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Hearing Date: To Be Determined
Time: To Be Determined

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 11

GEK REALTY AND HOME IMPROVEMENT LLC,

Case No. 17-40228 (NHL)

Debtor.

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**DEBTOR’S MOTION FOR AN ORDER, PURSUANT TO 11 U.S.C. §§105(a)
AND 363(b), (f) AND (m) AND FED. R. BANKR. P. 6004, AUTHORIZING AND
APPROVING SALE OF REAL PROPERTY, FREE AND CLEAR OF ALL
LIENS, ENCUMBRANCES AND INTERESTS, SUBJECT TO HIGHER
AND BETTER OFFERS, AND GRANTING RELATED RELIEF**

TO THE HONORABLE NANCY HERSHEY LORD,
UNITED STATES BANKRUPTCY JUDGE:

GEK Realty and Home Improvement LLC, the debtor and debtor-in-possession herein (the “Debtor”), as and for its motion (the “Motion”) for entry of an Order, pursuant to §§105(a) and 363(b), (f) and (m) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 6004 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) and Local Bankruptcy Rule 6004-1, authorizing and approving the Debtor’s proposed sale of certain real property located at 2750 Pearsall Avenue, Bronx, New York 10469 (Block 4525; Lot 20) (the “Pearsall Property”), free and clear of all liens, encumbrances and interest, to Stephan Depay and Carmen Depay (together, the “Proposed Purchaser”), for the purchase price of \$700,000, pursuant to the terms of a certain proposed Residential Contract of Sale, a copy of which is attached hereto as *Exhibit “A”* (the

“Contract”), but subject to any higher or better offers, and granting related relief, respectfully represents and alleges as follows:

BACKGROUND

1. On January 19, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with this Court and an Order for Relief was simultaneously entered. As of the Petition Date, the Debtor was authorized to remain in possession of its property and operate its business as a debtor-in-possession pursuant to §§1107(a) and 1108 of the Bankruptcy Code. No trustee, custodian or receiver was appointed, and no committee of creditors was formed.

2. The Debtor is the fee owner of the Pearsall Property which consists of a one family residential building.¹ The Pearsall Property (along with the Jefferson Property) is presently encumbered by, at a minimum, a mortgage lien in favor of BHMPW Funding LLC (the “Secured Creditor”) securing amounts which the Secured Creditor has asserted will total not less than \$916,751.67 as of November 30, 2017.² On January 28, 2016, the Secured Creditor commenced an action in the Supreme Court of the State of New York, Bronx County, titled *BHMPW Funding LLC v. GEK Realty and Home Improvement LLC, et al.*, Index No. 32083/2016E, seeking to foreclose its mortgage liens against the Pearsall Property and the Jefferson Property (the “Foreclosure Action”). As a result of the Debtor’s chapter 11 filing, further proceedings in the Foreclosure Action (including the entry of any judgment of foreclosure and sale) were stayed.

¹ The Debtor is also the fee owner of a certain real property located at 403 Jefferson Avenue, Brooklyn, New York 11221 (Block 1830; Lot 48) (the “Jefferson Property”). The Debtor is not seeking any relief with regard to the Jefferson Property by way of this Motion.

² The Debtor reserves all rights with regard to the amounts asserted by the Secured Creditor as well as the validity and extent of any lien allegedly securing such amounts.

3. The Debtor will shortly be filing a proposed chapter 11 plan of reorganization (possibly on a joint basis with the Secured Creditor) (the “Plan”) and a corresponding proposed Disclosure Statement. Briefly, the Plan will provide for the full payment of all of the Debtor’s pre and post-Petition Date obligations, with applicable interest. The Plan will further provide for the Debtor’s existing ownership to retain their respective equity interests in the Debtor. The Plan will be implemented and funded by way of a post-confirmation sale of the Pearsall Property and, to the extent necessary to fully fund the distributions contemplated under the Plan, with the proceeds of non-recourse contributions from non-debtor third parties.

THE PROPOSED SALE OF THE PEARSALL PROPERTY

4. Both prior to and after the Petition Date, the Debtor, with the assistance of its professionals (including Century 21 Metro Star (“Century 21”) which the Debtor will be seeking authority to retain as its real estate broker in this case), has been working to find a suitable purchaser for the Pearsall Property in the hopes of obtaining a purchase offer which would generate amounts sufficient to, at a minimum, fund substantially all of the distributions under a chapter 11 plan. As a result of those efforts, the Debtor was introduced to the Proposed Purchaser by Century 21 and extensive arms-length negotiations with the assistance of independent counsel ensued as to mutually agreeable terms of a sale of the Pearsall Property. The Debtor and the Proposed Purchaser subsequently entered into the Contract.³

³ The Debtor and the Proposed Purchaser had entered into a prior contract of sale regarding the Pearsall Property with a purchase price of \$587,000 which was subsequently reduced to \$575,000. However, as a result of recent further negotiations, the Proposed Purchaser has increased its offer for the Pearsall Property to \$700,000 as reflected in the Contract that is the subject of this Motion.

5. Without limiting the detail provided therein, the material terms of the Contract can be summarized as follows:

- (a) The Proposed Purchaser will pay the sum of \$700,000 in consideration of the Debtor's conveyance of its interests in the Pearsall Property free and clear of all liens and encumbrances;
- (b) The proposed sale is subject to the Proposed Purchaser obtaining a mortgage from an institutional lender of \$560,000 for a term of thirty (30) years within forty-five (45) days of the Contract being fully executed;
- (c) The proposed sale is not subject to any further conditions other than good and marketable title;
- (d) The Pearsall Property is being sold "As Is";
- (e) The Proposed Purchaser has remitted a good faith deposit in the amount of \$70,000 which is currently being held in escrow by the Debtor's counsel and will be applied to the amounts payable at closing;
- (f) The closing will take place within ten (10) days of the entry of an Order by this Court approving the sale; and
- (g) A brokerage commission equal to 4% of the purchase price is proposed to be paid by the Debtor in connection with the sale.

6. The Debtor believes that the proceeds of the sale of the Pearsall Property under the Contract will be sufficient to satisfy substantially all of its pre and post-Petition Date obligations as provided for under the Plan. Accordingly, the Debtor believes that the Proposed Purchaser's offer for the Pearsall Property is fair and reasonable and that approval thereof would be appropriate under the circumstances.

7. The Proposed Purchaser has no affiliation with the Debtor or any insider of the Debtor. Other than the Debtor and the Proposed Purchaser, no other individuals or entities stand to benefit from the proposed sale. There is no prejudicial connection or affiliation between the Debtor and the Proposed Purchaser and the proposed sale was fully and adequately negotiated with the

assistance of independent counsel. Thus, the Debtor avers that the proposed sale of the Pearsall Property to the Proposed Purchaser is at arms-length.

8. The Proposed Purchaser's \$700,000 offer for the Pearsall Property remains subject to any higher or better offers. As such, simultaneously with its filing of this Motion, the Debtor is filing a separate motion (the "Bid Procedures Motion") with this Court seeking the entry of an Order, pursuant to Bankruptcy Rules 2002, 6004 and 9006 and Local Bankruptcy Rule 6004-1, establishing bidding and noticing procedures, and scheduling auction and hearing dates, in connection with the Debtor's proposed sale of the Pearsall Property.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this case and this Motion pursuant to 28 U.S.C. §§157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper in this district pursuant to 28 U.S.C. §§1408 and 1409. The statutory predicates for the relief sought herein are §§105(a) and 363(b), (f) and (m) of the Bankruptcy Code and Bankruptcy Rule 6004.

RELIEF REQUESTED

10. By this Motion, the Debtor seeks this Court's authorization and approval of its proposed sale of the Pearsall Property to the Proposed Purchaser upon the terms of the Contract.

11. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate..." In order to approve the sale of estate property outside of the ordinary course of business, the bankruptcy judge must "find from the evidence presented before him

at the hearing a good reason to grant such an application.” Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F. 2d 1063, 1071 (2d Cir. 1983); see also Stephens Indus. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986) (“[B]ankruptcy court can authorize a sale of all of a Chapter 11 debtor’s assets under §363(b)(1) when a sound business purpose dictates such action.”). “[T]he standards for allowance of a pre-confirmation sale pursuant to §363(b)(1) are that the sale proponent must show not only that there is both a ‘sound business purpose’ why the sale should be allowed to take place outside of the ordinary course...but that the proponent must also make a strong showing that all of the requirements for any §363(b)(1) sale are met.” In re Industrial Valley Refrigeration and Air Conditioning Supplies, Inc., 77 B.R. 15, 21 (Bankr. E.D. Pa. 1987) (citations omitted). “These elements are the provision of accurate and reasonable notice; a showing that the price to be paid is adequate, *i.e.*, fair and reasonable; and establishing that ‘good faith’, *i.e.*, the absence of any lucrative deals with insiders, is present.” Id. It is clear that a debtor’s showing of a sound business justification need not be unduly exhaustive but, rather, a debtor is “simply required to justify the proposed disposition with sound business reason.” In re Baldwin United Corp., 43 B.R. 888, 906 (Bankr. S.D.Ohio 1984).

12. The Debtor respectfully submits that the proposed sale of the Pearsall Property under the terms of the Contract represents a sound exercise of business judgment by the Debtor and that consummation thereof would be in the best interests of the estate. As discussed above, both prior to and after the Petition Date, the Debtor has been actively soliciting offers for the Pearsall Property. The Debtor believes that the amounts proposed to be paid under the Contract represent the reasonable value of the Pearsall Property under the circumstances, including the current depressed

state of the residential real estate market, the existence of the pending Foreclosure Action regarding the Pearsall Property, the substantial mortgages and liens asserted against the Pearsall Property and the continuing accrual of interest and other charges relating to said mortgages and liens.

13. The proposed sale represents the best possible means for the Debtor, its creditors and its estate to recover the value of the Pearsall Property under the circumstances. In this regard, the proceeds of the sale of the Pearsall Property will be the primary source of funding for the Plan under which all claims against the Debtor will be fully paid, with applicable interest. Thus, the Debtor respectfully requests that the Court approve the proposed sale of the Pearsall Property to the Proposed Purchaser or such other bidder that may make a higher or better bid therefor at the auction.

14. With regard to any encumbrances against Pearsall Property proposed to be sold by a debtor, §363(f) of the Bankruptcy Code provides:

The [debtor-in-possession] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if -

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such 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 such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

15. The Debtor respectfully submits that the requirements of §363(f) are or will be satisfied as of the date that the sale of the Pearsall Property closes. All liens, claims and encumbrances against the Pearsall Property will be paid at closing or shall attach to the proceeds of the proposed sale.

16. Moreover, the Debtor requests that this Court find that the Proposed Purchaser (or any successful bidder) be afforded the protections provided by §363(m) of the Bankruptcy Code in connection with the proposed sale which provides, in pertinent part:

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

Although the Bankruptcy Code does not define “good faith purchaser”, the Court of Appeals for the Second Circuit has stated that good faith is shown by the integrity of a purchaser’s conduct during the course of the sale proceedings. Licensing by Paolo v. Sinatra (In re Gucci), 126 F.3d 380, 390 (2d Cir. 1997). Respectfully, and as required by §363(m) of the Bankruptcy Code, the Debtor and the Proposed Purchaser have acted in good faith in negotiating the proposed sale.

CONCLUSION

17. Based upon the foregoing, it is respectfully requested that this Motion be granted in its entirety along with such other and further relief as may be just and proper.

Dated: New York, New York
November 21, 2017

PICK & ZABICKI LLP
Proposed Substitute Counsel to the Debtor

By: _____

Douglas J. Pick
369 Lexington Avenue, 12th Floor
New York, New York 10017
(212) 695-6000

EXHIBIT "A"

Jointly prepared by the Real Property Section of the New York State Bar Association, the New York State Land Title Association, the Committee on Real Property Law of the Association of the Bar of the City of New York and the Committee on Real Property Law of the New York County Lawyers' Association

WARNING: NO REPRESENTATION IS MADE THAT THIS FORM OF CONTRACT FOR THE SALE AND PURCHASE OF REAL ESTATE COMPLIES WITH SECTION 5-702 OF THE GENERAL OBLIGATIONS LAW ("PLAIN LANGUAGE").

CONSULT YOUR LAWYER BEFORE SIGNING THIS AGREEMENT

NOTE: FIRE AND CASUALTY LOSSES AND CONDEMNATION

This contract form does not provide for what happens in the event of fire, or other casualty loss or condemnation before the title closing. Unless different provision is made in this contract, Section 5-1311 of the General Obligations Law will apply. One part of that law makes a Purchaser responsible for fire and casualty loss upon taking possession of the Premises before the title closing.

Residential Contract of Sale

Contract of Sale made as of November 6 2017 BETWEEN

GEX REALTY AND HOME IMPROVEMENT LLC

and Gregory Carmichael, President

Address: 111-29 208th Street, St. Albans, New York

Social Security Number/Fed. I.D. No.(s):

Stephen and Carmen Depay, as Husband and Wife

hereinafter called "Seller" and

Address: 2750 Peconic Ave., Bronx, New York 10465

Social Security Number/Fed. I.D. No.(s):

hereinafter called "Purchaser"

The parties hereby agree as follows:

1. Premises. Seller shall sell and convey and Purchaser shall purchase the property, together with all buildings and improvements thereon (collectively the "Premises"), more fully described on a separate page marked "Schedule A", annexed hereto and made a part hereof and also known as: 2750 Peconic Avenue, Bronx, New York

Street Address: Bronx NY 10465 Tax Map Designation: Block 04525, Lot 0020

Together with Seller's ownership and rights, if any, to land lying in the bed of any street or highway, opened or proposed, adjoining the Premises to the center line thereof, including any right of Seller to any unpaid award by reason of any taking by condemnation and/or for any damage to the Premises by reason of change of grade of any street or highway. Seller shall deliver at no additional cost to Purchaser, at Closing (as hereinafter defined), or thereafter, on demand, any documents that Purchaser may reasonably require for the conveyance of such title and the assignment and collection of such award or damages.

2. Personal Property. This sale also includes all fixtures and articles of personal property now attached or appurtenant to the Premises, unless specifically excluded below. Seller represents and warrants that at Closing they will be paid for and owned by Seller, free and clear of all liens and encumbrances, except any existing mortgage to which this sale may be subject. They include, but are not limited to, plumbing, heating, lighting and cooking fixtures, chandeliers, bathroom and kitchen cabinets and counters, mantels, door mirrors, switch plates and door hardware, venetian blinds, window treatments, shades, screens, awnings, storm windows, storm doors, window boxes, mail box, TV aerials, weather vane, flogpole, pumps, shrubbery, fencing, outdoor statutory, tool shed, dishwasher, washing machine, clothes dryer, garbage disposal unit, range, oven, built-in microwave oven, refrigerator, freezer, air conditioning equipment and installations, wall to wall carpeting and built-ins not excluded below (strikes out inapplicable items).

to the extent on the Property

Excluded from this sale are furniture and household furnishings and

3. Purchase Price. The purchase price is \$ 700,000.00

payable as follows:

(a) On the signing of this contract, by Purchaser's good check payable to the Escrowee (as hereinafter defined), subject to collection, the receipt of which is hereby acknowledged, to be

held in escrow pursuant to paragraph 6 of this contract (the "Downpayment") \$ 70,000.00

(b) By allowance for the principal amount unpaid on the existing mortgage on the date hereof, payment of which Purchaser shall assume by joinder in the deed: \$

(c) By a purchase money note and mortgage from Purchaser to Seller: \$

(d) Balance at Closing in accordance with paragraph 7: \$ 630,000.00

4. Existing Mortgage. (Delete if inapplicable) In addition to any existing mortgage as indicated in paragraph 3(b) above:

(a) The Premises shall be conveyed subject to the continuing lien of the existing mortgage, which is presently payable, with interest at the rate of percent per annum, in monthly installments of \$

which includes principal, interest and escrow amounts, if any, and with any balance of principal being due and payable on

(b) to the extent that any required payments are made on the existing mortgage between the date hereof and Closing which reduce the unpaid principal amount thereof below the amount shown in paragraph 3(b), then the balance of the price payable at Closing under paragraph 3(d) shall be increased by the amount of such payments of principal. Seller represents and warrants that the amount shown in paragraph 3(b) is substantially correct and agrees that only payments required by the existing mortgage will be made between the date hereof and Closing.

(c) If there is a mortgagee account, Seller shall assign it to Purchaser, if it can be assigned, and in that case Purchaser shall pay the amount in the escrow account to Seller at Closing.

(d) Seller shall deliver to Purchaser at Closing a certificate dated not more than 30 days before Closing signed by the holder of the existing mortgage, in a form for recording, certifying the amount of the unpaid principal, the date to which interest has been paid, the amount, if any, claimed to be unpaid for principal or interest, itemizing the same. Seller shall pay the fees for recording such certificate. If the holder of the existing mortgage is a bank or other institution as defined in Section 274-a of the Real Property Law it may, instead of the certificate, furnish a letter signed by a duly authorized officer, employee or agent dated not more than 30 days before Closing, containing the same information.

(c) Seller represents and warrants that (i) Seller has delivered to Purchaser true and complete copies of the existing mortgage, the note secured thereby and any extensions and modifications thereof, (ii) the existing mortgage is not in default, and at the time of Closing will not be, in default, and (iii) the existing mortgage does not contain any provision that permits the holder of the mortgage to require its immediate payment in full or to change any other term thereof by reason of the sale or conveyance of the premises.

5. ~~Purchase Money Mortgage (Delete if inapplicable)~~ If there is to be a purchase money mortgage as indicated in paragraph 3(c) above: (a) The purchase money note and mortgage shall be drawn by the attorney for Seller in the form attached or, if not, in the standard form adopted by the New York State Land Title Association. Purchaser shall pay at Closing the mortgage recording tax, recording fees and the attorney's fees for the amount of \$ [redacted] for its preparation. (b) The purchase money note and mortgage shall also provide that it is subject and subordinate to the lien of the existing mortgage and any extensions, modifications, replacements or consolidations of the existing mortgage, provided that (i) the interest rate thereof shall not be greater than [redacted] percent per annum and the total debt service shall not be greater than \$ [redacted] per annum, and (ii) if the principal amount thereof shall exceed the amount of principal owing and unpaid on the existing mortgage at the time of placing such new mortgage or consolidated mortgage, the excess is to be paid to the holder of such purchase money mortgage in reduction of the principal thereof. The purchase money mortgage shall also provide that such payment to the holder thereof shall not affect the regular installments, if any, of principal payable thereunder and that the holder thereof will, on demand and without charge therefor, execute, acknowledge and deliver any agreement or agreements further to effectuate such sale.

6. Downpayment in Escrow. (a) Seller's attorney ("Escrowee") shall hold the Downpayment in escrow in a segregated bank account at Capital One address New York, New York until Closing or sooner termination of this contract shall pay over or apply the Downpayment in accordance with the terms of this paragraph. Escrowee shall hold the Downpayment in a(n) [redacted] interest-bearing account for the benefit of the parties. If interest is held for the benefit of the parties, it shall be paid to the party entitled to the Downpayment and the party receiving the interest shall pay any income taxes thereon. If interest is not held for the benefit of the parties, the Downpayment shall be placed in an IOLA account or as otherwise permitted or required by law. The Social Security or Federal Identification numbers of the parties shall be furnished to Escrowee upon request. At Closing, the Downpayment shall be paid by Escrowee to Seller. If for any reason Closing does not occur and either party gives Notice (as defined in paragraph 25) to Escrowee demanding payment of the Downpayment, Escrowee shall give prompt Notice to the other party of such demand. If Escrowee does not receive Notice of objection from such other party to the proposed payment within 10 business days after the giving of such Notice, Escrowee is hereby authorized and directed to make such payment. If Escrowee does receive such Notice of objection within such 10 day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by Notice from the parties to this contract or a final, non-appealable judgment, order or decree of a court. However, Escrowee shall have the right at any time to deposit the Downpayment and the interest thereon with the clerk of a court in the county in which the Premises are located and shall give Notice of such deposit to Seller and Purchaser. Upon such deposit or other disbursement in accordance with the terms of this paragraph, Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder. (b) The parties acknowledge that Escrowee is acting solely as a stakeholder at their request and for their convenience and that Escrowee shall not be liable to either party for any act or omission on its part unless taken or suffered in bad faith or in willful disregard of this contract or involving gross negligence on the part of Escrowee. Seller and Purchaser jointly and severally (with right of contribution) agree to defend (by attorneys selected by Escrowee), indemnify and hold Escrowee harmless from and against all costs, claims and expenses (including reasonable attorneys' fees) incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith or in willful disregard of this contract or involving gross negligence on the part of Escrowee. (c) Escrowee may act or refrain from acting in respect of any matter referred to herein in full reliance upon and with the advice of

counsel which may be selected by it (including any member of its firm) and shall be fully protected in so acting or refraining from action upon the advice of such counsel. (d) Escrowee acknowledges receipt of the Downpayment by check subject to collection and Escrowee's agreement to the provisions of this paragraph by signing in the place indicated on the signature page of this contract. (e) Escrowee or any member of its firm shall be permitted to act as counsel for Seller in any dispute as to the disbursement of the Downpayment or any other dispute between the parties whether or not Escrowee is in possession of the Downpayment and continues to act as Escrowee. (f) The party whose attorney is Escrowee shall be liable for loss of the Downpayment.

7. Acceptable Funds. All money payable under this contract unless otherwise specified, shall be paid by: (a) Cash, but not over \$1,000.00; (b) Good certified check of Purchaser drawn on or official check issued by any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York unendorsed and payable to the order of Seller, or as Seller may otherwise direct upon reasonable prior notice (by telephone or otherwise) to Purchaser; (c) As to money other than the purchase price payable to Seller at Closing, uncertified check of Purchaser up to the amount of \$ 500.00 ; and (d) As otherwise agreed to in writing by Seller or Seller's attorney.

8. Mortgage Commitment Contingency. ~~(Delete paragraph if inapplicable. For explanation, see NOTES ON MORTGAGE COMMITMENT CONTINGENCY CLAUSE.)~~

(a) The obligation of Purchaser to purchase under this contract is conditioned upon issuance, on or before 45 days after a fully executed copy of this contract is given to Purchaser or Purchaser's attorney in the manner set forth in paragraph 25 or subparagraph 8(f) (the "Commitment Date"), of a written commitment from an Institutional Lender pursuant to which such Institutional Lender agrees to make a first mortgage loan, other than a VA, FHA or other governmentally insured loan, to Purchaser, at Purchaser's sole cost and expense, of \$ 560,000 for a term of at least 30 years (or such lesser sum or shorter term as Purchaser shall be willing to accept) at the prevailing fixed or adjustable rate of interest and on other customary commitment terms (the "Commitment"). To the extent a Commitment is conditioned on the sale of Purchaser's current home, payment of any outstanding debt, no material adverse change in Purchaser's financial condition or any other customary conditions, Purchaser accepts the risk that such conditions may not be met; however, a commitment conditioned on the Institutional Lender's approval of an appraisal shall not be deemed a "Commitment" hereunder until an appraisal is approved (and if that does not occur before the Commitment Date Purchaser may cancel under subparagraph 8(e) unless the Commitment Date is extended). Purchaser's obligations hereunder are conditioned only on issuance of a Commitment. Once a Commitment is issued, Purchaser is bound under this contract even if the lender fails or refuses to fund the loan for any reason. (b) Purchaser shall (i) make prompt application to one or, at Purchaser's election, more than one Institutional Lender for such mortgage loan, (ii) furnish accurate and complete information regarding Purchaser and members of Purchaser's family, as required, (iii) pay all fees, points and charges required in connection with such application and loan, (iv) pursue such application with diligence, and (v) cooperate in good faith with such Institutional Lender(s) to obtain a Commitment. Purchaser shall accept a Commitment meeting the terms set forth in subparagraph 8(a) and shall comply with all requirements of such Commitment (or any other commitment accepted by Purchaser). Purchaser shall furnish Seller with a copy of the Commitment promptly after receipt thereof. (c) ~~(Delete this subparagraph if inapplicable)~~ Prompt submission by Purchaser of an application to a mortgage broker registered pursuant to Article 12-D of the New York Banking Law ("Mortgage Broker") shall constitute full compliance with the terms and conditions set forth in subparagraph 8(b)(i), provided that such Mortgage Broker promptly submits such application to such Institutional Lender(s). Purchaser shall cooperate in good faith. (d) If all Institutional Lenders to whom applications were made deny such applications in writing prior to the Commitment Date, Purchaser may cancel this contract by giving Notice thereof to Seller, with a copy of such denials, provided that Purchaser has complied with all its obligations under this paragraph 8. (e) If no Commitment is issued by an Institutional Lender on or before the Commitment Date, then, unless Purchaser has accepted a written commitment from an Institutional Lender that

does not conform to the terms set forth in subparagraph 8(a), Purchaser may cancel this contract by giving Notice to Seller within 5 business days after the Commitment Date, provided that such Notice includes the name and address of the Institutional Lender(s) to whom application was made and that Purchaser has complied with all its obligations under this paragraph 8.

- (f) If this contract is canceled by Purchaser pursuant to subparagraphs 8(d) or (e), neither party shall thereafter have any further rights against, or obligations or liabilities to, the other by reason of this contract, except that the Downpayment shall be promptly refunded to Purchaser and except as set forth in paragraph 27.
- (g) If Purchaser fails to give timely Notice of cancellation or if Purchaser accepts a written commitment from an Institutional Lender that does not conform to the terms set forth in subparagraph 8(a), then Purchaser shall be deemed to have waived Purchaser's right to cancel this contract and to receive a refund of the Downpayment by reason of the contingency contained in this paragraph 8.
- (h) If Seller has not received a copy of a commitment from an Institutional Lender accepted by Purchaser by the Commitment Date, Seller may cancel this contract by giving Notice to Purchaser within 5 business days after the Commitment Date, which cancellation shall become effective unless Purchaser delivers a copy of such commitment to Seller within 10 business days after the Commitment Date. After such cancellation neither party shall have any further rights against, or obligations or liabilities to, the other by reason of this contract, except that the Downpayment shall be promptly refunded to Purchaser (provided Purchaser has complied with all its obligations under this paragraph 8) and except as set forth in paragraph 27.
- (i) For purposes of this contract, the term "Institutional Lender" shall mean any bank, savings bank, private banker, trust company, savings and loan association, credit union or similar banking institution whether organized under the laws of this state, the United States or any other state, foreign banking corporation licensed by the Superintendent of Banks of New York or regulated by the Comptroller of the Currency to transact business in New York State; insurance company duly organized or licensed to do business in New York State; mortgage banker licensed pursuant to Article 12-D of the Banking Law; and any instrumentality created by the United States or any state with the power to make mortgage loans.
- (j) For purposes of subparagraph 8(a), Purchaser shall be deemed to have been given a fully executed copy of this contract on the third business day following the date of ordinary or regular mailing, postage prepaid.

9. Permitted Exceptions. The Premises are sold and shall be conveyed subject to:

- (a) Zoning and subdivision laws and regulations, and landmark, historic or wetlands designation, provided that they are not violated by the existing buildings and improvements erected on the property or their use;
- (b) Consents for the erection of any structures on, under or above any streets on which the Premises abut;
- (c) Encroachments of stoops, areas, cellar steps, trim and cornices, if any, upon any street or highway;
- (d) Real estate taxes that are a lien, but are not yet due and payable; and
- (e) The other matters, if any, including a survey exception, set forth in a Rider attached.

10. Governmental Violations and Orders.

- (a) Seller shall comply with all notices or orders of violations of law or municipal ordinances, orders or requirements noted or issued as of the date hereof by any governmental department having authority as to lands, housing, buildings, fire, health, environmental and labor conditions affecting the Premises. The Premises shall be conveyed free of them at Closing. Seller shall furnish Purchaser with any authorizations necessary to make the searches that could disclose these matters.
- (b) *(Delete if inapplicable)* All obligations affecting the Premises pursuant to the Administrative Code of the City of New York incurred prior to Closing and payable in money shall be discharged by Seller at or prior to Closing.

11. Seller's Representations.

- (a) Seller represents and warrants to Purchaser that:
 - i. The Premises abut or have a right of access to a public road;
 - ii. Seller is the sole owner of the Premises and has the full right, power and authority to sell, convey and transfer the same in accordance with the terms of this contract;
 - iii. Seller is not a "foreign person", as that term is defined for purposes of the Foreign Investment in Real Property Tax Act. Internal Revenue Code ("IRC") Section 1445, as

- amended, and the regulations promulgated thereunder (collectively "FIRPTA");
- iv. The Premises are not affected by any exemptions or abatements of taxes; and
- v. Seller has been known by no other name for the past ten years, except
- (b) Seller covenants and warrants that all of the representations and warranties set forth in this contract shall be true and correct at Closing.
- (c) Except as otherwise expressly set forth in this contract, none of Seller's covenants, representations, warranties or other obligations contained in this contract shall survive Closing.

12. Condition of Property. Purchaser acknowledges and represents that Purchaser is fully aware of the physical condition and state of repair of the Premises and of all other property included in this sale, based on Purchaser's own inspection and investigation thereof, and that Purchaser is entering into this contract based solely upon such inspection and investigation and not upon any information, data, statements or representations, written or oral, as to the physical conditions, state of repair, use, cost of operation or any other matter related to the Premises or the other property included in the sale, given or made by Seller or its representatives, and shall accept the same "as is" in their present condition and state of repair, subject to reasonable use, wear, tear and natural deterioration between the date hereof and the date of Closing (except as otherwise set forth in paragraph 16(e)), without any reduction in the purchase price or claim of any kind for any change in such condition by reason thereof subsequent to the date of this contract. Purchaser and its authorized representatives shall have the right, at reasonable times and upon reasonable notice (by telephone or otherwise) to Seller, to inspect the Premises before Closing.

13. Insurable Title. Seller shall give and Purchaser shall accept such title as any licensed New York Title Insurance Company shall be willing to approve and insure in accordance with its standard form of title policy approved by the New York State Insurance Department, subject only to the matters provided for in this contract.

14. Closing, Deed and Title.

- (a) "Closing" means the settlement of the obligations of Seller and Purchaser to each other under this contract, including the payment of the purchase price to Seller, and the delivery to Purchaser of a Bargain & Sale with Covenant deed in proper statutory form for record, duly executed and acknowledged, so as to convey to Purchaser fee simple title to the Premises, free of all encumbrances, except as otherwise herein stated. The deed shall contain a covenant by Seller as required by subd. 5 of Section 13 of the Lien Law.
- (b) If Seller is a corporation, it shall deliver to Purchaser at the time of Closing (i) a resolution of its Board of Directors authorizing the sale and delivery of the deed, and (ii) a certificate by the Secretary or Assistant Secretary of the corporation certifying such resolution and setting forth facts showing that the transfer is in conformity with the requirements of Section 909 of the Business Corporation Law. The deed in such case shall contain a recital sufficient to establish compliance with that Section.

15. Closing Date and Place. Closing shall take place at the office of Pick & Zabicki LLP at 10:00 o'clock on * or upon reasonable notice (by telephone or otherwise) by Purchaser, at the office of Purchaser's Lender

16. Conditions to Closing. This contract and Purchaser's obligation to purchase the Premises are also subject to and conditioned upon the fulfillment of the following conditions precedent:

- (a) The accuracy, as of the date of Closing, of the representations and warranties of Seller made in this contract.
- (b) The delivery by Seller to Purchaser of a valid and subsisting Certificate of Occupancy or other required certificate of compliance, or evidence that none was required, covering the building(s) and all of the other improvements located on the property authorizing their use as a family dwelling at the date of Closing.
- (c) The delivery by Seller to Purchaser of a certificate stating that Seller is not a foreign person, which certificate shall be in the form then required by FIRPTA or a withholding certificate from I.R.S. If Seller fails to deliver the aforesaid certificate or if Purchaser is not entitled under FIRPTA to rely on such certificate, Purchaser shall deduct and withhold from the purchase price a sum equal to 10% thereof (or any lesser amount permitted by law) and shall at Closing remit the withheld amount with the required forms to the Internal Revenue Service.
- (d) The delivery of the Premises and all building(s) and improvements comprising a part thereof in broom clean condition, vacant and free of leases or tenancies, together with keys to the Premises.
- (e) All plumbing (including water supply and septic systems, if any), heating and air conditioning, if any, electrical and mechanical

* within ten days of entry of an Order by the Rockburgh Court approving this sale

systems, equipment, and machinery in the building(s) located on the property and all appliances which are included in this sale being in working order as of the date of Closing.

- (f) If the Premises are a one or two family house, delivery by the parties at Closing of affidavits in compliance with state and local law requirements to the effect that there is installed in the Premises a smoke detecting alarm device or devices.
- (g) The delivery by the parties of any other affidavits required as a condition of recording the deed.

17. Deed Transfer and Recording Taxes. At Closing, certified or official bank checks payable to the order of the appropriate State, City or County officer in the amount of any applicable transfer and/or recording tax payable by reason of the delivery or recording of the deed or mortgage, if any, shall be delivered by the party required by this contract to pay such transfer and/or recording tax, together with any required tax returns duly executed and sworn to, and such party shall cause any such checks and returns to be delivered to the appropriate officer promptly after Closing. The obligation to pay any additional tax or deficiency and any interest or penalties thereon shall survive Closing.

18. Apportionments and Other Adjustments; Water Meter and Installation Assessments.

- (a) To the extent applicable, the following shall be apportioned as of midnight of the day before the day of Closing: (i) taxes, water charges and sewer rents, on the basis of the fiscal period for which assessed; (ii) fuel; (iii) interest on the existing mortgage; (iv) premiums on existing transferable insurance policies and renewals of those expiring prior to Closing; (v) vault charges; (vi) rents as and when collected.
- (b) If Closing shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis of the tax rate for the immediately preceding fiscal period applied to the latest assessed valuation.
- (c) If there is a water meter on the Premises, Seller shall furnish a reading to a date not more than 30 days before Closing and the unfixed meter charge and sewer rent, if any, shall be apportioned on the basis of such last reading.
- (d) If at the date of Closing the Premises are affected by an assessment which is or may become payable in annual installments, and the first installment is then a lien, or has been paid, then for the purposes of this contract all the unpaid installments shall be considered due and shall be paid by Seller at or prior to Closing.
- (e) Any errors or omissions in computing apportionments or other adjustments at Closing shall be corrected within a reasonable time following Closing. This subparagraph shall survive Closing.

19. Allowance for Unpaid Taxes, etc. Seller has the option to credit Purchaser as an adjustment to the purchase price with the amount of any unpaid taxes, assessments, water charges and sewer rents, together with any interest and penalties thereon to a date not less than five business dates after Closing, provided the official bills therefor computed to said date are produced at Closing.

20. Use of Purchase Price to Remove Encumbrances. If at Closing there are other liens or encumbrances that Seller is obligated to pay or discharge, Seller may use any portion of the cash balance of the purchase price to pay or discharge them, provided Seller shall simultaneously deliver to Purchaser at Closing instruments in recordable form and sufficient to satisfy such liens or encumbrances of record, together with the cost of recording or filing said instruments. As an alternative Seller may deposit sufficient monies with the title insurance company employed by Purchaser acceptable to and required by it to assure their discharge, but only if the title insurance company will insure Purchaser's title clear of the matters or insure against their enforcement out of the Premises and will insure Purchaser's Institutional Lender clear of such matters. Upon reasonable prior notice (by telephone or otherwise), Purchaser shall provide separate certified or official bank checks as requested to assist in clearing up these matters.

21. Title Examination; Seller's Inability to Convey; Limitations of Liability.

- (a) Purchaser shall order an examination of title in respect of the Premises from a title company licensed or authorized to issue title insurance by the New York State Insurance Department or any agent for such title company promptly after the execution of this contract or, if this contract is subject to the mortgage contingency set forth in paragraph 8, after a mortgage commitment has been accepted by Purchaser. Purchaser shall cause a copy of the title report and of any additions thereto to be delivered to the attorney(s) for Seller promptly after receipt thereof.
- (b) (i) If at the date of Closing, Seller is unable to transfer title to Purchaser in accordance with this contract, or Purchaser has other valid grounds for refusing to close, whether by reason of

liens, encumbrances or other objections to title or otherwise (herein collectively called "Defects"), other than those subject to which Purchaser is obligated to accept title hereunder or which Purchaser may have waived and other than those which Seller has herein expressly agreed to remove, remedy or discharge and if Purchaser shall be unwilling to waive the same and to close title without abatement of the purchase price, then, except as hereinafter set forth, Seller shall have the right, at Seller's sole election, either to take such action as Seller may deem advisable to remove, remedy, discharge or comply with such Defects or to cancel this contract; (ii) if Seller elects to take action to remove, remedy or comply with such Defects, Seller shall be entitled from time to time, upon Notice to Purchaser, to adjourn the date for Closing hereunder for a period or periods not exceeding 60 days in the aggregate (but not extending beyond the date upon which Purchaser's mortgage commitment, if any, shall expire), and the date for Closing shall be adjourned to a date specified by Seller not beyond such period. If for any reason whatsoever, Seller shall not have succeeded in removing, remedying or complying with such Defects at the expiration of such adjournment(s), and if Purchaser shall still be unwilling to waive the same and to close title without abatement of the purchase price, then either party may cancel this contract by Notice to the other given within 10 days after such adjourned date; (iii) notwithstanding the foregoing, the existing mortgage (unless this sale is subject to the same) and any matter created by Seller after the date hereof shall be released, discharged or otherwise cured by Seller at or prior to Closing.

- (c) If this contract is cancelled pursuant to its terms, other than as a result of Purchaser's default, this contract shall terminate and come to an end, and neither party shall have any further rights, obligations or liabilities against or to the other hereunder or otherwise, except that: (i) Seller shall promptly refund or cause the Escrowee to refund the Downpayment to Purchaser and, unless cancelled as a result of Purchaser's default or pursuant to paragraph 8, to reimburse Purchaser for the net cost of examination of title, including any appropriate additional charges related thereto, and the net cost, if actually paid or incurred by Purchaser for updating the existing survey of the Premises or of a new survey, and (ii) the obligations under paragraph 27 shall survive the termination of this contract.

22. Affidavit as to Judgments, Bankruptcies, etc. If a title examination discloses judgments, bankruptcies or other returns against persons having names the same as or similar to that of Seller, Seller shall deliver an affidavit at Closing showing that they are not against Seller.

23. Defaults and Remedies.

- (a) If Purchaser defaults hereunder, Seller's sole remedy shall be to receive and retain the Downpayment as liquidated damages, it being agreed that Seller's damages in case of Purchaser's default might be impossible to ascertain and the Downpayment constitutes a fair and reasonable amount of damages under the circumstances and is not a penalty.
- (b) If Seller defaults hereunder, Purchaser shall have such remedies as Purchaser shall be entitled to at law or in equity, including but not limited to, specific performance.

24. Purchaser's Lien. All money paid on account of this contract, and the reasonable expenses of examination of title to the Premises and of any survey and survey inspection charges are hereby made liens on the Premises, but such liens shall not continue after default by Purchaser under this contract.

25. Notices. Any notice or other communication ("Notice") shall be in writing and either:

- (a) sent by either of the parties hereto or by their respective attorneys who are hereby authorized to do so on their behalf or by the Escrowee, by registered or certified mail, postage prepaid, or
- (b) delivered in person or by overnight courier, with receipt acknowledged, to the respective addresses given in this contract for the party and the Escrowee, to whom the Notice is to be given, or to such other address as such party or Escrowee shall hereafter designate by Notice given to the other party or parties and the Escrowee pursuant to this paragraph. Each Notice mailed shall be deemed given on the third business day following the date of mailing the same, except that any Notice to Escrowee shall be deemed given only upon receipt by Escrowee and each Notice delivered in person or by overnight courier shall be deemed given when delivered, or
- (c) with respect to paragraph 7(b) or paragraph 20, sent by fax to the party's attorney. Each Notice by fax shall be deemed given when transmission is confirmed by the sender's fax machine. A copy of each Notice sent to a party shall also be sent to the party's attorney. The attorneys for the parties are hereby authorized to give and receive on behalf of their clients all Notices and deliveries. This contract may be delivered as provided above or by ordinary mail.

16. **No Assignment.** This contract may not be assigned by Purchaser without the prior written consent of Seller in each instance and any purported assignment(s) made without such consent shall be void.

17. **Broker.** Seller and Purchaser each represents and warrants to the other that it has not dealt with any broker in connection with this sale other than

("Broker") and
Seller shall pay Broker any commission earned pursuant to a separate agreement between Seller and Broker. Seller and Purchaser shall indemnify and defend each other against any costs, claims and expenses, including reasonable attorney's fees arising out of the breach on their respective parts of any representation or agreement contained in this paragraph. The provisions of this paragraph shall survive Closing or, if Closing does not occur the termination of this contract.

18. **Miscellaneous.**

- (a) All prior understanding, agreements, representations and warranties, oral or written, between Seller and Purchaser are merged in this contract; it completely expresses their full agreement and has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this contract.
- (b) Neither this contract nor any provision thereof may be waived, changed or cancelled except in writing. This contract shall also apply to and bind the heirs, distributees, legal representatives, successors and permitted assigns of the respective parties. The

parties hereby authorize their respective attorneys to agree in writing to any changes in dates and time periods provided for in this contract.

- (c) Any singular word or term herein shall also be read as in the plural and the neuter shall include the masculine and feminine gender, whenever the sense of this contract may require it.
- (d) The captions in this contract are for convenience of reference only and in no way define, limit or describe the scope of this contract and shall not be considered in the interpretation of this or any provisions hereof.
- (e) This contract shall not be binding or effective until duly executed and delivered by Seller and Purchaser.
- (f) Seller and Purchaser shall comply with IRC reporting requirements, if applicable. This subparagraph shall survive Closing.
- (g) Each party shall, at any time and from time to time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other in order to carry out the intent and purpose of this contract. This subparagraph shall survive Closing.
- (h) This contract is intended for the exclusive benefit of the parties hereto and except as otherwise expressly provided herein, shall not be for the benefit of, and shall not create any rights in, or be enforceable by any other person or entity.
- (i) If applicable, the complete and fully executed disclosure of information on lead-based paint and/or lead-based paint hazards is attached hereto and made a part hereof.

Continued on Rider attached hereto. *(Delete if inapplicable)*

In Witness Whereof, this contract has been duly executed by the parties hereto.

GEK REALTY AND HOME IMPROVEMENT LLC Seller

Stephan Depay Buyer

Gregory Carmichael, President Seller

Carmen Depay Buyer

Seller

Purchaser

Seller

Purchaser

Attorney for Seller: Pick & Zolnick LLP

Attorney for Purchaser: Jayen Brown, Esq.

Address: 388 Lexington Avenue, 12th floor
New York NY 10017
Tel: (212) 632-8888
Fax: (212) 632-6027
e-mail: dypick@pickzolnick.com

Address: 41 West 57th Street, 3rd Floor
New York NY 10019
Tel: (212) 692-4064
Fax:
e-mail:

Receipt of the Downpayment is acknowledged and the undersigned agrees to act in accordance with the provisions of paragraph 6 above.

Escrowee

Contract of Sale

PREMISES

TITLE NO.

GEK REALTY AND HOME IMPROVEMENT LLC
and Gregory Carmichael, President

Section
Block 64525
Lot 002D
County or Town Bronx
Street Number 2769 Pearlman Avenue, Bronx, New York

Distributed By:

Stephan Depay
Carmen Depay



NOTES ON MORTGAGE COMMITMENT CONTINGENCY CLAUSE FOR RESIDENTIAL CONTRACT OF SALE

- WARNING:** The mortgage Commitment contingency clause for the Residential Contract of Sale is a bar association form that attempts to provide a recalculation that makes the rights and obligations of the parties clear in sale of residences in ordinary circumstances. It should be reviewed carefully by Seller and Purchaser and their attorneys in each and every transaction to make sure that all the provisions are appropriate for that transaction. Negotiated modifications should be made whenever necessary.
- Under the clause, the obligation of Purchaser to purchase under the contract of sale is contingent on Purchaser's obtaining a mortgage Commitment letter from an Institutional Lender within the number of days specified for the amount specified. This refers to calendar days. Seller's attorney should state his/her calculation of the Commitment Date in the letter delivering the executed contract to Purchaser's attorney, to prevent confusion later. Purchaser should promptly contact or correct that date. In applying for a loan, Purchaser should inform its lender of the scheduled date of Closing in the contract and request that the expiration date of the Commitment occur after the scheduled date of Closing. Purchaser must comply with deadlines and pursue the application in good faith. The Commitment contingency is satisfied by issuance of a Commitment in the amount specified on or before the Commitment Date, unless the Commitment is conditioned on approval of an appraisal. If the Commitment is conditioned on approval of an appraisal and such approval does not occur prior to the Commitment Date, Purchaser should either cancel the contract or obtain an extension of the Commitment Date. If the Commitment is later withdrawn or not honored, Purchaser runs the risk of being in default under the contract of sale with Seller.
- If there are loan terms and conditions that are required or would not be acceptable to Purchaser, such as the interest rate, term of the loan, points, fees or a condition requiring sale of the current home, those terms and conditions should be specified in a rider.
- This clause requires that initial review and approval of Purchaser's credit will occur before the Commitment letter is issued. Purchaser should confirm with the lender that this is the case before applying for the Commitment.
- If, as has been common, the Commitment letter itself is conditioned on sale of Purchaser's home or payment of any outstanding debt or no material adverse change in Purchaser's financial condition, such a Commitment will satisfy the contract contingency nonetheless, and Purchaser will take the risk of fulfilling those Commitment conditions, including forfeiture of the Downpayment if Purchaser defaults on its obligation to close. Under New York case law, a defaulting Purchaser may not recover any part of the Downpayment, and Seller does not have to prove any damages. If Purchaser is not willing to take that risk, the clause must be modified accordingly.
- Purchaser may submit an application to registered Mortgage Broker instead of applying directly to an Institutional Lender.
- This clause allows Seller to amend if a Commitment is not accepted by Purchaser by the Commitment Date, unless Purchaser timely supplies a copy of the Commitment, to allow Seller the option to avoid having to wait until the scheduled date of Closing to see if Purchaser will be able to close. Seller may prefer to cancel rather than to wait and settle for forfeiture of the Downpayment if Purchaser defaults. Because of Seller's right to cancel, Purchaser may not waive this contingency clause. This clause means that Purchaser is subject to cancellation by Seller even if Purchaser is willing to risk that he/she will obtain the Commitment after the Commitment Date. Some Purchasers may not want to be subject to such cancellation by Seller.
- Purchaser may want to add to paragraph 2(f) that Purchaser's reimbursement should include non-refundable financing and inspection expenses of Purchaser, which should be refunded by Seller if Seller willfully defaults under the contract of sale (alternative: If Seller is unable to transfer title under the contract of sale).

9-25-00 Joint Committee on the Mortgage Contingency Clause: Real Property Section of the New York State Bar Association Real Property Law Committee of the Association of the Bar of the City of New York Real Property Committee of the New York County Lawyers Association.



RIDER TO CONTRACT OF SALE

Dated: November 6, 2017
Premises: 111-20 200th Street, St. Albans, New York 11412
Seller: GEK Realty and Home Improvement LLC
Purchaser: Stephan Depay and Carmen Depay, as Husband and Wife

This is a Rider to that certain Contract dated November 6, 2017. In the event of any conflict between the terms of the Contract and this Rider, the terms of this Rider shall prevail.

1. In addition to the permitted exceptions in Paragraph 9 hereof, the premises shall be conveyed subject to the following:
 - a. Any state of facts an accurate survey may show.
 - b. Covenants, restrictions, utility easements, easements and consents of record, provided they do not prohibit the erection or maintenance of the structure or structures now on the premises.
 - c. Rights, if any, acquired by any utility company to maintain and operate lines, wires, cables, poles and distribution boxes over, and upon said premises.
 - d. Variation between the tax lot and the record.
2. The Seller has not made and does not make any representations as to the physical condition, expense, or any other matter or thing affecting or related to the aforesaid premises, and Purchasers hereby expressly acknowledge that no such representations have been made, and Purchasers, further agree to take the premises in an absolutely "AS IS" condition. Purchasers hereby waive, release and renounce all (i) implied and expressed warranties,

statutory or otherwise, (ii) representations, and/or (iii) guarantee and hereby waive, release and renounce any claim for any direct, incidental or consequential damages resulting therefrom. The Seller is not liable or bound in any manner by any verbal or written statements, representations, real estate brokers' setups or information pertaining to the above premises furnished by any real estate broker, agent, employee, servant or other person, unless the same are specifically set forth herein.

3. In the event that the Seller shall be unable to convey marketable title to the premises herein above described, subject to the encumbrances herein specifically enumerated or shall be unable to convey title to the premises in accordance with the terms of this contract, the Purchasers, at their election, shall have the right to accept such title as the Seller is able to convey, without any claim on the part of the Purchasers or abatement for defects or objections; or the Purchasers shall have the right to rescind this contract and upon rescission, pursuant to this paragraph, the Purchasers shall be entitled to a return of the Down Payment (without interest) paid at the time of signing of this contract. Upon such repayment this contract shall be null and void and of no force and effect, and Seller shall be under no obligation or liability whatever to Purchasers for any damages that Purchasers may have sustained by failure to convey title hereunder. Seller shall have the right to adjourn closing for a period of thirty-days so as to remove any such objections or encumbrances. Nothing herein contained shall require the Seller to expend any money in excess of \$500.00 or to bring any action or proceeding, or to incur any other expense in order to render title marketable.

Notwithstanding the above, in the event that Seller shall be unable to deliver a certificate of occupancy for these premises, Purchasers shall have the option to

terminate the contract and receive the Down Payment.

4. Purchasers, at least ten (10) days prior to closing of title, shall furnish to Seller's attorney a written notice of objections to title.

5. If Purchasers, through no fault of the Seller refuses to take title to the property as required by this contract, or otherwise breaches this contract, then Seller shall retain as liquidated damages the amount paid upon the signing of this contract, and Purchasers shall have no claims against Seller and this contract shall be null and void and of no further force and effect.

6. This contract may not be assigned by the Purchasers.

7. The Purchasers convent and agree not to record this contract or any notice or memorandum of this contract. The recording of this contract or any notice or memorandum of this contract by the Purchasers shall be deemed a material default.

8. The respective attorneys for the parties in this contract are authorized to extend any period of time for the performance of any term or condition of this agreement, by either party, provided same is in writing.

9. Violations in any County, City, Town or Federal Agency or department which the Seller is required to remove hereunder shall not be an objection to title, provided the Seller shall deposit with its attorney or with the Purchaser's title company, a sum sufficient to perform the work and provide the materials necessary to remove such violations of record within ninety (90) days from the date of closing of title. Such deposit shall not exceed \$500.00.

Alternatively, Purchasers may take title to the premises subject to said violations, without any

abatement in the purchase price or may terminate this contract in which event the sole obligation of the Seller shall be limited to the return of the Down Payment made by Purchasers under this contract.

10. The Purchasers represent and warrant to the Seller that neither the Purchasers nor Purchasers' counsel nor any other representative of the Purchasers has dealt with any brokers other than Century 21 Metro Star. The Purchasers and Seller covenants and agrees to indemnify and hold harmless the other from and against any and all claims, liabilities, fees (including legal fees) and other costs incurred with respect to or on account of any claim made for brokerage commissions in connection with this contract. The provisions of this Paragraph shall survive the closing of title.

11. It is expressly agreed by and between the parties that Seller shall be under no obligation to make any repairs or improvements to the property that may be required by the lending institution or any governmental agency for approval of Purchasers' request for mortgage loan.

12. Purchasers, at their own cost and expense, shall have ten (10) business days from the date hereof to have said Premises inspected for the existence of active termite or other wood destroying insect infestation or damage. If said inspection discloses such an infestation, then the Seller shall have the option at her own cost and expense to treat said infestation and repair any damage, or Seller shall have the right to cancel this Contract and return the Down Payment, and there shall be no further rights between the parties. If Seller elects to cancel, Purchasers shall have ten (10) days thereafter to waive this provision and accept the Premises subject to the existing infestation and damage. In the event Seller's attorney does not

receive written notice of said infestation and/or damage within fifteen (15) days hereof, then Purchasers shall be deemed to have waived this provision of the Contract.

13. The Purchasers shall be entitled to one (1) adjournment of the Closing for a period not to exceed twenty (20) days. On the adjourned date of the Closing, time shall be of the essence.

15. This contract was prepared and negotiated by Purchasers and Seller and shall be construed without prejudice to the party that actually memorialized this contract in final form. This contract shall be considered to be drafted by Purchaser and Seller.

16. All understandings and agreement heretofore made between the parties are merged in this contract. There are no oral promises, conditions, representations, understandings, interpretations, or terms of any kind as conditions or inducements to the execution of this contract in effect between the parties, except as expressly set forth in this contract.

17. This contract shall be of no force and effect until it is executed by the Seller and a counterpart delivered to the Purchasers.

18. In the event of any litigation arising out of a breach or claimed breach of this Contract, the prevailing party shall be entitled to recover all costs and expenses incurred, including reasonable attorneys' fees. References to "reasonable attorneys' fees herein shall include all such fees in connection with litigation, including a trial, appeal and post-trial proceedings, whether or not so stated in a particular instance.

19. Seller and Purchasers hereby knowingly, irrevocably, voluntarily and intentionally waive any right any of them may have to a trial by jury in respect of any action, proceeding or counterclaim based on this Contract, or arising out of, under, or in connection with

this Contract or any document or instrument executed in connection with this Contract, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party hereto. This provision is a material inducement for each of the parties to enter into this Contract.

20. The provisions of this Contract are independent of and severable from each other. If any provision hereof or any document or agreement delivered pursuant hereto shall for any reason be held invalid or unenforceable, it is the intent of the parties that such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof and that this Contract shall be construed as if such invalid or unenforceable provision had never been contained herein.

21. This Contract can be modified or amended only by a writing expressly referring to this Contract and signed by all of the parties.

22. The Seller hereby gives notice pursuant to the residential Lead Based Paint Hazard Reduction Act of 1992, also known as Title X, Section 1018, which requires the disclosure of known information on lead based paint and lead based point hazards on the sale or leased housing for most housing built before 1978 as is the premises which is the subject of this Contract. The Seller cannot state to a maximum certainty that lead-based substance was not used on the premises.

23. The purchase will be entitled to 10 days in which to conduct a lead based paint inspection or risk assessment at their own expense. The Federal Law does not require any testing or removal of lead based paint by the Seller, nor will the existence of lead based paint or a lead based hazard invalidate the contract of sale or reduce the purchase price.

24. Should the Purchasers fail to conduct a lead based paint inspection or risk assessment at their own expense within the 10 days provided by the contract, they will have been deemed to have waived their right to conduct such testing.

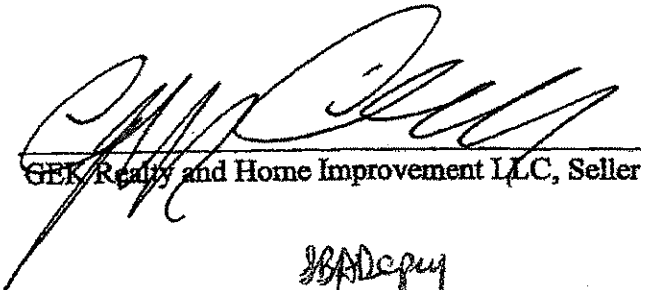
25. Attached to this contract is a Sample Disclosure Format for Target Housing Sales which contains disclosure as required by Federal Law to be signed by the Seller, Purchasers and the real estate agent. In addition, the Seller will annex to this Contract as formal notice to the Purchasers, the pamphlet from EPA/HUD fact sheet concerning lead based paint poisoning; disclosure of lead based paint hazards and housing which is annexed herein and made a part of this Contract.

26. This Contract is subject to the approval, by way of the entry of an appropriate Order, by the United States Bankruptcy Court for the Eastern District of New York in connection with Seller's pending chapter 11 bankruptcy case (Case No. 17-40228 (NHL)). Seller shall file an application (the "Sale Application") for such approval to the Bankruptcy Court within ten (10) days after receipt of this Contract signed by Purchaser and the tender of the Deposit under §3 of this Contract, and shall cooperate and comply in good faith with any procedural requirements of the Bankruptcy Court in order to receive the Court's approval of the sale. In the event this Contract is not approved by the Bankruptcy Court and/or if the parties are otherwise prevented from closing by any act by the Court or other governmental or judicial body or agency, this Contract shall be null and void and Seller shall return to Purchaser the entire amount of Purchaser's downpayment and deposit without set-off or deduction.

27. Purchaser acknowledges and understands that the Seller will seek Court approval of the terms and conditions of this Contract through a hearing ("Sale Hearing") on the Sale Motion, and, consistent with Bankruptcy Code section 363, such approval will be sought by the Seller subject to any higher or better offers that may be tendered to the Seller at the Sale Hearing. In seeking higher or better offers, if this Agreement is transferred or signed or accepted by an entity or an individual other than

Purchaser (a "Higher Sale"), then Purchaser shall be entitled to receive from the proceeds of any such Higher Sale, a "Termination Fee" of 3% of the winning bid, plus reimbursement of Purchaser's actual and reasonable expenses in connection with this transaction, including, but not limited to, professional fees, payable upon the closing of the Higher Sale.

28. The terms and conditions of sale to govern the bidding at the Sale Hearing shall provide that in order to be considered by the Court and admissible on the date of the Sale Hearing, any competing offer ("Competing Offer") must satisfy the following terms and conditions: (i) a Competing Offer shall provide for a Purchase Price of at least \$30,000.00 more than the Purchase Price as provided for in this Contract; (ii) the Competing Offer shall be substantially similar to the terms and conditions of this Contract; (iii) a higher and better Competing Offeror must sign an agreement agreeing to be bound by the terms and conditions of this Contract; (iv) the Competing Offer shall not be contingent upon the receipt of financing necessary to its consummation, and the Competing Offeror shall have demonstrated evidence of its ability to conclude the transaction upon the terms and conditions of this Contract, without delay; (v) the Competing Offer shall not be conditioned upon the outcome of unperformed due diligence by the Competing Offeror; (vi) the Competing Offeror shall provide, at or before the Sale Hearing, a certified check made payable to Pick & Zabicki, LLP as Attorneys for the Seller, in the sum of \$60,500.00 as a down payment; and (vii) in the case of any subsequent competing offer ("Subsequent Competing Offer") received from any party, which may, include, without limitation, Purchaser or the Buyer (after a prior competing bid has been received) which satisfies the conditions set forth above, such Competing Offer shall provide for an aggregate consideration at least \$25,000.00 in excess of that provided by the prior better offer and shall otherwise comply with all conditions of the Agreement.



GEK Realty and Home Improvement LLC, Seller

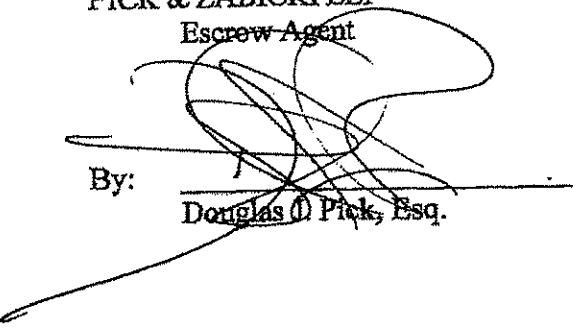


Stephan Depay, Purchaser



Carmen Depay, Purchaser

PICK & ZABICKI LLP
Escrow Agent



By:

Douglas D. Pick, Esq.



EXTENSION AGREEMENT

FAX TO: 914-681-6044 or 845-294-3414
OR EMAIL MLS@HGAR.com

EXCLUSIVE RIGHT TO SELL

Date: 5/16/17 Broker Code: 16424

EXCLUSIVE AGENCY

MLS #: 4648605

It is hereby agreed that:
The undersigned grants to Century 21 Metro-Star

(FIRM NAME)

a renewal and extension of the Exclusive listing contract. The listed property is known and described in the MLS Service as:

Address: 2750 Yearsall Ave, Bronx NY 10469
Dec 16, 2016 (ORIG LISTING DATE) May 16, 2017 (LAST EXPIRATION DATE) Dec 31, 2017 (NEW EXPIRATION DATE)

All the terms outlined in the original agreement shall apply to this extension agreement, with the following exception:

[Signature] (OWNER) 5/16/17 (DATE)

(BROKER)

[Signature] (SALES)

(ASSOCIATE)

Expiration dates are now to be modified by the listing agent prior to expiration. The extension form must then be uploaded into Matrix within 24 hours. After expiration, extension agreements must be submitted within 24 hours of signing to HGMLS staff for processing and must be dated within 60 days of the original date of expiration on the listing agreement. Otherwise, a new listing agreement will be needed.

STEPHEN A. DEPAY
CARMENA O. DEPAY

1-8
210 103

2702

Date Nov 6 2017

Pay to the order of Pick and Zabicki LLP \$ 70,000.00

Sandy Thorsrud SSA

Dollars  Money Order
Print on Back

citibank

CITIBANK, N.A. BR #103
1183 CASTLE HILL AVENUE
BRONX, NY 10462

Memo down payment 2750 parcel SSA Depay

⑆021000089⑆ 69678522⑈ 2702