

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

Hearing Date and Time:
August 16, 2017 at 9:30 a.m.

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In re:

Chapter 11

Joseph Antonakos,

Case No. 16-42935 (ESS)

Debtor.

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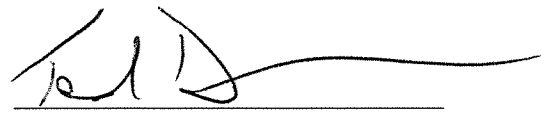
**NOTICE OF HEARING
TO CONSIDER DEBTOR'S MOTION TO APPROVE SALE**

PLEASE TAKE NOTICE that upon the motion of Joseph Antonakos, the Debtor herein, the undersigned will move before the Honorable Elizabeth S. Stong, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Eastern District of New York, Courtroom 3585, located at 271-C Cadman Plaza East, Brooklyn, NY 11201 on August 16, 2017 at 9:30 a.m. for an Order approving the private sale of the Debtor's real property located at 29 Finlay Road, Staten Island, New York for the sum of \$400,000, free and clear of all liens and encumbrances, with the sale to attach to the proceeds of the sale, pursuant to 11 U.S.C. §363(b) and (f).

PLEASE TAKE FURTHER NOTICE THAT objections, if any, to the motion, shall be filed in writing through the Clerk's ECF system, with a copy delivered to the Chambers of the Honorable Elizabeth S. Stong, and served upon the Debtor's counsel, J. Ted Donovan, Esq., Goldberg Weprin Finkel Goldstein LLP, 1501 Broadway, 22nd Floor, New York, NY 10036, so as to be received no later than August 9, 2017.

Dated: New York, New York
July 25, 2017

GOLDBERG WEPRIN FINKEL
GOLDSTEIN LLP
Attorneys for the Debtor
1501 Broadway – 22nd Floor
New York, New York 10036
(212) 221-5700

By: 

J. Ted Donovan, Esq.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 11

Joseph Antonakos,

Case No. 16-42935 (ESS)

Debtor.

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**DEBTOR’S MOTION TO APPROVE PRIVATE SALE OF
REAL PROPERTY AT 29 FINLAY AVENUE, BROOKLYN, NY**

**TO: THE HONORABLE ELIZABETH S. STONG,
UNITED STATES BANKRUPTCY COURT:**

Joseph Antonakos (the “Debtor”) as and for his motion to approve a private sale of real property located at 29 Finlay Avenue, Staten Island, NY, respectfully states and alleges as follows:

Preliminary Statement

1. The Debtor owns four parcels of real estate, all of which are subject to mortgages held by SunTrust. While the Debtor intends to deal with SunTrust’s claim, the first step for the Debtor in formulating a viable plan to pay creditors is to sell two of his properties, and to seek refinancing for the other two.

2. To that end, the Debtor has now obtained a signed Agreement of Purchase and Sale (the “Contract”) to sell vacant land located at 29 Finlay Avenue, Staten Island, NY (the “Finlay Property”) for the sum of \$400,000 to Carmine Tragni and Daniela Tragni (the “Proposed Purchasers”). A copy of the Contract is annexed hereto as Exhibit “A”. The offer is not subject to financing, and the Proposed Purchasers seek to close the sale as soon as possible to conclude a Section 1031 tax exchange.

3. The Debtor scheduled the value of the Finlay Property at \$403,000, and does not believe that he is likely to obtain a higher or better offer through a marketing program. Accordingly, the Debtor seeks approval of the immediate private sale of the Finlay Property to the Proposed Purchaser free and clear of all liens and encumbrances, including the liens asserted by SunTrust and any outstanding real estate taxes, with the same to attach to the proceeds of the sale.

Background Facts

4. The Debtor is a seventy year old individual with brain cancer. In 2010, the Debtor became a passive investor in True Comm by making a loan to True Comm in the sum of \$1 Million in exchange for a 30% stock interest in the company.

5. On or about April 30, 2013, True Comm obtained an SBA-backed loan from SunTrust in the principal amount of \$5,288,000.00. The Debtor executed guarantees for \$1,000,000 and \$4,288,000.00 respectively, and signed mortgages against his four properties, located at 591 Huguenot Avenue, Staten Island, New York; 97-04 101st Avenue, Ozone Park, New York; 65 Wieland Avenue, Staten Island, New York (the Debtor's residence) and the Finlay Property.

6. True Comm subsequently defaulted on the loan, and SunTrust began suit against the Debtor to enforce the guarantees and foreclose on the Debtor's real property. This bankruptcy followed on June 30, 2016, automatically staying both actions. Neither case has progressed beyond the initial stages, and there are no judgments or collateral estoppel issues precluding the Debtor from asserting defenses to SunTrust's claim.

7. March 1, 2017 was previously fixed as the bar date for filing claims. It appears that the Debtor owes approximately \$240,000 in unsecured debt, in addition to the Wells Fargo

mortgage against his residence, and SunTrust's liens. There are no taxes due to the IRS or New York State. Although no proof of claim was filed, there appear to be real estate taxes owed on some of the properties to the City of New York.

8. The Debtor now seeks to develop a plan that will hopefully permit him to retain two of his properties, his residence at 65 Wieland Avenue, Staten Island, New York, and the property at 97-04 101st Avenue, Ozone Park, New York where his company, Anton Adjustments, Inc. ("AAI"), maintains its business office. The Debtor anticipates that these two properties will be refinanced, and the remaining two properties (the Finlay Property and 591 Huguenot Avenue is a one family home in which the Debtor's nephew and his family reside) will be sold to fund a plan.

9. To that end, the Debtor solicited offers for the Finlay Property, and has now executed the Contract to sell the Finlay Property to the Proposed Purchasers for a sale price of \$400,000, subject to the approval of this Court. A deposit of \$40,000 has been tendered and is being held in escrow by counsel to the Debtor.

10. The Contract is not subject to financing. There is an existing restriction on the deed which bars the construction of a two family house on the premises. As the Proposed Purchasers intend to build a two family house, they require that this restriction be removed, and it is a condition of the closing that the Debtor deliver a deed to the Property without the restriction. The Debtor has already commenced the removal process, and is advised that the process should be completed in seven to ten days.

11. Because the Proposed Purchasers are seeking to purchase the Finlay Property as part of a Section 1031 tax exchange, they must close the sale no later than August 18, 2017. The hearing on this motion has been scheduled for August 16, 2017 to meet that deadline. The

Debtor is confident that the restriction will be removed well prior to the hearing, and that there will be no impediment to a timely closing.

12. The Debtor has kept counsel for SunTrust and the United States Trustee fully informed of the proposed sale as the process has unfolded, and believes that SunTrust will not oppose the sale.

The Sale Should Be Approved

13. Section 363(b)(1) of the Bankruptcy Code provides 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. . . .” *See also* Fed. R. Bankr. P. 6004(f)(1) (authorizing sales outside of the ordinary course of business to be conducted privately or by public auction). A debtor-in-possession is given these rights by section 1107(a) of the Bankruptcy Code.

14. Section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate to authorize the sale or disposition of a debtor’s assets prior to confirmation of a plan. However, it is well settled that a sale of a debtor’s assets should be authorized pursuant to section 363 of the Bankruptcy Code if a sound business judgment exists for such a sale. *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983), considering the following factors:

- Sound business reason for the sale;
- Accurate and reasonable notice;
- Proportionate value of the asset to the estate as a whole (fair and reasonable);
- The amount of elapsed time since the filing;
- The likelihood that a plan of reorganization will be proposed and confirmed in the near future;
- The effect of the proposed disposition on the future plan;
- The amount of proceeds to be obtained from the sale versus the appraised value of the property sold; and
- Whether the asset is decreasing or increasing in value.

Lionel, 722 F.2d at 1071.

15. Courts have long since made clear that a debtor's showing of a sound business justification does not have to be unduly exhaustive. 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). Moreover, the paramount goal in any proposed sale of property of the estate is to maximize the value received by the estate. *See In re Food Barn Stores, Inc.*, 107 F.3d at 564-65 (8th Cir. 1997)(stating that in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand"); *In re Integrated Res., Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992)("It is a well-established principle of bankruptcy law that the . . . [debtors'] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate." (quoting *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988))).

16. In this instance, the Debtor submits that, in his sound business judgment, the sale is beneficial to the creditors and this estate and should be approved. The Finlay Property is vacant land, and is not necessary to any reorganization plan being contemplated by the Debtor. On the other hand, the proceeds of the sale of the Finlay Property will be beneficial in permitting the Debtor to make a down payment to SunTrust, and show his good faith in trying to move his case forward, after some initial delays.

17. Moreover, the proposed sale price of \$400,000 is not only within a few thousand dollars of the Debtor's pre-petition estimate of the value of the Finlay Property, as reflected in the Debtor's schedules, but is in line with an appraisal obtained by SunTrust in 2013, which fixed the value of the Finlay Property at \$360,000.

18. Typically, bankruptcy sales conducted under Section 363 are conducted by means of competitive bidding with a stalking horse offer, or even a formal auction. In this instance, the Debtor seeks to proceed by means of a private sale without competitive bidding because of the need to close the sale prior to August 18, 2017 to meet the requirements of the Proposed Purchasers.

19. Given that the sale price is higher than the appraised value, and that the property in question is vacant land, it is highly unlikely that the Debtor will obtain a higher or better offer. Moreover, marketing the property will not only take time, but will cause the Debtor to incur costs and potentially a broker commission, all of which will dilute the recovery for creditors, without a likely increase in the final purchase price.

20. Accordingly, the Debtor respectfully submits that, in his business judgment the proposed sale should be approved, and he should be authorized to proceed by means of a private sale, without competitive bidding.

The Debtor Should Be Authorized To Sell The Property Free And Clear Of All Liens

21. In accordance with section 363(f) of the Bankruptcy Code, the Debtor may sell estate property “free and clear of any interest in such property of an entity other than the estate” if any one of the following conditions is satisfied:

- a. applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- b. such entity consents;
- c. 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;
- d. such interest is in *bona fide* dispute; or
- e. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

22. 11 U.S.C. § 363(f). Because section 363(f) of the Bankruptcy Code is stated in the disjunctive, satisfaction of any one of its five requirements will suffice to warrant approval of the proposed sale of the Property. *See, e.g., In re Grubb & Ellis Co.*, 2012 WL 1036071, *10 (Bankr. S.D.N.Y. 2012).

23. In this instance, based on prior discussions with counsel for SunTrust, the Debtor anticipates that SunTrust will consent to the proposed sale. The only other potential lienholder against the Finlay Property is the City of New York, which will be paid any outstanding real estate taxes at the closing.

24. The Debtor proposes to pay a portion of the net proceeds of the sale to SunTrust on account of its claim, in an amount to be negotiated prior to the closing, and to hold the balance of the funds in reserve until confirmation of a plan, with any residual lien held by SunTrust against the Finlay Property attaching to the net proceeds.

WHEREFORE, based upon the foregoing, the Debtor respectfully prays for the entry of an Order consistent with the foregoing and granting such other relief as may be just and proper.

Dated: New York, New York
July 25, 2017

GOLDBERG WEPRIN
FINKEL GOLDSTEIN LLP
Attorneys for the Debtor
1501 Broadway – 22nd Floor
New York, New York 10036
(212) 221-5700


By: 
J. Ted Donovan, Esq.

EXHIBIT "A"

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (“Agreement”) made as of July 25, 2017 by and between Joseph Antonakos, having an address at 65 Wieland Avenue, Staten Island, NY 10309 (“Seller”) and Daniela M. Tragni and Carmine Tragni, having an address at 324 Stobe Avenue, Staten Island, NY 10306 (jointly, “Purchaser”).

WITNESSETH:

1. Agreement to Sell and Purchase: Description of Property.

Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from Seller, upon the terms and conditions hereinafter contained, all right, title and interest of Seller in and to those certain lots, pieces or parcels of land located at 29 Finlay Avenue, Staten Island, NY, as more particularly bounded and described in Exhibit “A” attached hereto and hereby made a part hereof (the “Land”) together with (i) the land lying in the bed of any street, highway, road or avenue, opened or proposed, public or private, in front of or adjoining the Land, to the center line thereof, (ii) any rights of way, appendages, appurtenances, easements, sidewalks, alleys, gores or strips of land adjoining or appurtenant to the Land or any portion thereof and used in conjunction therewith, (iii) any development rights appurtenant to the Land or any portion thereof without representation of the extent, scope or existence of such development rights and (iv) any award or payment made or to be made in lieu of any of the foregoing or any portion thereof and any unpaid award for damage to the Land by reason of change of grade or closing of any street, road or avenue, it being understood and agreed that Seller will execute and deliver to Purchaser on the Closing Date (as hereinafter defined) or thereafter (which obligation shall survive the Closing (as hereinafter defined), upon reasonable written request, all proper instruments for the conveyance of such right, title and interest and for

the assignment and collection of any such awards or payments, without representation or warranty by or recourse to Seller, and (b) to the extent assignable, permits and licenses, if any, held solely for use in connection with all or any portion of the Land but, as hereafter set forth, the instructions shall not include any plans or permits obtained by or on behalf of the Seller in connection with the intended development of the Property. All of the above enumerated property, rights and interests to be sold to Purchaser pursuant to this Agreement are hereinafter sometimes collectively referred to as the "Property."

2. Exceptions to Title; Title Matters.

2.1 The Property is sold and shall be conveyed subject to the following (the "Permitted Exceptions"):

2.1.1 Omitted.

2.1.2 All present and future zoning, building, environmental and other laws, ordinances, codes, restrictions and regulations of all governmental authorities having jurisdiction with respect to the Property, including, without limitation, landmark designations and all zoning variances and special exceptions, if any (collectively, "Laws and Regulations").

2.1.3 All covenants, restrictions and rights and all easements and agreements for the erection and/or maintenance of water, gas, steam, electric, telephone, sewer or other utility pipelines, poles, wires, conduits or other like facilities, and appurtenances thereto, over, across and under the Property (collectively, "Rights").

2.1.4 Any state of facts which would be shown on or by an accurate current survey of the Property (collectively, "Facts").

2.1.5 All non-monetary violations of building, fire, sanitary, environmental, housing and similar Laws and Regulations whether or not noted or issued at the date hereof or at the date of the Closing (collectively, "Violations").

2.1.6 Consents by Seller or any former owner of the Property for the erection of any structure or structures on, under or above any street or streets on which the Property may abut.

2.1.7 Variations between tax lot lines and lines of record title.

2.1.8 The matters described in Exhibit "B" attached hereto and made a part hereof.

2.1.9 Any restrictive covenants, conditions, agreements, reservations, encroachments, easements and rights of way of record; and any other restrictive covenants, conditions, agreements, reservations, encroachments, easements and rights of way provided that same do not prevent the current use of the present structures on the Property.

2.1.10 Omitted.

2.1.11 Any other matter which the Title Company (as hereinafter defined) may raise as an exception to title, provided the Title Company will insure against collection or enforcement of same out of the Property and/or that no prohibition of present use or maintenance of the Property will result there from, as may be applicable.

2.2 Purchaser agrees promptly upon the execution of this Agreement at its sole cost and expense to cause title to the Property to be examined by any reputable title insurer licensed to issue title insurance in the State of New York (the "Title Company") and shall direct the Title Company to deliver copies of such title report (the "Title Report") to Seller's attorney simultaneously with the delivery of same to Purchaser. Purchaser further agrees that not later

than the date which is ten (10) Business Days following Purchaser's receipt of the Title Report, Purchaser will furnish to Seller's attorneys a writing (the "Title Report Objection Notice") specifying any non-monetary exceptions to title to the Property set forth in the Title Report which Purchaser believes are not covered by the exceptions to title set forth in Section 2.1 hereof and "subject to" which Purchaser believes it is not required to accept title. If, after giving the Title Report Objection Notice to Seller, continuation reports or other written evidence, indicating any non-monetary title defect(s) which are not covered by Section 2.1 hereof and "subject to" which Purchaser is not required to accept title, receipt of such continuation reports or other written evidence of such title defects by Seller's attorneys shall constitute notice of objection to such title defects as if same were set forth in the Title Report Objection Notice. In the event the title company selected by Purchaser pursuant to the first sentence of this Section 2.2 fails or refuses to insure title for any reason or no reason, Seller may substitute another title company licensed to do business in the State of New York reasonably acceptable to Purchaser that will provide such insurance, or an abstract company writing through such a title company, in which event Seller's substituted title company shall, for purposes of this Agreement be the "Title Company." Any disputes relating to whether a title company is acceptable or whether the Seller or Purchaser is acting reasonably shall be decided by the Bankruptcy Court.

2.3 If, on the Closing Date, Seller fails or is unable to convey to Purchaser title to the Property subject to and in accordance with the provisions of this Agreement, Seller shall be entitled, upon written notice delivered to Purchaser on or prior to the Closing Date, to reasonable adjournments of the Closing one or more times for a period not to exceed thirty (30) days in the aggregate to enable Seller to convey such title to the Property. If Seller does not so elect to adjourn the Closing, or if at the adjourned date Seller is unable to convey title subject to

and in accordance with the provisions of this Agreement, Purchaser may terminate this Agreement by written notice to Seller and Escrow Agent (as hereinafter defined) delivered on or promptly after the date scheduled for the Closing, in which event Escrow Agent shall repay to Purchaser the Downpayment (as hereinafter defined), together with any interest earned thereon, subject to Section 23. This Agreement shall thereupon be deemed canceled and become void and of no further effect, and neither party hereto shall have any obligations of any nature to the other hereunder or by reason hereof, except for those provisions which are intended to survive such termination. If Seller elects to adjourn the Closing as provided above, this Agreement shall remain in effect for the period or periods of adjournment, in accordance with its terms. Except as hereafter set forth, Seller shall not be required to take or bring any action or proceeding or any other steps to remove any defect in or objection to title or to fulfill any condition precedent to Purchaser's obligations under this Agreement or to expend any moneys therefore and must pay up to \$25,000 to clear title, nor shall Purchaser have any right of action against Seller therefore, at law or in equity. Notwithstanding the foregoing, Seller shall be required to remove through 11 U.S.C. Section 363 all mortgages, liens and monetary claims unless the same are under objection whereupon appropriate escrow arrangements shall be made pursuant to separate order of the Bankruptcy Court as applicable.

2.4 Notwithstanding anything in Section 2.3 above to the contrary, Purchaser may at any time accept such title as Seller can convey, without reduction of the Purchase Price (as hereinafter defined) or any credit or allowance on account thereof or any claim against Seller. The acceptance of the Deed (as hereinafter defined) by Purchaser shall be deemed to be full performance of, and discharge of, every agreement and obligation on Seller's part to be

performed under this Agreement except for such items as are specifically set forth to survive the Closing pursuant to the terms of this Agreement.

2.5 The amount of any unpaid taxes, assessments and water and sewer charges which Seller is obligated to pay and discharge, with interest and penalties, may at the option of Seller be allowed to Purchaser out of the balance of the Purchase Price, if official bills therefore with interest and penalties thereon figured to said date are furnished to or obtained by the Title Company at the Closing for payment thereof. Any taxes and violations being challenged by the Seller at the time of Closing shall be escrowed in full with interest, in lieu of payment at Closing.

2.6 If the Property shall, at the time of the Closing, be subject to any mortgage liens, judgments, transfer, inheritance, estate, franchise, license or other similar taxes or any encumbrances or other title exceptions which would be grounds for Purchaser to reject title hereunder, the same shall not be deemed an objection to title provided that, at the time of the Closing, either (a) Seller uses all or a portion of the Purchase Price and delivers to Purchaser and/or the Title Company at the Closing instruments in recordable form sufficient to satisfy and discharge of record such mortgage liens and encumbrances as all owed and fixed by the Bankruptcy Court together with the cost of recording or filing such instruments, or (b) the Title Company will otherwise issue or bind itself to issue a policy which will insure Purchaser against collection thereof from or enforcement thereof against the Property, or (c) such lien and encumbrance is discharged against the Property based upon entry of a Bankruptcy Court order approving this Agreement under 11 U.S.C. § 363(b) and (f). If a request is made, Purchaser agrees to provide at the Closing separate certified or official bank checks as requested aggregating the amount of the cash to be paid by Seller to satisfy the aforesaid, to facilitate the satisfaction of any of such liens or other defects.

3. Purchase Price and Payment

3.1 The purchase price payable to Seller for the Property is FOUR HUNDRED THOUSAND (\$400,000.00) AND NO CENT DOLLARS (the "Purchase Price"), subject to such apportionments, adjustments and credits as are provided in Sections 6, 11 and 24 hereof.

3.2 The Purchase Price shall be payable as follows:

3.2.1 \$40,000.00 DOLLARS (the "Downpayment") simultaneously with the execution and the delivery of this Agreement by check, subject to collection, to an account at such bank or banks as designated by Goldberg Weprin Finkel Goldstein LLP, as escrow agent (the "Escrow Agent") to be held by Escrow Agent at the Bank (as defined in Section 23.1.1 hereof). The Downpayment shall be held by Escrow Agent and disbursed in accordance with the terms and conditions of this Agreement. Any interest earned on the Downpayment shall be deemed to be part of the Downpayment and shall be paid together with the principal portion of the Downpayment to whichever party is entitled thereto, it being understood and agreed that any interest earned on the Downpayment shall not be credited to the Purchase Price upon the Closing and shall, upon the Closing, be and remain the property of Seller.

3.2.2 THREE HUNDRED SIXTY THOUSAND (\$360,000.00) AND NO CENTS DOLLARS shall be paid to Seller on the date of the Closing, subject to the apportionments, adjustments and credits referenced herein, simultaneously with the delivery of the Deed by federal funds wire transfer or by bank check(s) issued by any bank which is a member of the New York Clearinghouse Bank Association which branch banking and commercial facilities within the City of New York.

3.3 Purchaser expressly agrees and acknowledges that Purchaser's obligations hereunder are not in any way conditioned upon or qualified by Purchaser's ability to obtain financing of any type or nature whatsoever (i.e., whether by way of debt financing or equity investment, or otherwise) to consummate the transaction contemplated hereby or any further due diligence, environment or engineering study. To the extent Purchaser separately elects to seek financing, Seller will endeavor to cooperate with any potential lender as reasonable under the circumstances, without creating any liability hereunder or contingencies, it being understood that the Seller is providing such cooperation as an accommodation to Purchaser, and Seller cannot be deemed in default for any alleged failure to cooperate. Likewise, the Seller shall attempt to obtain an assignment of the existing mortgage as a further accommodation to Purchaser without any representation that it can be accomplished or creating any responsibility therefore.

4. Closing.

4.1 The closing of the transaction contemplated hereby (the "Closing") shall occur at 10:00 A.M. on the day that is, fifteen (15) days entry of an order (the "Sale Order") by the Bankruptcy Court having jurisdiction over the Seller's Chapter 11 case (the "Bankruptcy Court") that provides for a sale of the Property pursuant to this Agreement. The date of Closing as set forth in the immediately preceding sentence, as the same may be adjourned one time by either party for up to 30 days, is herein referred to as the "Closing Date."

4.2 The Closing will occur at the offices of Seller's attorney Goldberg Weprin Finkel Goldstein, LLP, 1501 Broadway, 22nd Floor, New York, NY 10036 or such other place as the parties agree or, on not less than three (3) Business Days prior written notice, at the offices of Purchaser's bank's attorneys in the New York metropolitan area.

4.3 All parties acknowledge that the Purchasers are purchasing this property as part of a 1031 Exchange, whereby, the completion of a closing is time sensitive. All parties agree that despite the terms of this Agreement, if this matter does not close title prior to August 18, 2017, the Purchaser has the option of cancelling the contract without any further rights between the parties, and is entitled to the immediate return of their contract deposit.

5. “AS IS”.

5.1 The Purchaser is expressly purchasing the Property in its existing condition “AS IS, WHERE IS, AND WITH ALL FAULTS” with respect to all facts, circumstances, conditions and defects, but without any tenants or occupants and otherwise vacant. Seller has no obligation to determine or correct any such facts, circumstances, conditions or defects or to compensate Purchaser for same. Seller has specifically bargained for the assumption by Purchaser of all responsibility to investigate the Property, Laws, and Regulations, Rights, Facts and Violations and of all risk of adverse conditions and has structured the Purchase Price and other terms of this Agreement in consideration thereof. Purchaser has, as of the date hereof, undertaken all such investigations and review of the Property, Laws and Regulations, Rights, Facts and Violations as Purchaser deems necessary or appropriate under the circumstances as to the status of the Property and based upon same, Purchaser is and will be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel and officers and Purchaser is and will be fully satisfied that the Purchase Price is fair and adequate consideration for the Property and, by reason of all the foregoing, Purchaser assumes the full risk of any loss or damage (subject to Section 11 below) occasioned by any fact, circumstance, condition or defect pertaining to the Property.

5.2 Seller hereby disclaims all warranties of any kind or nature whatsoever (including warranties of habitability and fitness for particular purposes), whether expressed or implied, including, without limitation, warranties with respect to the Property. Except as is expressly set forth in this Agreement to the contrary, Purchaser acknowledges that it is not relying upon any representation of any kind or nature made by Seller with respect to the Property, and that, in fact, no such representations were made.

5.3 Seller makes no representation or warranty with respect to the presence of Hazardous Materials (as hereinafter defined) on, above or beneath the Land (or any parcel in proximity thereto) or in any water on or under the Property. Purchaser's closing hereunder shall be deemed to constitute an express waiver of Purchaser's right to cause Seller to be joined in any action brought under any Environmental Laws (as hereinafter defined). The term "Hazardous Materials" shall mean: (a) those substances included within the definitions of any one or more of the terms "hazardous materials," "hazardous wastes," "hazardous substances," "industrial wastes" and "toxic pollutants," as such terms are defined under the Environmental Laws, or any of them, (b) petroleum and petroleum products, including, without limitation, crude oil and any fractions thereof, (c) natural gas, synthetic gas and any mixtures thereof, (d) asbestos and or any material which contains any hydrated mineral silicate, including, without limitation, chrysotile, amosite, crocidolite, tremolite, anthophyllite and/or actinolite, whether friable or non-friable, (e) polychlorinated biphenyl ("PCBs") or PCB-containing materials or fluids, (f) radon, (g) any other hazardous or radioactive substance, material, pollutant, contaminant or waste, and (h) any other substance with respect to which any Environmental Law or governmental authority requires environmental investigation, monitoring or remediation. The term "Environmental Laws" shall mean all federal, state and local laws, statutes, ordinances and regulations, now or

hereafter in effect, in each case as amended or supplemented from time to time, including, without limitation, all applicable judicial or administrative orders, applicable consent decrees and binding judgments relating to the regulation and protection of human health, safety, the environment and natural resources (including, without limitation, ambient air, surface, water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Material Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. §§ 136 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.), the Toxic Substance Control Act, as amended (15 U.S.C. §§ 2601 et seq.), the Clean Air Act, as amended (42 U.S.C. §§ 7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. §§ 300f et seq.), any state or local counterpart or equivalent of any of the foregoing, and all state and federal common law, and any federal, state or local transfer of ownership notification or approval statutes.

5.4 Purchaser shall rely solely upon Purchaser's own knowledge of the Property based on its investigation of the Property and its own inspection of the Property in determining the Property's physical condition. Purchaser releases Seller and its respective successors and assigns from and against any and all claims which Purchaser or any party related to or affiliated with Purchaser (each, a "Purchaser Related Party") has or may have arising from or related to any matter or thing related to or in connection with the Property, including the documents and information referred to herein, any construction defects, errors or omissions in the design or construction and any environmental conditions, and, except as expressly set forth in

this Agreement to the contrary, neither Purchaser nor any Purchaser Related Party shall look to Seller or its respective successors and assigns in connection with the foregoing for any redress or relief. This release shall be given full force and effect according to each of its express terms and provisions, including those relating to unknown and unsuspected claims, damages and causes of action. The provisions of this Section 5.4 shall survive the termination of this Agreement or the Closing Date and shall not be deemed to have merged into any of the documents executed or delivered at the Closing. To the extent required to be operative, the disclaimers and warranties contained herein are “conspicuous” disclaimers for purposes of any applicable law, rule, regulation or order.

6. Apportionments.

6.1 At the Closing, the following items shall be apportioned between the parties as of 11:59 PM on the day preceding the Closing Date. Any errors in the apportionments pursuant to this Section 6 shall be corrected by appropriate re-adjustment between Seller and Purchaser post-closing, provided that notice of any such error, with supporting calculations, shall be given by Purchaser to Seller or by Seller to Purchaser, as the case may be, no later than ninety (90) days after the Closing, if ascertainable within such period, it being understood and agreed that if any such items or errors are not ascertainable at the Closing or within ninety (90) days thereafter, the apportionment shall be made subsequent to the Closing when the charge or error is determined. Except as otherwise specifically provided for herein, all apportionments shall be made in the manner recommended by the Customs in Respect to Title Closings of the Real Estate Board of New York, Inc., and there shall be no other apportionments. The items to be apportioned are:

6.1.1 Real estate taxes, unmetered water and sewer charges and vault charges, if any, and any and all other municipal or governmental assessments of any and every nature levied or imposed upon the Property in respect of the current fiscal year of the applicable taxing authority in which the Closing Date occurs (the "Current Tax Year") on a per diem basis based upon the number of days in the Current Tax Year prior to the Closing Date (which shall be allocated to Seller) and the number of days in the Current Tax Year on and after the Closing Date (which shall be allocated to Purchaser). If the Closing shall occur before the tax rate for the Current Tax Year is fixed, the apportionment of real estate taxes shall be upon the basis of the tax rate for the next preceding fiscal period applied to the latest assessed valuation. Promptly after the new tax rate is fixed for the fiscal period in which the Closing takes place, the apportionment of real estate taxes shall be recomputed. Upon the Closing Date and subject to the adjustment provided above, Purchaser shall be responsible for real estate taxes and assessments levied or imposed upon the Property payable in respect of the Current Tax Year and all periods after the Current Tax Year. In no event shall Seller be charged with or be responsible for any increase in the real estate taxes or assessments levied or imposed upon the Property resulting from the transfer of the Property herein contemplated or from any improvements made at any time or for any reason. In the event that any assessments levied or imposed upon the Property are payable in installments, the installment for the Current Tax Year shall be prorated in the manner set forth above and Purchaser hereby assumes the obligation to pay any such installments due on and after the Closing Date.

6.2 If there are water meters on the Property, Seller shall endeavor to furnish a final meter readings to a date not more than thirty (30) days prior to the Closing Date, and the unfixed meter charges and the unfixed sewer rents, if any, based thereon for the intervening time

shall be apportioned on the basis of such last readings. If Seller fails or is unable to obtain such readings, the Closing shall nevertheless proceed and the parties shall apportion the meter charges and sewer rents on the basis of the last readings and bills received by Seller and the same shall be appropriately readjusted after the Closing on the basis of the next subsequent bills.

6.3 Seller shall not be required to assign any policies of insurance in respect of the Property to Purchaser and Purchaser shall be responsible for obtaining its own insurance as of the Closing Date. Purchaser shall take all necessary actions required to transfer all utility accounts to Purchaser as of the Closing Date.

6.4 The provisions of this Section 6 shall survive the Closing; provided, however, that any re-proportions or re-apportionments shall be made as and when required under Section 6.1 above. Any corrected adjustment or proration shall be paid in by federal funds wire transfer or by bank check(s) issued by any bank which is a member of the New York Clearinghouse Bank Association which branch banking and commercial facilities within the City of New York and which has a long-term unsecured debt rating of not less than "Aa3" by Moody's to such account(s) as may be designated by the party entitled thereto.

7. Representations and Warranties of the Parties; Certain Covenants.

7.1 Seller warrants, represents and covenants to and with Purchaser that the following are true and correct on the date hereof:

7.1.1 Seller is not subject to any law, order, decree, restriction or agreement which prohibits or would be violated by this Agreement or the consummation of the transactions contemplated hereby other than Seller's pending Chapter 11 case. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will be authorized by order of the Bankruptcy Court. This Agreement constitutes, and each document

and instrument contemplated hereby to be executed and delivered by Seller, when executed and delivered following Bankruptcy Court approval, shall constitute the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its respective terms. Seller agrees to make a prompt and diligent application to the Bankruptcy Court for its approval.

7.1.2 Seller is not a “foreign person” within the meaning of Section 1445 of the Internal Revenue Code 1986, as amended, or any regulations promulgated thereunder (collectively, the “Code”).

7.1.3 Seller has not received written notice of any pending or threatened condemnation or eminent domain proceedings that would affect the Property.

7.1.4 Seller has entered into no leases, licenses or other occupancy agreements affecting any portion of the Property as of the date hereof which will be in force on the Closing Date. The accuracy on the date hereof of the representations and warranties of Section 7.1 shall be conditions to Closing-

7.2 Purchaser warrants, represents and covenants to and with Seller that the following are true and correct on the date hereof:

7.2.1 Purchaser is not subject to any law, order, decree, restriction, or agreement which prohibits or would be violated by this Agreement or the consummation of the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action of Purchaser. This Agreement constitutes, and each document and instrument contemplated hereby to be executed and delivered by Purchaser, when executed and delivered, shall constitute the legal, valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its respective terms.

7.2.2 Neither the execution, delivery and performance of this Agreement nor the consummation of the transactions contemplated hereby is prohibited by, or requires Purchaser to obtain any consent, authorization, approval or registration under any law, statute, rule, regulation, judgment, order, writ, injunction or decree which is binding upon Purchaser.

7.2.3 There are no judgments, orders, or decrees of any kind against Purchaser unpaid or unsatisfied of record, nor any actions, suits or other legal or administrative proceedings pending or, to the best of Purchaser's actual knowledge, threatened against Purchaser, which would have any material adverse effect on the business or assets or the condition, financial or otherwise, of Purchaser or the ability of Purchaser to consummate the transactions contemplated by this Agreement.

7.2.4 To the best of Purchaser's knowledge, Purchaser will qualify as a good faith purchaser under 11 U.S.C. § 363(m).

7.3 Purchaser agrees and acknowledges that neither the Seller nor the Broker nor any agent nor any representative nor any purported agent or representative of Seller or Broker have made, and neither Seller nor Broker are liable for or bound in any manner by, any express or implied warranties, guaranties, promises, statements, inducements, representations or information pertaining to the Property or any part thereof. Without limiting the generality of the foregoing, Purchaser has not relied on any representations or warranties, and Seller and Broker have not made any representations or warranties other than as expressly set forth herein, in either case express or implied, as to (a) the current or future real estate tax liabilities, assessments or valuations of the Property, (b) the potential qualification of the 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, (c) the compliance of the 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 with respect to the Property's non-compliance, if any, with said zoning ordinances, (d) the availability of any financing for the development, alteration, rehabilitation or operation of the Property from any source, including, but not limited to, any state, city or Federal government or any institutional lender, (e) the current or future use of the Property, including but not limited to the Property's use for residential (including hotel, cooperative or condominium use) or commercial purposes, (f) the present and future condition and operating state of any machinery or equipment on the Property and the present or future structural and physical condition of any building or its suitability for rehabilitation or renovation, (g) the ownership or state of title of any personal property on the Property, (h) the presence or absence of any Laws and Regulations or any Violations, (i) the compliance of the Property with any rent control or similar law or regulation, and (j) the layout, income, expenses, operation, agreements, licenses, easements, instruments or documents of or in any way affecting the Property. Further, Purchaser acknowledges and agrees that neither Seller nor Broker are liable for or bound by (and Purchaser has not relied upon) any verbal or written statements, representations or any other information respecting the Property furnished by Seller, or Broker or any employee, agent, consultant or other person representing or purportedly representing Seller or Broker. The provisions of this Section 7.3 shall survive the Closing.

8. Closing Deliveries.

8.1 At or prior to the Closing, Seller shall make, have made or caused to be made, the following deliveries:

8.1.1 Seller shall execute, acknowledge and deliver to Purchaser a

bargain and sale deed without covenants against grantor's acts, sufficient to convey fee title to the Property subject to and in accordance with the provisions of this Agreement, in the form attached hereto as Exhibit "C" and made a part hereof (the "Deed").

8.1.2 Seller shall deliver to Purchaser a certificate, duly executed and acknowledged by Seller, in accordance with Section 1445 of the Code.

8.1.3 Seller shall deliver to the Title Company a certified copy of the Bankruptcy Court order approving this Agreement authorizing the transaction contemplated herein and the execution and delivery of the documents required to be executed and delivered hereunder.

8.1.4 To the extent the Sale is not exempt under 11 U.S.C. §1146(a) Seller shall execute, acknowledge and deliver the New York State TP-584 Form, the New York City Real Property Transfer Tax Form and Form RP-5217 (the "Equalization Form") in respect of the Property (collectively, the "Transfer Tax Returns"). Seller to pay all applicable City and State transfer taxes.

8.1.5 Seller shall execute and deliver such documents as local custom may require to effect the change of ownership on the City's ownership records.

8.2 At or prior to the Closing, Purchaser or its agents shall make, have made or caused to be made, the following deliveries:

8.2.1 Purchaser shall pay to Seller the balance of the Purchase Price required pursuant to Section 3.2 hereof.

8.2.2 Purchaser shall execute, acknowledge and deliver to Seller a counterpart of the Transfer Tax Returns as necessary.

8.2.3 Purchaser shall execute, acknowledge and deliver to Seller a counterpart of the Equalization Form.

8.3 Seller and Purchaser, at the Closing, shall prepare, execute and deliver to each other, subject to all the terms and provisions of this Agreement, (a) a closing statement setting forth, inter alia, the closing adjustments and material monetary terms of the transaction contemplated hereby and (b) such other instruments and documents as may be reasonably required to effectuate the consummation of the transactions described in this Agreement.

9. Interim Responsibilities.

9.1 Seller agrees that during the period between the date hereof and the Closing Date:

9.1.1 Seller shall promptly seek Bankruptcy Court approval of this Agreement and a related Plan of Reorganization and Disclosure Statement providing for the sale of the Property.

9.1.2 Seller will not lease the Property between the date hereof and the Closing Date.

9.1.3 Seller will maintain property and liability insurance coverage in the ordinary course of Seller's business with respect to the Property from the date hereof through the Closing Date or earlier termination of this Agreement.

9.1.3 Seller will not grant any lien or cause any instrument to be recorded that would further encumber the Property in any manner, other than liens or encumbrances to be discharged as of the Closing Date.

9.2 Between the date hereof and the Closing Date, Purchaser shall be afforded access to the Property required by Purchaser in connection with its preparation for the Closing.

Any access to the Property (i) must be upon written notice to Seller and during reasonable business hours, and (ii) at all times Purchaser and its representatives shall be accompanied by a representative of Seller when at the Property. Purchaser agrees that its inspection activities shall not interfere with the operation of the Property and Purchaser shall repair any and all damage caused to the Property arising or resulting from such inspection. No invasive testing may be conducted by the Purchaser without Seller's prior written consent, to be given or withheld in Seller's sole and absolute discretion.

10. Limitation on Liability of Parties.

10.1 In the event Purchaser shall default in the performance of Purchaser's obligations under this Agreement and the Closing does not occur as a result thereof (a "Purchaser Default"), Seller shall be entitled to retain the Downpayment and any interest earned thereon as and for full and complete liquidated and agreed damages for Purchaser's default, and thereupon Purchaser shall be released from any further liability to Seller hereunder, except for those provisions hereof intended to survive the termination of this Agreement. SELLER AND PURCHASER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH SELLER MAY SUFFER UPON A PURCHASER DEFAULT AND THAT THE DOWNPAYMENT AND ANY INTEREST EARNED THEREON, AS THE CASE MAY BE, REPRESENTS A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT SELLER WOULD SUFFER UPON A PURCHASER DEFAULT. SUCH LIQUIDATED AND AGREED DAMAGES ARE NOT INTENDED AS A FORFEITURE OR A PENALTY WITHIN THE MEANING OF APPLICABLE LAW.

10.2 Subject to the provisions of Section 2.3 hereof, in the event that Seller shall default in the performance of Seller's obligations under this Agreement and the Closing does not occur as a direct result thereof after compliance with Sections 26, 27, and 28, Purchaser shall be entitled, to either (a) instruct Escrow Agent to pay to Purchaser the Downpayment with the interest earned thereon, if any, (a "Downpayment Return"), upon which Seller shall be released from any further liability to Purchaser hereunder for any other damages of any kind whatsoever, or (b) seek specific performance of Seller's obligations hereunder; but in no event whatsoever shall Seller be obligated to pay Purchaser damages of any kind or nature. So as to avoid any doubt, neither the Seller, nor its managers and members shall have any liability to the Purchaser for any claims for damages arising out of this Agreement, and Purchaser's remedies are limited to the provisions of Section 10.2.

11. Fire or Other Casualty, Condemnation.

11.1 Seller agrees (a) to maintain its present property insurance policy including fire and extended coverage and (b) to give Purchaser reasonably prompt notice of any fire or other casualty occurring at the Property of which Seller obtains knowledge, between the date hereof and the date of the Closing, or of any actual or threatened condemnation of all or any part of the Property of which Seller obtains knowledge.

11.2 Omitted.

11.3 Omitted.

11.4 Omitted.

11.5 Omitted.

11.6 Nothing contained in this Section 11 shall be construed to impose upon

Seller any obligation to repair any damage or destruction caused by fire or other casualty or condemnation.

12. Brokerage.

Purchaser and Seller each represent and warrant that it has not dealt with any broker, consultant, finder or like agent who might be entitled to a commission or compensation on account of introducing the parties hereto, the negotiation or execution of this Agreement or the closing of the transactions contemplated hereby. Purchaser and Seller agree to indemnify and hold each other and the Related Parties of the other harmless from and against all claims, losses, liabilities and expenses (including, without limitation, reasonable attorney's fees and disbursements) which may be asserted against, imposed upon or incurred by such party by reason of any claim made by any other broker, consultant, finder or like agent for commissions or other compensation for bringing about this transaction or claiming to have introduced the Property to Purchaser. The provisions of this Section 12 shall survive the Closing or the termination of this Agreement.

13. Closings Costs; Fees and Disbursements of Counsel. Omitted.

14. Notices.

Except as otherwise provided in this Agreement, all notices, demands, requests, consents, approvals or other communications (for the purposes of this Section collectively referred to as "Notices") required or permitted to be given hereunder or which are given with respect to this Agreement, in order to constitute effective notice to the other party, shall be in writing and shall be deemed to have been given when (a) personally delivered with signed delivery receipt obtained, (b) upon receipt, when sent by prepaid reputable overnight courier or

(c) three (3) days after the date so mailed if sent postage prepaid by registered or certified mail, return receipt requested, in each case addressed as follows:

If to Seller, to:

Joseph Antonakos
65 Wieland Avenue,
Staten Island, NY 10309

with a copy to:

Kevin J. Nash, Esq.
Goldberg Weprin Finkel Goldstein LLP
1501 Broadway, 22nd Floor
New York, NY 10036

If to Purchaser, to:

Daniela M Tragni and Carmine Tragni
324 Stobe Avenue
Staten Island, NY 10306

with a copy to:

Christine Corrado, Esq.
120 Royal Oak Road
Staten Island, New York 10314

If to Escrow Agent, to:

Goldberg Weprin Finkel Goldstein LLP
1501 Broadway - 22nd Floor
New York, New York 10036
Attention: Kevin J. Nash, Esq.

Notices shall be valid only if served in the manner provided above. Notices may be sent by the attorneys for the respective parties and each such Notice so served shall have the same force and effect as if sent by such party.

15. Survival; Governing Law.

Except as otherwise expressly set forth in this Agreement, the provisions of this Agreement shall not survive the Closing provided for herein. This Agreement shall be governed by, interpreted under, construed and enforced in accordance with, the laws of the State of New York and may be enforced only before the Bankruptcy Court.

16. Counterparts; Captions.

This Agreement may be executed in counterparts, each of which shall be deemed an original. The captions are for convenience of reference only and shall not affect the construction to be given any of the provisions hereof.

17. Entire Agreement; No Third Party Beneficiaries.

This Agreement (including all exhibits annexed hereto), contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings, if any, with respect thereto. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto. The provisions of this Section 17 shall survive the Closing.

18. Waivers; Extensions.

No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other agreement or

provision herein contained. No extension of time for performance of any obligations or acts shall be deemed an extension of the time for performance of any other obligations or acts.

19. No Recording.

The parties hereto agree that neither this Agreement nor any memorandum or notice hereof shall be recorded. Any recordation or attempted recordation by Purchaser shall constitute a Purchaser's Default.

20. Assignment.

Purchaser shall neither assign its rights nor delegate its obligations hereunder without obtaining Seller's prior written consent, which consent may be granted or withheld in Seller's sole discretion. In connection with any assignment permitted or consented to hereunder, such assignee shall assume in writing all of the assignor's obligations under this Agreement in form and substance satisfactory to Seller, provided that Purchaser originally named herein shall not be relieved from its obligations under this Agreement. Any other purported or attempted assignment or delegation without obtaining Seller's prior written consent or not otherwise permitted hereunder shall be void and of no effect. Any change in control of Purchaser or of any of the direct or indirect ownership interests in Purchaser, at any level or tier of ownership, whether in one transaction or a series of transactions, shall constitute an assignment for purposes of this Section 20. No consent given by Seller to any transfer or assignment of Purchaser's rights or obligations hereunder shall be construed as a consent to any other transfer or assignment of Purchaser's rights or obligations hereunder. Purchaser shall not resell the Property or any part thereof through a "double escrow" or other similar procedure without Seller's prior written consent, which consent may be granted or withheld in Seller's sole discretion. No transfer or assignment in violation of the provisions hereof shall be valid or enforceable.

20.1. Seller agrees, prior to closing, to have the single family use Declaration removed of record in accordance with the requirements of the NYC Building Department & the terms of the Declaration. Said documentation shall be filed with the Richmond County Clerk to effectively remove the Declaration from the public record.

21. Pronouns, Joint and Several Liability.

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the parties may require. If Purchaser consists of two or more parties, the liability of such parties shall be joint and several.

22. Successors and Assigns.

This Agreement shall bind and inure to the benefit of Seller, Purchaser and their respective permitted successors and permitted assigns.

23. Escrow.

23.1 Escrow Agent shall hold the Downpayment, together with all interest earned thereon, in its interest bearing escrow account, in accordance with the following:

23.1.1 Escrow Agent shall hold the Downpayment, together with all interest earned thereon, in Escrow Agent's escrow account at New York Community Bank ("Bank"), and shall cause the Downpayment to earn interest at the Bank's then prevailing rates on deposits of similar size. Escrow Agent shall have no liability for any fluctuations in the interest rate paid by the Bank on the Downpayment, and is not a guarantor thereof.

23.1.2 If the Closing has occurred and Seller is entitled to receive the Downpayment, Escrow Agent shall deliver the Downpayment, together with the interest earned thereon to Seller. If Escrow Agent receives a written notice signed by both Seller and Purchaser that this Agreement has been terminated or canceled, Escrow Agent shall deliver the Downpayment, together with the interest thereon, as directed therein unless stayed by Order of the Bankruptcy Court.

23.1.3 If Escrow Agent receives a written request signed by Purchaser or Seller (the "Noticing Party") stating that this Agreement has been canceled or terminated and that the Noticing Party is entitled to the Downpayment, or that the other party hereto (the "Non-Noticing Party") has defaulted in the performance of its obligations hereunder, Escrow Agent shall mail (by certified mail, return receipt requested) a copy of such request to the Non Noticing Party. The Non-Noticing Party shall have the right to object to such request for the Downpayment by written notice of objection delivered to and received by Escrow Agent ten (10) days (excluding Saturdays, Sundays and State of New York and Federal holidays) after the date of Escrow Agent's mailing of such copy to the Non-Noticing Party, but not thereafter. If Escrow Agent shall not have so received a written notice of objection from the Non-Noticing Party, Escrow Agent shall deliver the Downpayment, together with the interest earned thereon, to the Noticing Party. If Escrow Agent shall have received a written notice of objection within the time herein prescribed, Escrow Agent shall refuse to comply with any requests or demands on it and shall continue to hold the Downpayment, together with any interest earned thereon, until Escrow Agent receives either (a) a written notice signed by both Seller and Purchaser stating who is entitled to the Downpayment (and interest) or (b) a final order of the Bankruptcy Court directing disbursement of the Downpayment (and interest) in a specific manner, in either of which events Escrow Agent shall then disburse the Downpayment, together with the interest earned thereon, in accordance with such notice or order. Escrow Agent shall not be or become liable in any way or to any person for its refusal to comply with any such requests or demands until and unless it has received a direction of the nature described in subdivision (a) or (b) above.

23.2 Any notice to Escrow Agent shall be sufficient only if received by Escrow

Agent within the applicable time period set forth herein. All mailings and notices from Escrow Agent to Seller and/or Purchaser, or from Seller and/or Purchaser to Escrow Agent, provided for in this Section 23 shall be addressed to the party to receive such notice at its notice address set forth in Section 14 above (with copies to be similarly sent to the additional persons therein indicated), but the provisions of Section 14 relating to the manner of giving notices and the effective dates thereof shall have no application to the provisions of this Section 23.

23.3 Notwithstanding the foregoing, if Escrow Agent shall have received a written notice of objection as provided for in Section 23.1.3 above within the time therein prescribed, or shall have received at any time before actual disbursement of the Downpayment a written notice signed by either Seller or Purchaser disputing entitlement to the Downpayment or shall otherwise believe in good faith at any time that a disagreement or dispute has arisen between the parties hereto over entitlement to the Downpayment (whether or not litigation has been instituted), Escrow Agent shall have the right, upon written notice to both Seller and Purchaser, (a) to deposit the Downpayment, together with the interest earned thereon with the Clerk of the Bankruptcy Court and/or (b) to take such reasonable affirmative steps as it may, at its option, elect in order to terminate its duties as Escrow Agent, including, without limitation, the depositing of the Downpayment, together with the interest earned thereon, with the Bankruptcy Court and the commencement of an action for interpleader, and thereupon Escrow Agent shall be released of and from all liability hereunder except for any previous gross negligence or willful misconduct.

23.4 Escrow Agent is acting hereunder without charge as an accommodation to Purchaser and Seller, it being understood and agreed that Escrow Agent shall not be liable for any error in judgment or any act done or omitted by it in good faith or pursuant to court order, or

for any mistake of fact or law. Escrow Agent shall not incur any liability in acting upon any document or instrument believed thereby to be genuine. Escrow Agent is hereby released and exculpated from all liability hereunder, except only for willful misconduct or gross negligence. Escrow Agent may assume that any person purporting to give it any notice on behalf of any party has been authorized to do so. Escrow Agent shall not be liable for, and Purchaser and Seller hereby jointly and severally agree to indemnify Escrow Agent against, any loss, liability or expense, including reasonable attorney's fees (either paid to retained attorneys or, representing the fair value of legal services rendered by Escrow Agent to itself), arising out of any dispute under this Agreement, including the cost and expense of defending itself against any claim arising hereunder. Notwithstanding anything to the contrary herein contained, Purchaser agrees that Goldberg Weprin Finkel Goldstein LLP may represent Seller as Seller's counsel in any action, suit or other proceeding between Seller and Purchaser or in which Seller and Purchaser may be involved.

24. Tax Proceedings.

From and after the date hereof until the Closing, Seller is hereby authorized to commence any new proceeding or proceedings and/or continue any proceeding or proceedings now pending for the reduction of the assessed valuation of the Property, and in Seller's sole discretion at its sole cost and expense to litigate or settle same; provided, however, that Purchaser shall be entitled to that portion of any refund relating to the period occurring after the Closing after payment to Seller of all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Seller in obtaining such refund. Purchaser shall deliver to Seller, reasonably promptly after request therefore, receipted tax bills and canceled checks used in payment of such taxes and shall execute any and all consents or

other documents, and do any act or thing necessary for the collection of such refund by Seller. Any refunds or credits due for the periods prior to Purchaser's ownership of the Property shall remain the sole property of Seller. The provisions of this Section 24 shall survive the Closing.

25. Confidentiality. OMITTED

26. Special Provisions for Bankruptcy Court Approval.

26.1 Pursuant to 11 U.S.C. Section 363(b) and (f), Bankruptcy Court approval of this Agreement is required before the Seller may sell the Property to the Purchaser. Seller shall promptly apply for and diligently pursue Bankruptcy Court approval of this Agreement by way of a motion to approve a private sale of the Property to Purchaser under 11 U.S.C. § 363 (b) and (f) (the "Sale Order"). Purchaser acknowledges and agrees that the Bankruptcy Court may require that the Debtor consider higher or better offers for the Property as part of a bidding procedures process. In such event, the Seller shall seek approval of the sale of the Property through a bidding procedures motion to be filed by Seller in consultation with Purchaser and its counsel seeking to (i) approve this Agreement as a "Stalking-Horse contract", subject to competitive bidding and otherwise providing an auction sale of the Property based upon the Stalking-Horse contract, free and clear of all liens, claims, interests and encumbrances under 11 U.S.C. § 363 (b) and (f); (ii) scheduling a sale approval hearing; and (iii) approving the form and manner of notice thereof. The Seller shall also request that the bidding procedures contain an initial overbid of \$410,000.00, with bidding thereafter at intervals of \$10,000.00.

27. Conditions Precedent to Purchaser's Obligation to Close.

27.1 Purchaser's obligations to consummate the transactions described in this Agreement, and to take the actions required to be taken by Purchaser at the closing, is subject to

the satisfaction, at or prior to such closing, of each of the following conditions (any of which may be waived by Purchaser, in whole or in part):

(a) Seller has performed or complied in all material respects with all of the covenants and obligations required of Seller by this Agreement to be performed or complied with up to and including the closing date.

(b) Bankruptcy Court approval of this Agreement has been obtained as the highest and best offer for the Property.

28. Conditions Precedent to Seller's Obligations to Close.

28.1 Seller's obligation to consummate the transactions described in this Agreement, and to take the actions required to be taken by Seller at the closing, is subject to the satisfaction, at or prior to such closing, of each of the following conditions.

(a) Purchaser has performed or complied with all of the covenants and obligations required of Purchaser by this Agreement to be performed or complied with up to and including the closing date.

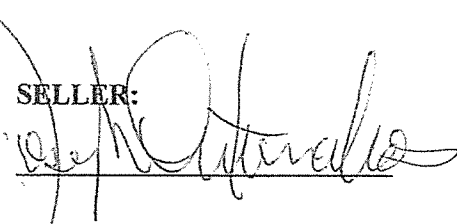
(b) Bankruptcy Court approval of this Agreement has been obtained as the highest and best offer for the Property.

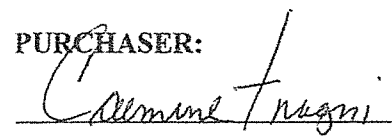
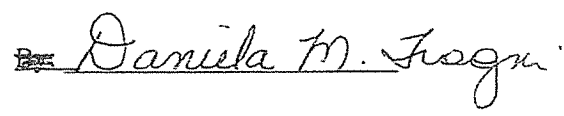
29. Transfer Tax Exemption.

This transaction and all orders approving of the same shall provide that consistent with the Supreme Court's interpretation of Section 1146(a) of the Bankruptcy Code in Florida Department of Revenue v. Piccadilly Cafeterias, Inc., 128 S.Ct. 2326 (2008), that the transfer of the Property shall be made in furtherance of a confirmed plan of reorganization and, to the extent permitted, shall be exempt from payment of all transfer and recording taxes otherwise owed to a local, state or federal government unit and shall provide that the recorder of deeds or similar

official shall accept such deed and instrument for recording without requiring the payment of any filing fees, documentary stamp taxes or transfer taxes, including the New York City RPT and the New York State TP 584.

N WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

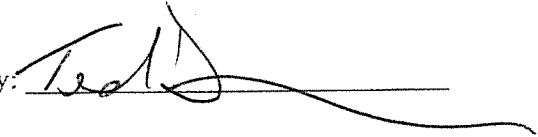
SELLER:

By: _____

PURCHASER:

~~By:~~ 

ESCROW AGENT:

SOLELY FOR THE PURPOSES OF
CONFIRMING THE PROVISIONS OF ARTICLE 23:

Goldberg Weprin Finkel Goldstein LLP

By: 

SCHEDULE OF EXHIBITS

Exhibit A	Legal Description
Exhibit B	Permitted Exceptions
Exhibit C	Bargain and Sale Deed