

**GAZES LLC**

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re: :  
 : Chapter 11  
JOSEPH NATHAN BARNES, :  
 : Case No. 13-10819 (SCC)  
 :  
Debtor. :  
 :  
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**MOTION TO APPROVE SALE OF REAL PROPERTY  
LOCATED AT 126-22 116th AVENUE, QUEENS, NEW YORK**

TO: THE HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE

Ian J. Gazes, the chapter 7 trustee of the estate of Joseph Nathan Barnes, by his attorneys, submits this Motion for an order, substantially in the form attached hereto as Exhibit “A”, approving the sale of the estate’s right, title and interest in certain residential real property located at 126-22 116<sup>th</sup> Avenue, Queens, New York (the “Proposed Sale”) , and respectfully represents as follows:

**I. JURISDICTION, VENUE AND STATUTORY PREDICATE FOR RELIEF**

1. This Court has jurisdiction to hear the relief requested by this Motion pursuant to sections 157 and 1334 of title 28 of the United States Code, 28 U.S.C. §§ 1 *et seq.* (the “Judicial

Code”), and the Amended Standing Order of Reference of the United States District Court for the Southern District of New York. This Motion is a core proceeding under Judicial Code section 157 (b)(2)(M). 28 U.S.C. § 157 (b)(2)(M).

2. Venue of this bankruptcy case is proper under section 1408 of the Judicial Code. 28 U.S.C. § 1408.

3. The statutory and other provisions governing the relief requested in this Motion are subsections 363(b)(1), (f) and (m) of title 11 of the United States Code, 11 U.S.C. §§ *et seq.* 101 (the “Bankruptcy Code”), Rules 2002(a)(2) and (c)(1) and 6004(a) and (c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Local Bankruptcy Rule 9006-1(b), and this Court’s General Order M-383.

## **II. BACKGROUND**

### **A. Procedural Background**

4. On March 18, 2013, Joseph Nathan Barnes (the “Debtor”) filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code [Doc. No. 1].

5. On November 13, 2013, the Court entered an order converting the Debtor’s case to a case under chapter 11 of the Bankruptcy Code and directing the appointment of a chapter 11 trustee [Doc. No. 75].

6. On November 21, 2013, the Office of the United States Trustee appointed Ian J. Gazes to serve as chapter 11 trustee (the “Trustee”) [Doc. No. 78].

7. On November 22, 2013, the Trustee filed his acceptance of appointment as chapter 11 trustee [Doc. No. 79].

### **B. The Proposed Sale**

8. In 1980, the Debtor acquired a fee simple ownership in a 1,017-square foot single family dwelling located at 126-22 116th Avenue in the Ozone Park section of Queens, New York (the “Property”).

9. The monthly carry for the Property, including insurance and property taxes but exclusive of other expenses, is approximately \$500.00.

10. During the course of administering this case, the Trustee determined that the Property was occupied by Ruth Melville, a senior citizen. Because Ms. Melville was a longtime resident and because the Trustee anticipated potential litigation if the Property were sold to another party, the Trustee invited her to make an offer to purchase the Property. Ms. Melville initially indicated that she would make an offer but ultimately declined to do so.<sup>1</sup>

11. In order to inspect the Property, assess its value, and to market it for sale, the Trustee enlisted MYC & Associates, Inc. (“MYC”).<sup>2</sup>

12. MYC has inspected the Property and has determined that it requires significant renovation and updating. *See* Exhibit “B” hereto, Affidavit of Marc P. Yaverbaum in Support of the Sale of Real Property (the “Yaverbaum Affidavit”), ¶ 5. Also, as pointed out by the proposed buyer to MYC upon her inspection of the Property, there is undisturbed asbestos insulation on the heating pipes in the basement.. *Id.*

13. The price per square foot of comparable sales ranges from \$126.11 to \$187.50. *See Yaverbaum Affidavit*, at ¶ 8.

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<sup>1</sup> Ms. Melville asserted that she occupied the Property under a lease with the Debtor commencing on January 1, 2013 and ending on December 31, 2017. The Trustee asserts that the lease automatically terminated 60 days after the Petition Date during the pendency of the chapter 7 proceeding pursuant to section 365(d)(1) of the Bankruptcy Code. Ms. Melville has recently vacated the Property of her own volition.

<sup>2</sup> The Trustee previously submitted his application to retain MYC as broker for review by the Office of the United States Trustee.

14. After inspecting and marketing the Property, MYC received an offer from Jennifer Turini (the “Purchaser”) to purchase the Property for \$210,000.00 (the “Purchase Price”) or \$206.49 per square foot. Based on this offer, the Trustee negotiated and thereafter entered into a contract of sale (the “Contract”) with the Purchaser subject to this Courts approval and received a \$15,000.00 deposit on the Purchase Price. A copy of the Contract is attached hereto as Exhibit “C”.

15. The Contract further provides, among other things, that:

- (a). the Property is being sold free and clear of liens, claims and encumbrances;
- (b). the Property is being sold “as is”, “where is” and “with all faults” and;
- (c). the Trustee will request that the Court include in its order a finding that Purchaser is a “good faith purchaser” entitled to the protections of section 363(m) of the Bankruptcy Code.

**C. Liens on the Property**

16. The title search for the Property obtained by the Trustee reveals the following liens or potential liens on the Property:

- (a). A mortgage (the “Morvillo Mortgage”), recorded on August 27, 1995, given by the Debtor in favor of the law firm of Morvillo Abramowitz Grand Iason & Silberberg PC (“Morvillo”) in the amount of \$49,100.00;
- (b). A mortgage (the “HUD Mortgage”), recorded on September 29, 1980, given by the Debtor in favor of the United States Department of Housing and Urban Development (“HUD”) in the amount of \$23,600.00;
- (c). A judgment against “Joseph Barnes” in favor of Palisades Collection, LLC in the amount of \$1,571.06;
- (d). Several judgments against “Joseph Barnes” in favor of the Criminal Court of the City of New York in the aggregate amount of \$810.00; and

(e). Various Environmental Control Board, parking, and Transit Adjudication Bureau violations, against “Joseph Barnes”, “Joseph D. Barnes”, “Joseph A. Barnes”, or “Joseph K. Barnes” in the aggregate amount of \$1,367.72.

17. A review of the online tax records for the New York City Department of Finance show unpaid real estate taxes of no less than \$16,237.95.

18. Morvillo has advised the Trustee that the Morvillo Mortgage has been satisfied. The parties are in the process of preparing a satisfaction of mortgage for recordation.

19. With respect to the HUD Mortgage, HUD’s mortgage servicer, Novad Management Consulting, LLC (“Novad”), has advised that it has no immediate record of the HUD Mortgage. The Trustee believes that Novad’s ongoing investigation will confirm that the HUD Mortgage has been satisfied.

**D. Extraordinary Provisions of the Proposed Sale**

20. The Proposed Sale contains the following Extraordinary Provision as described in the Court’s General Order M-383:

Private Sale – The Proposed Sale is not being conducted pursuant to the auction procedures set forth in Local Bankruptcy Rule 6004-1 and is not subject to higher and better offers.

Sale Free and Clear - The sale of the Property shall free and clear of all liens and encumbrances pursuant to section 363(f) of the Bankruptcy Code.

**III. SALE APPROVAL**

**A. The Proposed Sale is Justified by Sound Business Reasons and is in the Best Interest of the Estate and its Creditors**

21. Bankruptcy Code section 363 (b)(1) provides that the “trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate...” 11 U.S.C. § 363(b)(1). A sale conducted pursuant to section 363(b)(1) will only be approved upon the trustee’s demonstration of a good business reason for that sale. *In re*

*Chateaugay Corp.*, 973 F.2d 141 (2d Cir. 1992); *Comm. of Equity Sec. Holders v. Lionel Corp.* (*In re Lionel Corp.*), 772 F.2d 1063, 1071 (2d Cir. 1983). As a general matter, courts will afford a trustee's business judgment considerable though not complete deference. *In re Bakalis*, 220 B.R. 525, 532 (Bankr. E.D.N.Y. 1998). This deference extends to the manner in which a trustee chooses to conduct a sale. *Id*; *see also* General Order M-383, p. 2, n. 2 ("With the exception of providing for such disclosure, these Guidelines do not express a preference for public over private sales as a means to maximize the sale price").

22. In the exercise of his business judgment, the Trustee submits that the Proposed Sale is justified by sound business reasons and is in the best interest of the estate and its creditors. The Property appears to be the estate's sole remaining asset of value and a sale is the only means of realizing that value. Moreover, given the monthly carry of maintaining the Property, that value continues to decrease.

**B. The Purchase Price is Fair and Reasonable and No Auction Sale should be Required**

23. Based on comparable sales, the condition of the Property, and MYC's marketing efforts, the Trustee submits that the Purchase Price is both fair and reasonable. *See Yaverbaum Affidavit*, at ¶¶ 7-9.

24. This Court's General Order M-383 requires that a proposed sale in which "...no auction is contemplated, the debtor has agreed to a limited no-shop or no-solicitation provision, or the debtor has otherwise not sought or is not actively seeking higher or better offers...must so state and explain why such sale is likely to maximize the sale price."

25. The Trustee respectfully submits that the Property has been more than adequately marketed so that the Purchase Price accurately reflects true market value. Moreover, given the relatively modest value of the Property, the Trustee believes that any speculative increase that

might be realized from an auction would likewise be modest and offset by the monthly costs incurred from further delay as well as the expenses associated with an auction.

**D. The Proposed Sale is Proposed in Good Faith and has been Entered into without Collusion**

26. To the best of the Trustee's knowledge, the Purchaser has no known prior connections to the Debtor, the Debtor's creditors, the Trustee or the Trustee's professionals. The Proposed Sale is solely the product of arm's length bargaining, was entered into without collusion, and proposed in good faith. Based on the foregoing, the Trustee requests that the Purchaser be afforded the protections of Bankruptcy Code subsection 363(m).

**E. Sale Free and Clear**

27. As set forth above, the Trustee does not believe that there are any valid mortgage liens on the Property. The Trustee further believes that most if not all of the potential violation and judgment liens are attributable to individuals other than the Debtor. Even if it is assumed that all of these amounts are secured by liens on the Property, the Purchase Price substantially exceeds the aggregate amounts of potential liens. Thus, the Proposed Sale free and clear of all liens claims and encumbrances with such interests attaching to the sale proceeds is authorized under Bankruptcy Code section 363(f)(3).

**NOTICE**

28. Section 363(b)(1) provides that "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." Bankruptcy Rule 2002(a)(2) of the Federal Rules of Bankruptcy Procedure requires that parties in interest be given twenty-one (21) day notice of "a proposed use, sale, or lease of property of the estate other than in the ordinary course of business." Fed. R. Bankr. P. 2002(a)(2); *see also* Fed. R. Bankr. P. 6004(a) and (c).

29. Contemporaneously with the filing of this Motion, a copy of this Motion, associated exhibits, and Notice of Hearing will be served on (a) the Office of the United States Trustee, attn.: Paul K. Schwartzberg, Esq., (b) the Debtor and his attorneys, (c) on all parties that have filed a proof of claim and/or a notice of appearance in this case as of the date of this Motion, and (d) all parties known to have a lien or potential lien on or interest in the Property.

30. The Trustee submits that service of notice as described herein is appropriate and request that the Court find that due and sufficient notice of the Motion has been given.

**WHEREFORE**, the Trustee respectfully requests the entry of the proposed order attached hereto as Exhibit A granting the Motion, and for such other different relief as to this court may seem just and proper.

Dated: New York, New York  
June 22, 2017

Gazes LLC  
Attorneys for the Trustee  
By: /s/ Ian J. Gazes  
Ian J. Gazes  
151 Hudson Street  
New York, New York 10013  
(212) 765-9000



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re: :  
 : Chapter 11  
JOSEPH NATHAN BARNES, :  
 : Case No. 13-10819 (SCC)  
 :  
Debtor. :  
 :  
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**ORDER APPROVING SALE OF PROPERTY**

**UPON** the Motion, dated June 22, 2017, of Ian J. Gazes, the chapter 11 trustee (the “Trustee”) of the estate of Joseph Nathan Barnes (the “Debtor”), by and through his counsel, Gazes LLC, for an order approving the Trustee’s sale of the estate’s right, title and interest in that certain residential real property located at 126-22 116<sup>th</sup> Avenue, Queens, New York (the “Property”) to the Jennifer Turini, free and clear of all liens, claims and encumbrances, with such liens to attach to the sale proceeds pursuant to section 363(b),(f), and (m) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”); and upon the Affidavit Marc C. Yaverbaum, dated June 21, 2017; and upon the record of the hearing on the Motion held before this Court on July 13, 2017 (the "Hearing"); and sufficient cause appearing therefore; and after due deliberation; it is

**HEREBY FOUND AND DETERMINED, that:**

A. On May 18, 2013, the Debtor filed a voluntary chapter 7 petition; thereafter and following the conversion of the Debtor’s case to a chapter 11 proceeding, Ian J. Gazes was appointed the chapter 11 trustee in this case.

B. Proper, timely, adequate and sufficient notice of the Motion and the Sale Hearing on the requested relief set forth therein has been provided in accordance with Rules 2002 and 6004 of the Federal Rules of Bankruptcy, as evidenced by the certificate of service filed with Clerk of this

Court and no other or further notice of the Motion, the Sale Hearing or the entry of this Order is necessary.

C. The Contract in the form attached to the Motion has been negotiated in good faith and represents an arm's-length transaction between the Trustee and the Purchaser and the Purchaser is a good faith purchaser of the Property and is entitled to the protections set forth in §363(m) of the Bankruptcy Code if it consummates the sale in accordance with this order and the Contract.

D. The Trustee has adequately disclosed all material facts necessary to permit the Court, the Purchaser and the Debtor's creditors to evaluate the merits of the Contract.

E. It is in the best interest of the estate and creditors to sell the Property in accordance with the terms and conditions of the Contract.

F. The Trustee has advanced sound business reasons for seeking to sell the Property as set forth in the Contract, and it is a reasonable exercise of the Trustee's business judgment to sell the Property on the basis set forth in the Motion and the Contract.

G. This Court has jurisdiction over this case and the parties and property affected hereby pursuant to the provisions of sections 157(b)(2)(D) and 1334 of title 28 of the United States Code. 28 U.S.C §§157(b)(2)(D) and 1334.

H. Consideration of the Motion is a core proceeding under section 157 (b)(2)(M) of title 28 of the United States Code. 28 U.S.C. § 157 (b)(2)(M).

I. Venue of this case and Motion is proper under section 1408 of title 28 of the United States Code. 28 U.S.C. § 1408.

J. Good cause has been demonstrated for the entry of this Order.

Accordingly, it is hereby **FOUND, ORDERED, DETERMINED AND DECREED**, as follows:

1. The Trustee is expressly authorized and empowered to enter into, among other documents, the Contract, substantially the form annexed to the Motion.

2. The terms and conditions of the Contract are approved, and the Trustee is authorized to execute, deliver and perform and do all acts that may be required in connection with such agreement.

3. The Contract has been negotiated in good faith and at arm's length between the Trustee and the Purchasers.

4. The Trustee is authorized and directed to do and perform all acts, to make, and execute all related instruments and documents, which may be required or necessary for performance pursuant to the terms of the Contract.

5. The Trustee is authorized and directed to pay any and all taxes at closing.

6. All documents and the provisions of this Order shall be binding upon the Debtor and third parties.

7. The provisions of this Order shall be immediately effective upon its entry and any actions taken pursuant hereto shall survive entry of, and shall govern with respect to any conflict with, any other order.

8. If any or all of the provisions of this Order shall be modified, vacated or stayed, such stay, modification or vacatur shall not affect (x) the validity of any obligation, indebtedness or liability incurred by the Trustee hereunder prior to the effective date of any such stay, modification or vacatur, or (y) the validity and enforceability of any priority authorized or created hereby or pursuant to the Contract or the Bankruptcy Code. Notwithstanding any such stay, modification or vacatur, any indebtedness, obligation or liability incurred by the Trustee hereunder prior to the effective date of such stay, modification or vacatur shall be governed in all

respects by the original provisions of this Order, and the Trustee shall be entitled to all of the rights, remedies, privileges and benefits, granted herein with respect to all such indebtedness, obligation or liability.

9. At the closing with the Purchaser, pursuant to sections 363(b) and (f) of the Bankruptcy Code, the Property shall be conveyed sold and transferred to the Purchaser free and clear of any all liens, encumbrances, claims, and interests whether or not allowable, security interests, title retentions, charges, and any other interest in the Property as defined under the Contract of any entity, whether arising prior or subsequent to closing, with the liens, claims and encumbrances only attaching to the proceeds of sale, with the same priority, validity, force, effect and enforceability, and subject to the same defenses and avoiding power actions as such liens, claims and encumbrances have or may now be subject to with respect to the Property being sold under the Contract.

10. The proceeds of sale of the Property to the Purchasers received by the Trustee under the Contract shall be deposited into the bankruptcy estate's non-interest bearing account with such funds to be disbursed to pursuant to further order of this Court.

11. The provisions of this Order authorizing the sale of the Property free and clear of all liens, claims and encumbrances shall be self-executing, and no party shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate and implement the foregoing provisions hereof; provided, however, that this decretal paragraph shall not excuse such parties from performing any and all of their respective obligations under the Contract.

12. This Order shall be binding upon and inure to the benefit of the Debtor's estate and the Purchasers and their respective assigns.

13. The Purchaser shall be entitled to the protection of §363(m) of the Bankruptcy Code with respect to the sale and the purchase of the Property in the event this Order or any authorization contained herein is reversed or modified on appeal.

14. Each and every federal, state and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the sale of the Property and the recording of any deed, document or other instrument and all such parties and creditors are enjoined from interfering with this Order.

15. This Court shall retain jurisdiction to resolve any and all disputes arising from or relating to the Contract in accordance with the terms of this Order and the Motion.

Dated: New York, New York  
July \_\_, 2017

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HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

JOSEPH NATHAN BARNES

Debtor.

Chapter 11

Case No. 13-10809 (SCC)

-----X

**AFFIDAVIT OF MARC P. YAVERBAUM**  
**IN SUPPORT OF THE SALE OF REAL PROPERTY**

STATE OF NEW YORK    )  
                                  )ss:  
COUNTY OF NEW YORK )

MARC P. YAVERBAUM, being duly sworn, deposes and says:

1. I am a principal of MYC & Associates, Inc. ("**MYC**"), maintaining its office at 1110 South Avenue, Suite 22, Staten Island, New York 10314. MYC is the proposed real estate broker in connection with captioned debtor's real property.

2. I am fully familiar with the facts and circumstances set forth in this Affidavit. I am submitting this Affidavit in support of the sale of real property by Ian J. Gazes (the "**Trustee**") as the Chapter 11 bankruptcy trustee of Joseph Nathan Barnes (the "**Debtor**"). The real property is commonly known as and located at 126-22 116th Ave., Queens, NY 11420 (the "**Property**").

3. The Property is a 1,600 square foot lot improved by a fully attached, single family residence that is defined by 1,000 square feet of living space. The improvement to the Property is further defined by two (2) bedrooms and one (1) bath.

4. When MYC was first asked to market and sell the Property, the Property was occupied by an elderly woman who was a tenant for over twenty-five (25) years. MYC worked with the tenant who willfully vacated the Property.

5. When MYC first inspected the Property it was found to be in a dated condition and requiring complete updating. As pointed out by the proposed buyer to MYC upon her inspection of the Property, there is undisturbed asbestos insulation on the heating pipes in the basement.

6. MYC marketed the Property by maintain a listing on its website, [www.MYCcorp.com](http://www.MYCcorp.com), since April 2016. MYC also sent multiple e-mail blasts to its subscriber database notifying as to the availability of the Property.

7. As a result of MYC's marketing efforts, in January 2017, MYC received an offer to purchase the Property from Jennifer Turini ("**Turini**") for \$210,000.

8. MYC advised that the Trustee that he should accept Turini's offer as it was well in line with the current market value of the Property. The comparable sales used to determine the market value of the Property are as follows:

<u>Address</u>	<u>Sale Date</u>	<u>Sale Price</u>	<u>Size (SF)</u>
Subject	N/A	N/A	1,017
131-02 Foch Blvd.	11/8/16	\$190,000	1,184
111-14 128 St.	2/16/17	\$170,000	1,348
116-10 135 St.	3/30/17	\$233,000	1,400
114-41 121 St.	2/5/17	\$240,000	1,280

9. Based upon the aforementioned marketing strategy, condition and market value of the Property, MYC believes that the best possible price was achieved for the Property.

BY: /s/ Marc P. Yaverbaum  
Marc P. Yaverbaum  
MYC & Associates, Inc.

Sworn to me before this  
21st Day of June 2017

/s/ Victor M. Moneypenny  
Victor M. Moneypenny  
Notary Public, State of New York  
No. 01MO6343439  
Qualified in Richmond County  
Commission Expires 6/13/2020



CONTRACT OF SALE

AGREEMENT made as of the 18<sup>th</sup> day of MAY, 2017, by and between the estate of Joseph Nathan Barnes, IAN J. GAZES, solely in his capacity as chapter 11 trustee (the "Trustee" or "Seller") of the bankruptcy estate of Joseph Nathan Barnes (the "Debtor") in Case No. 13-10819 SCC which is pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), and Jennifer Turini (the "Purchaser").

WITNESSETH

1. Agreement to Purchase; Description of Property

Trustee hereby agrees to sell to Purchaser, and Purchaser hereby agrees to purchase from Trustee, upon the terms and conditions set forth herein, all of the Trustee's estate, right, title, and interest in and to (i) those certain lots, pieces and parcels of land, situate, lying and being know as 126-22 116<sup>th</sup> Avenue, in the County of Queens, State of New York, as more particularly described in Schedule A annexed hereto and the appurtenances thereto (collectively, the "Land"); (ii) all buildings and improvements located on the Land and the appurtenances thereto (collectively, the "Improvements"); and (iii) all fixtures located on and used in connection with the operation and maintenance of the Land and/or Improvements (collectively, the "Personalty"). The Land, Improvements and Personalty are hereinafter sometimes collectively called the "Property".

2. Consideration

The consideration for the purchase of the Property is Two Hundred and Ten Thousand Dollars (\$210,000.00) (the "Purchase Price"), without offset or reduction (except as expressly provided for herein), payable by Purchaser as follows:

- (i) FIFTEEN Thousand Dollars (\$15,000.00) (the "Deposit") upon execution and delivery of this Agreement, by check of Purchaser, subject to collection, payable to the order of "estate of Joseph Nathan Barnes, Ian J. Gazes, as Trustee". The Deposit shall be held in the Trustee's estate account maintained by the Trustee at Texas Capital Bank located at 2350 Lakeside Boulevard, Richardson, Texas. At Closing (as defined herein), any interest earned on the Deposit shall belong to the Trustee and shall not be credited against the Purchase Price. The Deposit shall not constitute property of the estate until after Closing (hereinafter defined). The Deposit will not be maintained in an interest bearing account.  
*\* \$10,500.00 on execution of contract. \$4,500.00 on or before 5/31/17.*
- (ii) One Hundred and NINETY FIVE Thousand Dollars (\$195,000) upon Closing, by unendorsed certified check of Purchaser or official bank check drawn on a bank which is a member of the New York Clearing House Association or otherwise satisfactory to the Trustee.

(iii) In addition to the Purchase Price, Purchaser shall also pay the net apportionments and adjustments set forth in Section 10 below calculated as of midnight of the date of the Closing.

(iv) At Trustee's request (made by facsimile transmission if Trustee so elects), made no later than three (3) business days prior to the Closing, Purchaser shall provide at the Closing up to three (3) separate unendorsed certified or official bank checks, aggregating the amount to be paid to Trustee at Closing, made payable to those parties which Trustee so requests.

(v) Purchaser shall, to the extent required by the Bankruptcy Court, the Order (as defined herein), or as may be required by any applicable law or governmental authority, pay at Closing any and all State, City, County and/or local taxes ordinarily imposed upon a purchaser at closing of the Property arising from the transfer of the Property to the Purchaser. Notwithstanding same, the Trustee shall use his best efforts to close this sale of the Property concurrently with the confirmation of a plan of reorganization with respect to the Debtor such that the Purchaser shall get the benefit of Section 1146(c) of the Bankruptcy Code.

### 3. Bankruptcy Court Approval

(i) After the Parties execute the Agreement, the Trustee shall file a motion (the "**Motion**") with the Court pursuant to, *inter alia*, sections 105(a), 363, and 365 of the Bankruptcy Code for entry of an order: (a) (x) authorizing this sale without an auction or, if the Court requires an auction (y) approval of the Seller's proposed bidding procedures; and (b) authorizing and approving the sale of the Property to Purchaser pursuant hereto, free and clear of all liens, claims and encumbrances with such liens, claims, and encumbrances attaching to the sale proceeds (the "**Sale Order**") substantially in the form attached hereto as Exhibit "A". In the Motion, the Trustee will request that the Court include in its order a finding that Purchaser is a "good faith purchaser" entitled to the protections of section 363(m) of the Bankruptcy Code. The Court's failure to include such a finding in its order will not excuse Purchaser of any of its obligations under this Agreement. The obligations of the parties under this Agreement (each a "Party" and collectively the "Parties") are expressly subject to, and conditioned only upon, the entry of the Sale Order including a Break-Up Fee (hereinafter defined). In the event the Bankruptcy Court does not enter the Sale Order for any reason other than a default by Purchaser within sixty (60) after the filing of the Trustee's Motion seeking among other things approval of this Agreement full, either the Trustee or Purchaser may terminate this Agreement by written notice to the other. In such event, the Deposit shall be returned to the Purchaser within five (5) business days. The Parties agree to proceed to closing notwithstanding an appeal unless the Court enters an order staying the sale pending the appeal.

(ii) The Sale Order shall provide that the sale shall be free and clear of all liens, claims and encumbrances affecting the Property, other than the Permitted Encumbrances (as defined herein) and otherwise noted in this Contract, and at Closing the Property shall be conveyed to Purchaser free and clear of all liens, claims and encumbrances affecting the Property, other than the Permitted Encumbrances and as otherwise noted in this Contract.

(iii) If Purchaser or Trustee shall terminate this Agreement pursuant to this Section 3, then this Agreement shall be null and void and the Trustee shall promptly return the Deposit with interest, if any, and upon such return of the Deposit to Purchaser, there shall be no further liabilities or obligations upon either of the parties hereto except for those which by the express terms hereof survive such a termination.

4. Default by Purchaser

In the event that Purchaser fails to timely complete the transaction contemplated by this Agreement in accordance with its terms, the Trustee shall have the option of terminating this Agreement, with respect to Purchaser's obligations hereunder (subject to Section 11 below). In the event of such termination, all payments made by Purchaser to Trustee prior to such termination (including, without limitation, the Deposit delivered to the Trustee (the "**Prior Payments**")) shall be retained by Trustee as sole liquidated damages (and not as a penalty) for all loss, damage and expense suffered by Trustee, including, without limitation, the loss of its bargain, and neither party hereto shall have any further right or obligation to the other except for those which by the express terms hereof survive such a termination.

5. Release of Environmental Claims

Purchaser understands and acknowledges that the Trustee has not and is not providing any representations, written or oral, actual or implied, including without limitation latent defects concerning the existence of any and all liability relating to or arising from any environmental, dangerous, hazardous and/or toxic condition, substance, material and/or waste which currently exists or which may exist in the future on the Property (collectively, "**Environmental Claims**"), including, without limitation, any claims made pursuant to 42 U.S.C. §9601 *et seq.* and any claims made for contribution, indemnity and reimbursement and Purchaser is taking the Property "AS IS and "WHEREAS". This Section 5 shall survive the Closing.

6. The Closing

✓ (i) The Property shall be transferred and conveyed by Trustee to Purchaser subject to **any and all tenancies and occupants, legal or otherwise**, and Purchaser shall pay the balance of the Purchase Price at closing (the "**Closing**") on the date (the "**Closing Date**") mutually acceptable to the Purchaser and Trustee which date may be no more than 15 days subsequent to the entry of the Sale Order.

(ii) The Closing shall be held in the office of Trustee's counsel, Gazes LLC, or such other mutually convenient location as may be agreed upon by the parties hereto.

7. Permitted Encumbrances; Other Matters  
Omitted by Purchaser's Title Insurer

Notwithstanding anything herein to the contrary, the Trustee shall convey the Property free and clear of all liens, claims and encumbrances pursuant to the Sale Order and Purchaser shall accept, the Property, without any warranties, express or implied, legal or

equitable, including without limitation the permitted encumbrances set forth in Schedule B annexed hereto (collectively, the "Permitted Encumbrances").

Purchaser may, at Purchaser's sole cost and expense: (a) promptly order a title report (the "Title Report") from a title insurance company licensed to do business in the State of New York; (b) cause the Title Report to be issued to Purchaser promptly after the date of execution of this Agreement; and (c) cause a copy of the Title Report and any amendments, supplements and endorsements to the Title Report to be delivered to Trustee's attorney simultaneously with the issuance of the same to Purchaser. In the event Purchaser elects to obtain title insurance and the title company refuses to issue title insurance by reason of any defect in or objection to title that is noted in the Title Report or any amendment, supplement or endorsement thereto, and is objected to by Purchaser, other than the Permitted Encumbrances, Purchaser shall provide notice thereof promptly after Purchaser receives the Title Report or amendment, supplement or endorsement thereto that first notes such defect or objection but nonetheless Purchaser is obligated to close providing the Sale Order states that the sale is free of all liens, claims and encumbrances with such liens, claims and encumbrances attaching to the sale proceeds other than the Permitted Encumbrances. Notwithstanding the foregoing, Seller may elect to pay fines and penalties, real estate taxes and water charges assessed against the Property prior to the Closing or at Closing and may direct the Purchaser to deduct from the cash consideration Sellers apportionment of same.

If the Sale Order states that the sale is free and clear of all liens, claims and encumbrances, entry thereof shall be deemed full satisfaction and compliance by Seller despite the Title Company's refusal to insure by reason of such liens, claims and encumbrances. Seller will reasonably assist Purchaser in clearing such defect but under no circumstances is this sale contingent upon Purchaser obtaining title insurance and, therefore, the removal of such defect(s). The Sale Order must authorize and direct the Trustee to execute the Deed substantially in the form attached hereto as Schedule C.

8. Access to the Property

✓ If Seller can arrange access to the Premises, Purchaser will be afforded reasonable access from time to time to the Property (including, without limitation, within 48 hours of the Closing Date) for the purposes of inspection accompanied by Trustee's representative MYC for non-invasive purposes only. Purchaser shall be permitted to make searches of governmental records as it reasonably deems necessary with respect to the Property, and Trustee agrees to reasonably cooperate with Purchaser and to issue any consents or authorizations reasonably required therefor. Any entry upon and activities on the Property shall be entirely at Purchaser's own risk. Purchaser is required to close even if Seller is unable to provide Purchaser with access to the Property prior to the Closing. This subparagraph 8 shall survive the Closing or other termination of this Agreement.

9. Complete Agreement and Fire and Casualty

(i) Purchaser has inspected the Property and is thoroughly acquainted with its condition. Subject to the provisions herein, Purchaser agrees to purchase the Property "AS IS", "WHERE IS", "WITH ALL FAULTS" and in its present condition,

subject to reasonable use, wear, tear, fire or casualty loss, vandalism and natural deterioration between now and the Closing (but subject further to subsections 9(ii) and (iii) below) and all tenants and occupants, legal and/or otherwise, rent stabilized or not. Purchaser shall take the Property subject to all violations of law or municipal ordinances, orders or requirements promulgated by any governmental department having authority as to lands, housing, buildings, fire, health, labor, environment, highways, use, land use and other similar conditions affecting the Property. Purchaser acknowledges that except as set forth herein, neither the Trustee nor any agent or representative or purported agent or representative of Trustee has made, and Trustee is not liable for or bound in any manner by, any express or implied warranties, guaranties, statements, inducements, representations or information pertaining to the Property, or any part thereof, the physical condition, environmental, dangerous, hazardous and/or toxic condition, income, expenses or operation thereof, compliance with the rent control laws, the Rent Stabilization Law or the Rent Stabilization Code, or any laws or regulations associated therewith, the uses which can be made of the Property or any other matter or thing with respect thereto. Without limiting the foregoing, Purchaser acknowledges and agrees that Trustee is not liable for or bound by (and Purchaser has not relied upon) any verbal or written statements, representations, real estate brokers' "set-ups" or any other information respecting the Property, furnished by the Trustee or any broker, employee, agent, consultant or other person representing or purportedly representing Trustee except to the extent that same constitute gross negligence, actual fraud or willful misconduct.

(ii) In the event that the Property sustains fire or casualty loss between the date hereof and the Closing in an amount less than \$50,000 (as determined is the reasonable estimate of a consultant mutually chosen by the Parties), then Trustee may provide notice of its election to so terminate within thirty (30) days after the later of: (a) the Parties' becoming aware of the occurrence of such fire or casualty loss or (b) the date of the report provided by the consultant chosen by the Parties pursuant to this sentence. In the event of such notice this Agreement shall remain in full force and effect except that: (a) with respect to any loss (or portion thereof) which is uninsured, Purchaser shall be entitled to a reduction in the Purchase Price equal to the lesser of (1) the reasonable cost to repair such uninsured fire or casualty loss as reasonably determined by a reputable contractor(s) approved by the Parties or (2) the diminution in the value of the Property below the Purchase Price as reasonably determined by an appraiser approved by Trustee; and/or (b) with respect to any loss (or portion thereof) which is insured, Purchaser shall not be entitled to a reduction in the Purchase Price but shall be entitled to receive the proceeds of any applicable insurance and Purchaser agrees to cooperate with Trustee in settling any such claim.

(iii) Notwithstanding subparagraph 9(ii) above to the contrary, in the event that the Property sustains fire or casualty loss between the date hereof and the Closing in excess of \$50,000.00 (a "Loss") (as determined by an estimate of a consultant mutually agreeable to the Parties within 30 days after any such Loss) and Trustee (a) does not elect to repair the Property to substantially the same condition as it existed in immediately prior to such Loss (which election shall be made in a notice to Purchaser within 15 days after the consultant delivers its written estimate to the Parties) or (b) Trustee elects to repair the Property to substantially the same condition as it existed in

immediately prior to such Loss (and Purchaser fails to deliver Purchaser's Waiver (as defined herein)) but Trustee does not substantially complete said repairs within 5 months after said Loss, then Purchaser shall have the right to terminate this Agreement by giving written notice to Trustee of its election to so terminate within 15 days after (x) Trustee gives its notice that it elects not to repair the Loss or (y) the expiration of the 5 month period described above during which Trustee failed to substantially complete the repairs, as the case may be (and upon such termination the Deposit with accrued interest, if any, shall be promptly returned to Purchaser).

In the event that Trustee so elects not to repair said Loss under 9(iii) or so elects to repair said Loss and Purchaser, within 5 days after receipt of Trustee's election to repair said Loss (time being of the essence), delivers to Trustee a written waiver ("**Purchaser's Waiver**") of its termination rights under this subsection 9(iii) (in which case Trustee shall not make any repairs), then subsection 9(ii) shall control with respect to a reduction in the Purchase Price or assignment of the insurance proceeds, as applicable. However, in the event that Trustee so elects to repair said Loss (and Purchaser fails to deliver Purchaser's Waiver) but Trustee fails to substantially complete the repairs within the required 5 month period and Purchaser fails to exercise its termination right in the time provided for above (time being of the essence), then the Closing shall occur on a date between 10 and 30 days after the repairs are substantially complete.

10. Apportionments and Offsets to the Purchase Price

(i) The following apportionments and adjustments shall be made at the Closing, as of 11:59 P.M. of the day immediately preceding the Closing Date. All such apportionments and adjustments, if in favor of Purchaser, shall be offset against the Purchase Price, provided that if such aggregate offsets exceed the Purchase Price, Seller may cancel this Contract and return the Deposit at which time neither party shall hold any claims against the other.

(a) Real estate taxes, assessments and water, sewer and vault charges, if any (collectively, "**Real Estate Taxes**") on the basis of the fiscal period for which assessed. Real Estate Taxes paid (or to be paid out of the Closing proceeds) by Trustee and pertaining in whole or in part to the period following the Closing shall be Purchaser's obligation and an apportionment shall be made therefor. If the Closing shall occur before a new tax rate is fixed, then the apportionment of taxes at the Closing shall be upon the basis of the old tax rate for the preceding period applied to latest assessed valuation. Promptly after the new tax rate is fixed, the apportionment of taxes shall be recomputed and subject to adjustment and settlement after the Closing, which such obligation shall survive the Closing but shall cease upon confirmation of the plan of reorganization in this case. If there is a water meter on the Property, apportionment at the Closing shall be based on the last available reading. If there is no water meter reading on or before the Closing, the water charges shall be adjusted by utilization of the last water bill with no further adjustments. In the event that any assessment is payable in installments, then all installments payable on or after Closing shall be Purchaser's responsibility.

(b) Any fuel then existing on the Property based upon the greater of (1) its then fair market value or (2) the original cost of the same.

(c) If any tenant/lessee/occupant on the Property is in arrears in the payment of rent on the Closing Date, rents received from such tenant after the Closing Date or other lease obligations ("Arrears") shall be applied in the following order of priority: (a) first to the month in which the Closing occurred; (b) then to any month or months following the month in which the Closing occurred; and (c) then to the period allocated as of midnight prior to the Closing Date, such Arrears in this subsection (c) less reasonable costs of collection shall constitute property of the estate unless waived by the Trustee. If rents or any portion thereof received by Seller or Purchaser after the Closing are payable to the other party by reason of this allocation, the appropriate sum less a proportionate share of any reasonable attorney's fees and expenses incurred in the collection thereof, shall be promptly paid to the other party. This subparagraph shall survive closing.

(ii) Any discrepancy resulting from such recomputation and any errors or omissions in computing apportionments at the Closing shall be promptly corrected, which obligations shall survive the Closing but, with respect to any sum owed Purchaser, the same shall not survive the entry of the order confirming the plan of reorganization (and shall survive prior to the entry of the Final Decree only to the extent monies are then currently available to pay the same).

(iii) Trustee shall not be obligated to accept more than \$1,000.00 in the aggregate at Closing in cash or uncertified checks. Any amounts owed in excess of \$1,000.00 must be paid in accordance with subsection 2(ii).

(iv) Except as otherwise herein provided, the customs with respect to title closings recommended by the Real Estate Board of New York shall apply to the apportionments at the Closing.

#### 11. Conditions of Closing

Notwithstanding anything contained herein to the contrary, the obligation of the Parties to close title in accordance with this Agreement are expressly conditioned upon:

(i) The Parties having made all required payments and having complied with all their respective obligations under this Agreement;

(ii) There shall be no judicial, quasi-judicial, administrative or other judicial body having jurisdiction over this case that has issued a stay or enjoined the sale contemplated hereunder;

(iii) In the event the Bankruptcy Court declines to enter an order approving the sale contemplated hereunder Purchaser shall be entitled to immediately terminate this Agreement and Trustee shall, within three (3) days of receipt of Notice of same from Purchaser, return the Deposit to Purchaser, together with all interest earned thereon, if any; and

(iv) The entry of the Sale Order substantially in the form attached hereto as Exhibit "A".

Closing Documents and Deliverables

(i) Trustee shall deliver to Purchaser at the Closing:

(a) A deed, substantially in accordance with the form annexed hereto as Schedule C (the "**Deed**") subject to any other rights to use or occupy any portion or all of the Property as set forth on Schedule B as Permitted Encumbrances. For all purposes under this Contract delivery of the Deed at Closing shall constitute delivery of possession of the Premises to the Purchaser.

(b) An appropriate non-foreign affidavit pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, sufficient to provide an exemption under Subdivision (b) thereof.

(c) The assignment and assumption agreement(s) described in subsection 12(iv) below.

(d) To the extent in the Trustee's physical possession all certificates, licenses, authorizations, permits, and approvals issued for or with respect to the Property by any governmental authority having jurisdiction over the Property.

(e) All transfer tax documents in proper form for submission, prepared, executed and acknowledged by the Seller.

(f) Such other documents as may be reasonably requested to evidence the conveyance of the Property, and Seller's authorization therefor.

(g) A notice to each tenant/occupant at the Property notifying of the sale of the Property, duly executed by the Trustee.

(h) The original or copy of any lease and all lease files to the extent in the physical possession of the Trustee with respect to all tenants/occupants at the Property.

(i) To the extent same are in the possession of Seller, all certificates, licenses, permits, authorizations and approvals issued for or with respect to the Property by governmental and quasi-governmental authorities having jurisdiction and plans and specifications with respect to same and the Property.

(j) A certified copy of the Sale Order.

(ii) Purchaser and Trustee shall execute, acknowledge and deliver to each other such other instruments and documents, if any, to which either party may be entitled pursuant to any of the other provisions of this Agreement or which are required by law.



(iii) The Parties acknowledge that the sale contemplated by this Agreement does not include the sale of any personalty giving rise to a sales tax.

(iv) Purchaser shall execute the appropriate documentation indicating that Purchaser (or Purchaser's lender) is the designated settlement/reporting agent for the purposes of the preparation and filing of the Form 1099-S (if such form is required under the Internal Revenue Code, as amended).

(v) The Trustee will turnover to the Purchaser at Closing or shortly thereafter so much of any security deposits under existing leases that has not been applied under the existing lease but only to the extent such deposits are in the physical possession of the Trustee.

12. Condemnation

If, at any time prior to the Closing, all or a material part of the Property shall be taken in the exercise of the power of eminent domain by any governmental authority (a "**Taking**"), then Trustee or Purchaser shall have the option to terminate this Agreement by giving notice to other Party within 20 days after such Taking. In the event no Party elects to terminate this Agreement, then the Trustee shall, without the consent of Purchaser, enter into any agreement concerning any condemnation award to which Seller or Trustee may be entitled as a consequence of such taking, and shall assign to Purchaser at the Closing all of Trustee's right, title and interest to any such award including the right to enter into any agreement regarding payment for such condemnation.

13. Fees and Disbursements of Counsel, etc.

Each of the parties hereto shall bear and pay the fees and disbursements of its own counsel, accountants and other advisors in connection with the negotiation, preparation and carrying out of this Agreement and the Closing. Purchaser shall bear and pay the cost of recording the Deed and other documents to be delivered hereunder. This Section 14 shall survive the Closing.

14. Notices

As used in this Agreement, "**notice**" or "**Notice**" shall mean any notice, demand, request, consent, approval or other communication required or permitted to be given hereunder or which is given with respect to this Agreement, and, except as otherwise provided in this Agreement, all notices shall be in writing and shall be sent by (i) registered or certified mail, return receipt requested, postage pre-paid, (ii) overnight express mail, (iii) Federal Express or (iv) personal delivery (provided written receipt therefor is obtained) addressed to the party to be notified at the addresses and the addressees set forth below or to such other addresses and/or addressees as such Party shall have specified most recently by like notice.

Any notice to be given to Trustee shall be sent to:

Ian J. Gazes, Trustee  
c/o Gazes LLC

151 Hudson Street  
New York, New York 10022

Any notice to be given to Purchaser shall be sent to:

Michael Holland, Esq.  
Law Office of Michael W. Holland  
421 Willis Avenue  
Williston Park, New York 11596

Notice given as provided above shall be deemed duly given (i) 3 days after sending, if sent by registered or certified mail, (ii) 1 business day after sending, if sent by overnight express mail or by Federal Express, or (iii) on the date of delivery, if delivered by personal delivery, as the case may be.

15. Trustee's Exculpation Limitation of Purchaser's Remedies

(i) Trustee is entering into this Agreement strictly in his capacity as trustee in the Debtor's chapter 11 proceeding in the Bankruptcy Court. Under no circumstances shall Trustee be liable in his personal capacity for payment or performance of any of Trustee's obligations hereunder.

(ii) If Trustee (a) is unable to transfer title to Purchaser in accordance with this Agreement, (b) terminates this Agreement for any reason other than a default by Purchaser, (c) fails to receive Bankruptcy Court confirmation or authorization for any reason whatsoever, or (d) receives and accepts a higher or better offer at auction should the Bankruptcy Court require an auction sale and such higher and better offerer closes, Trustee's sole liability shall be to refund the Deposit with interest, if any, paid by Purchaser on account of this Agreement. Upon such refund this Agreement shall be considered cancelled, and neither Trustee nor Purchaser shall have any further rights or obligations hereunder, except obligations under this Agreement which expressly survive the Closing or other termination of this Agreement.

(iii) Purchaser acknowledges that, prior to the Closing, Trustee shall have sole and complete discretion with respect to all matters relating to management and operation of the Property, including, without limitation, any election, in Trustee's sole discretion, not to manage, operate, insure, secure or otherwise safeguard all or any portion of the Property and shall substantially comply with the confirmed plan of reorganization.

16. Broker

Purchaser and Seller each represent and warrant to the other that the respective Party 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, the negotiation or execution

of this Agreement or the closing of the transactions contemplated herein other than MYC & Associates, Inc. (the "**Broker**").

The Parties each represent and warrant to the other that they have dealt with any broker, consultant, finder or like agent who might be entitled to a commission or compensation on account of introducing the parties, the negotiation or execution of this Agreement or the closing of the transactions contemplated herein other than the Broker. The Parties each jointly and severally, hereby agree to indemnify, defend and hold harmless the other from and against any and all losses, costs, expenses, claims, damages and liabilities, including, without limitation, attorneys' fees, resulting from a breach of the foregoing representation and warranty.

Trustee hereby covenants and agrees to pay the Broker any and all commissions, expenses, or fees which it is owed in connection with this transaction, pursuant to entry of a further order of the Bankruptcy Court. This Section 17 shall survive the Closing.

17. Higher and/or Better Offers

The Seller will seek approval of this sale as a private sale. However, if the Bankruptcy Court directs the Trustee to conduct an auction sale subject to higher and better offers:

(i) The Purchaser acknowledges and agrees this Agreement is subject to higher and better offers at an auction to be conducted by the Trustee and thereafter accepted by the Trustee subject to approval by the Bankruptcy Court. The Trustee agrees to that any higher and better offeror must sign an agreement substantially in the form of this Agreement unless terms are more favorable to the Trustee.

(ii) Purchaser will be deemed to have bid no less than the Purchase Price (the "**Stalking Horse Bid**"), and as such shall be designated as the stalking horse bidder to acquire the Property (the "**Stalking Horse Bidder**"). The Trustee shall provide copies of any higher or better bids upon receipt and acknowledge that Purchaser has standing to appear and be heard with respect to such other bids. Purchaser agrees to attend an auction, if any.

(iii) Any "qualified bidders" (as shall be defined in the bidding procedures set forth by the Bankruptcy Court (the "Bidding Procedures")) will be required to bid in accordance with the Bidding Procedures. If one or more "qualified bids" (as defined in Bidding Procedures) is/are submitted by the deadline incorporated in the Bidding Procedures, then the Trustee will conduct an auction (the "**Auction**"), to be held at the location, and at such date and time, set forth in the Bidding Procedures.

(iv) The Trustee agrees that no qualified bid shall be deemed higher or better than the Stalking Horse Bid unless such competing, qualified bid is equal to or greater than Two Hundred and Fifty Thousand Dollars (\$250,000.00). Subsequent bid increments must begin at no less than Ten Thousand Dollars (\$10,000.00) higher than the previous bid for the first round of bidding, and for each subsequent round of bidding must begin at no less than Ten Thousand Dollars (\$5,000.00) higher than the previous bid; *provided that* after the first round of bidding the Trustee may change the bidding floor in

any round of bidding if the Trustee deems such change reasonable and appropriate in conducting the Auction.

(v) In the event of an Auction, if (i) the Stalking Horse Bidder chooses not to participate in the Auction or does participate but is not the successful bidder, (ii) the Trustee selects another party as the successful bidder, and (iii) the Trustee and that party close on the transaction, then the Debtor's estate shall pay to the Stalking Horse Bidder, upon such Closing, a break-up fee in an amount equal to Two Thousand Dollars (\$2,000.00) (the "**Break-Up Fee**") and return the Deposit to the Stalking Horse Bidder within five (5) days of such closing. The Stalking Horse Bidder agrees to act as an alternative or back-up purchaser until the Trustee closes the transaction with any other party he selects as the successful bidder, provided that if the transaction between the Trustee and the party he selects as the successful bidder does not close within ninety (90) days from the date of the Auction, the Stalking Horse Bidder shall have the option to notify the Trustee in writing of the Stalking Horse Bidder's withdrawal as an alternative or back-up purchaser, and by electing said option and providing the Trustee with such notice, the Stalking Horse Bidder agrees to expressly waive any right or entitlement to the Break-Up Fee. The Stalking Horse Bidder shall not be entitled to receive, whether in the form of a credit or payment, the Break-up Fee, if no higher or better offers are received, accepted, and approved by the Court, or if the Stalking Horse Bidder submits a higher or better offer at the Auction that the Trustee receives and accepts and the Court approves and thereafter the Stalking Horse Bidder closes on the sale of the Property. The Break-Up Fee is subject to approval by the Bankruptcy Court. To the extent the Stalking Horse Bidder is entitled to the Break-Up Fee, the Break-Up Fee shall constitute an allowed claim pursuant to section 503(b) of the Bankruptcy Code in the Debtor's bankruptcy case and paid from the proceeds of the sale at closing or shortly thereafter.

(vi) If the Trustee is required by the Court to hold an Auction of the Property, then with respect to any offer at such Auction that is received, accepted and approved, the offeror shall assume all of the terms of this Agreement as Purchaser hereunder (as such terms, including those with respect to the Purchase Price, shall have been modified by the terms of the auction), and this Agreement shall not thereafter be conditioned upon or subject to a higher or better offer.

18. Counterparts; Captions

This Agreement and all instruments and documents to be delivered hereunder may be executed in counterparts, each of which shall be deemed an original. The captions in this Agreement are for convenience and reference only and shall not be utilized in the interpretation of this Agreement.

19. Entire Agreement

This Agreement (including all schedules 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 or supplemented, nor may any obligations hereunder be waived, except by written instrument

signed by the Party to be charged. The Parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the Parties hereto. This Paragraph 20 shall survive the Closing or other termination of this Agreement.

20. 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. Each of the parties hereby authorizes its attorneys to agree on its behalf in writing to any changes in dates and time periods provided for in this Agreement.

21. Assignment; Successors and Assigns

Purchaser's interest under this Agreement may only be assigned with Trustee's prior written consent, which consent may be withheld in Trustee's reasonable discretion. However, if the Purchaser wishes to assign this Contract to an entity controlled and owned by the same members of the Purchaser the Trustee shall provide consent. Such assignment shall not become effective until (i) notice of assignment, including identity of the assignee and an address for notices to the assignee, has been provided to Trustee, (ii) the assignee has delivered to Trustee a signed assumption of the terms of this Agreement and any related agreements entered into by Purchaser and (iii) Trustee delivers to Purchaser its prior written consent. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of Purchaser, Trustee, and their respective successors and assigns.

22. Pronouns

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.

23. No Recording

Purchaser shall not record this Agreement or a memorandum thereof against the title to the Property.

24. Governing Law and Jurisdiction

This Agreement shall be governed and construed in accordance with the Bankruptcy Code and the laws of the State of New York, without regard to any rules or principles of conflicts of law which might look to the laws of any other jurisdiction. The Bankruptcy Court shall retain jurisdiction over the parties to this Agreement to hear and determine any matter arising from or related to the making, interpretation, and enforcement of this Agreement or any issues arising hereunder, and the parties agree to waive any entitlement to a trial by jury in any suit concerning this Agreement and/or the releases given in connection with this Agreement.

25. Warranty of Authority.

Purchaser hereby represents and warrants that (i) it has full right, power and authority to execute this Agreement, (ii) such execution has been duly authorized and (iii) that it is bound hereby.

Seller represents and warrants to Purchaser that pursuant to the Sale Order attached hereto the Seller (a) has the power and authority to enter into, execute and deliver this Agreement and to perform all of its duties and obligations under this Agreement; (b) has obtained all the necessary authorizations required in connection with the execution, delivery and performance contemplated by this Agreement; (c) this Agreement will be the legal, valid and binding obligation of Seller and will be enforceable against Seller in accordance with its terms; and (d) at the Closing, Seller shall convey to Purchaser good title to the Property, free and clear of liens, claims and encumbrances other than the Permitted Encumbrances. Seller currently maintains casualty insurance coverage in an amount equal to the replacement value of the Property and that it shall continue to maintain such insurance coverage through the Closing Date.

With respect to the leases in effect with respect to the Property (the "Leases"):

- (i) To the extent in the Seller's possession true, complete and correct copies of all the Leases have been made available to and examined by Purchaser.
- (ii) No tenant or any other party to Seller's knowledge without investigation has any option or right (including, without limitation, a right of first refusal) to purchase the Property.
- (iii) Seller to his knowledge without investigation has not received any notification from any tenant that such tenant disputes the computation by Seller of any rent or other charges payable by such tenant.
- (iv) Seller has not offered, and not then made, any payments to tenants as consideration for such tenants vacating their apartments.
- (v) Seller agrees that all security deposits coming into his possession or which may come into his possession shall be turned over to the Purchaser. Any and all claims and interests in and to any security deposits shall be assumed by the Purchaser and Purchaser shall hold the Seller harmless and indemnify Seller from any such claims. This provision shall survive the Closing.

Seller further represents and warrants to Purchase as follows:

(i) There are no persons employed by Seller at the Property in connection with the operation or maintenance of the Property except for the MYC;

(ii) Seller has no actual knowledge of, any pending actions, suits, investigations, arbitrations, claims (including claims covered by insurance) or proceedings (including with respect to zoning matters) materially and adversely affecting the Seller or the Property;

(iii) Seller has no actual knowledge of any pending condemnation proceedings affecting the Property or any part thereof;

(iv) Seller is not a "foreign person" within the meaning of the applicable provisions of the Internal Revenue Code of 1986, as amended;

(v) Seller is not named on any list of persons, entities, and governments issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("**OFAC**") pursuant to Executive Order 13224 - Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as in effect on the date hereof, or any similar list issued by OFAC or any other department or agency of the United States of America (collectively, the "**OFAC Lists**"), or is included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or otherwise associated with any of the persons or entities referred to or described in any OFAC Lists;

(vi) Seller has not received actual notice from any insurance company or agent or from any board of fire underwriters (or other body exercising similar functions) claiming any defect or deficiency or requesting performance of any repairs, alterations or other work to the Property as a condition of maintaining any policy of insurance in effect. No notice has been received by Seller from the insurance company which issued any of such policies stating in effect that such policies will not be renewed or will be renewed at a materially higher premium than is presently payable thereunder;

Seller hereby covenants and agrees that except as required by applicable law, Seller shall not enter into any new lease for the Property which is presently vacant or which may hereafter become vacant without first giving Purchaser written notice of the identity of the proposed tenant, together with either a copy of the proposed lease or a summary of the terms thereof in reasonable detail and the terms of payment thereof. If Purchaser objects to such proposed lease, Purchaser shall so notify Seller within 5 business days after receipt of Seller's Notice, in which case Seller shall not enter into the proposed lease and, provided that the proposed rent for such space is not less than the rent set forth on the annexed rent roll, Purchaser shall pay to Seller, at Closing, the rent and any additional rent that would have been payable under the proposed lease from the date on which the tenant's obligation to pay rent would have commenced if Purchaser had not so objected until the Closing. If Purchaser does not so notify Seller of its objection, Seller shall have the right to enter into the proposed lease with the tenant identified in Seller's notice. If any space is vacant on the Closing Date, Purchaser shall accept the Property subject to such vacancy, provided that the vacancy was not permitted or created by Seller in violation of any restrictions contained in this Contract.

26. No Specific Performance


Seller waives all rights to institute action for specific performance of this Contract and in the event of default by the Purchaser, the Deposit shall constitute liquidated damages.

27. Merger

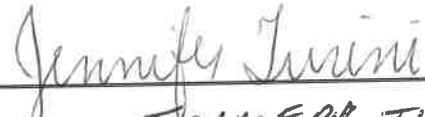
The acceptance of the Deed by Purchaser shall be deemed to be full performance of, and discharge of, every agreement and obligation on Seller's part to be performed hereunder, except for those which this Agreement specifically provides shall survive the Closing.

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

TRUSTEE

By:   
IAN J. GAZES, solely in his capacity as  
Chapter 11 Trustee

PURCHASER:

By:   
Name: JENNIFER TURINI  
Title: PURCHASER



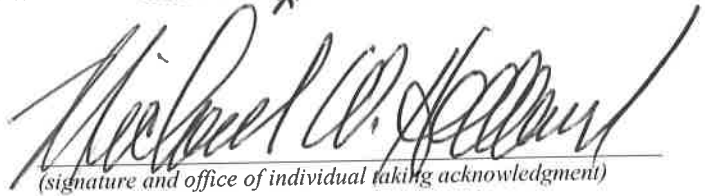
PURCHASER'S ACKNOWLEDGMENT

IN NEW YORK STATE

State of New York )

County of NASSAU )

On the 12<sup>th</sup> day of MAY in the year 2017, before me, the undersigned, personally appeared JENNIFER TUCINI, personally known to me or proved to me on the basis of satisfactory evidence to be the individual~~(s)~~ whose name(s) is ~~(are)~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ capacity(ies), and that by ~~his~~/her/~~their~~ signature~~(s)~~ on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
(signature and office of individual taking acknowledgment)

*Notary Public-State of New York*

MICHAEL W. HOLLAND  
NOTARY PUBLIC, State of New York  
No. 30-4505347, Nassau County  
Term Expires June 30, 2019

Schedule A

Legal Description

Schedule B

PERMITTED ENCUMBRANCES

1. All present and future zoning, building and environmental laws, ordinances, codes, restrictions and regulations of all other governmental (including, without limitation, local, state and federal) authorities having jurisdiction over the Property, all zoning variances and special exceptions, if any, and all present or future violations thereof, if any.
2. Any state of facts a current land title survey of the Land, Improvements and/or Personalty would disclose, provided same does not render the title unmarketable and does not provide an out of possession exception.
3. Covenants, conditions, restrictions, reservations, easements, rights, rights-of-way, party wall agreements and other agreements which are in writing and recorded in the public record against the Property, not violated by existing structures.
4. All violations of building, fire, sanitary, environmental, housing and similar laws, ordinances, rules, regulations and orders of governmental authorities having jurisdiction over the Property, whether or not noted or issued at the date hereof or at the date of Closing, and including, without limitation, sidewalk violations.
5. Real Estate Taxes shall be apportioned in accordance with this Agreement and Purchaser shall take subject to all of the same which are not yet due and payable.
6. Standard printed exceptions contained in the Title Report issued with respect to the Property issued by Primary and/or contained in the Title Report.
7. Possible lack of or revocable nature of the right, if any, to maintain or use any space, facilities or appurtenances outside the building lines, whether on, over or under the ground, including, without limitation, all vaults, signs, loading platforms, intake valves or pipes and chutes, if any.
8. Consents by Trustee, Debtor or any former owner of the Property for the erection of any structure or structures on, under or above any streets on which the Property may abut which are in writing and recorded in the public record against the Property.
9. Any unpaid vault taxes unless the same are a lien on the Property at the time of Closing.
10. Tax map variations, if any.
11. Any mortgage or encumbrance which, by the terms of this Agreement, Purchaser has expressly agreed to assume or take subject to.
12. Any legal or other action or proceeding related to the Property that is instituted or prosecuted by any governmental authority.

Schedule C

Trustees Deed of Real Estate

This Indenture made the \_\_\_\_ day of \_\_, 2017, between Ian J. Gazes, solely in his capacity as chapter 11 trustee in bankruptcy of the estate of Joseph Nathan Barnes, bankrupt, party of the first part, having an address at 151 Hudson Street, New York, New York 10013, and \_\_\_\_\_, party of the second part, having an address at \_\_\_\_\_;

WITNESSETH the party of the first part by virtue of the power and authority given in and by an order of the United States Bankruptcy Court for the Southern District of New York, dated the \_\_\_\_ day of \_\_\_\_\_, 2017, and in consideration of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), lawful money of the United States paid by the party of the second part, does hereby grant, convey and release unto the party of the second part, its heirs, successors and assigns forever, all the estate which Joseph Nathan Barnes has in that certain property set forth on Schedule A hereto and the appurtenances thereto which the party of the first part has or has power to convey or dispose of, as chapter 11 trustee in bankruptcy of Joseph Nathan Barnes, bankrupt.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, its heirs, successor and assigns forever.

IN WITNESS WHEREOF the party of the first part has hereunto set his hand and seal the day and year first above written.

\_\_\_\_\_  
As and only as Chapter 11 trustee  
in bankruptcy of the estate of  
Joseph Nathan Barnes,  
bankrupt, and not individually.

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF                    )

On the \_\_\_\_ day of \_\_\_\_\_, 2017 before me, the undersigned, personally appeared Ian J. Gazes, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature and office of individual taking acknowledgment

Schedule A  
To Trustees Deed of Real Estate

Legal Description

Schedule D

Contracts

*See attached*