

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

**IN RE:  
KIDS ONLY III, LLC  
Debtor**

**CASE NO. 15-51355**

**CHAPTER 11**

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**MOTION TO SELL IMMOVABLE PROPERTY  
FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES**

NOW INTO COURT, through undersigned counsel, comes **KIDS ONLY III, LLC.**

(“Debtor”), who presents the following motion to sell immovable property:

1.

The Debtor filed a petition for relief under Chapter 11 on October 20, 2015. The Debtor’s primary asset consists of a daycare located at 224 Julian Circle, Lafayette, Louisiana (the “Property”).

2.

The Debtor confirmed a plan of reorganization on November 20, 2016 (the “Plan”). The confirmed Plan provided that the Debtor was to sell or refinance the Property by March 13, 2017.

3.

On February 21, 2017, RREF II PEBP-LA, LLC (“RREF”), the first mortgage holder, filed a consent motion to auction the Property on May 2, 2017, which the Court granted.

4.

The Debtor and RREF have now found a buyer, Brian Miller, to purchase the Property, which is in accordance with the Plan. The Property will be purchased for \$180,000.00 and be leased back to the Debtor. Mr. Miller will also pay the real estate commission in the amount of 6% or

\$10,800.00. A copy of the Purchase Agreement and the First Amendment to the Purchase Agreement are attached hereto as Exhibit A. Mr. Miller has already paid the \$18,000.00 deposit required by the Purchase Agreement, which is being held in escrow pending Bankruptcy Court approval. The Property is being sold "as is, where is," without any warranty whatsoever, even for the return of the purchase price to Mr. Miller.

5.

Section 363(f) of the Bankruptcy Code provides, in part, that a Debtor-in-possession may sell property of the estate outside the ordinary course of business free and clear of any other entity's interest in such property if applicable non-bankruptcy law permits the sale of such property free and clear of such interest, if such entity consents, if 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 the property, if such interest is in *bona fide* dispute, or if such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. See, 11 U.S.C. § 363(f).

6.

To the extent that there are holders of liens or interests in the Property, one or more of the section 363(f) requirements will be satisfied. Any person holding liens on the Property may be compelled to accept a money satisfaction of their respective liens and interests. Any liens or interests will be adequately protected by having them attach to the net proceeds of the sale, subject to any claims and defenses the Debtor may have with respect thereto. Additionally, it is believed that no lien holder would object to the sale. In fact, it is believed that the other lien holders would all consent to the sale as proposed. If any lien holder believes the property has a higher value, that lien holder may make a higher bid on the Property so as to protect their interest. Accordingly, the sale

of the Property will be free and clear of liens, claims, encumbrances, and interests pursuant to Section 363(f) of the Bankruptcy Code. The only lien known to affect the Property, other than the first mortgage of RREF, is a tax lien in favor of the Internal Revenue Service.

7.

Under this proposed sale of the Property, all of the net sale proceeds would be paid to RREF.

8.

The Debtor requests that the Clerk of Court for Lafayette Parish be ordered to cancel and erase from the mortgage records any and all liens and encumbrances, including the lien of the Internal Revenue Service, but only in so far as they relate to the Property that is being sold, same to be sold free and clear of all liens and encumbrances.

9.

The Debtor also believes that Brian Miller is a "good faith" purchaser within the meaning of Section 363(m) of the Bankruptcy Code. The proposed sale is to be on terms and conditions that were entered into after negotiations between the parties, their advisors and their counsel. Accordingly, the sale has been proposed in good faith, and Brian Miler is entitled to the protections afforded by §363(m).

10.

The Debtor also seeks approval for the payment of the real estate commission for selling the Property of 6%, payable at 3% each to Fisher Auction Company and Van Eaton & Romero.

11.

Pursuant to Bankruptcy Rule 6004(g), unless the court orders otherwise, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are automatically

stayed for fourteen (14) days after entry of the order. The purpose of Bankruptcy Rule 6004(g) is to provide sufficient time for an objecting party to request a stay pending appeal before the order can be implemented. *See* Advisory Comm. Notes to Fed. R. Bankr. P. 6004(g). To preserve the value of the Property and limit the costs of administering and preserving such assets, it is critical that the Debtor close the Sale of the Property as soon as possible. Accordingly, the Debtor hereby requests that the Court waive the 14 day stay periods under Bankruptcy Rules 6004(g) and 6006(d).

12.

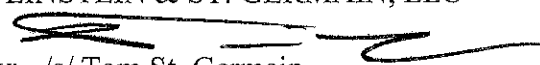
Based upon the foregoing, the Debtor submit the relief requested herein is necessary, in accordance with its Plan, is in the best interests of the Debtor and its estate, and should be granted in all respects.

WHEREFORE, Debtor KIDS ONLY III, LLC prays that the sale of the Property to Brian Miller under the terms set forth in the attached purchase agreement free and clear of all liens be approved, and for other such relief as is just.

Date: May 4, 2017

Respectfully Submitted,

WEINSTEIN & ST. GERMAIN, LLC

By:  /s/ Tom St. Germain

TOM ST. GERMAIN (#24887)

1414 NE Evangeline Thruway.

Lafayette, LA 70501

(337) 235-4001

(337) 235-4020 fax

ATTORNEY FOR KIDS ONLY III, LLC.

## PURCHASE AGREEMENT

This Purchase Agreement is made and entered into by and between Kids Only III of Lafayette, LLC, a Louisiana limited liability company ("Seller"), and Brian Miller or LLC TBD

- an individual of the full age of majority, whose address for purposes hereof is 2310 Ambassador Caffery, Lafayette, LA 70506
- a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, whose address for purposes hereof is \_\_\_\_\_, represented by \_\_\_\_\_, its duly authorized \_\_\_\_\_

("Purchaser").

### ARTICLE I

#### DEFINITIONS

The terms hereinafter used shall have the following meanings unless the context of this Agreement otherwise requires:

"Act of Cash Sale" means a cash sale substantially the same in form and content to that attached hereto as Exhibit A and made a part hereof for all purposes, conveying good and merchantable title to the Property in full ownership; subject only, however, to the Permitted Exceptions.

"Agreement" means this Purchase Agreement and all exhibits attached hereto and made a part hereof, and all written amendments, modifications, and supplements hereafter executed by both Purchaser and Seller.

"Approval Order" has the meaning set forth in Article X.

"Bankruptcy Code" means Title 11 of the United States Code, as amended, 11 U.S.C. §§ 101, *et seq.*

"Bankruptcy Court" means the United States Bankruptcy Court for the Western District of Louisiana (Lafayette Division) wherein the following matter is pending: In Re: Kids Only III of Lafayette, LLC, Case No. 15-51355.

"Closing" means the closing of the purchase and sale of the Property contemplated herein as described in Article IV hereof and contingent upon the satisfaction or waiver of the Condition Precedent outlined in, and in accordance with, Article X hereof.

"Closing Date" means the date on which the Closing occurs, which shall be on or before the twentieth (20th) day following the entering of the Approval Order by the Bankruptcy Court, unless Seller and Purchaser agree otherwise in writing.

"Court Approval" means the entry of the Approval Order by the Bankruptcy Court, together with all other orders of the Bankruptcy Court necessary to effect the transaction contemplated by this Agreement.

"Deposit" means an amount equal to ten (10%) percent of the Purchase Price, to be paid in accordance with Section 5.01.

"Effective Date" means the effective date of this Agreement, which shall be the date on which the Escrow Agent has received the Deposit, Purchaser has received this Agreement signed by Seller, and Seller has received this Agreement signed by Purchaser.

"Escrow Agent" means Seller's Broker.

"Final Order" means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, the operation or effect of which has not been reversed, stayed, modified, amended, vacated or supplemented and as to which order or judgment the time to appeal or seek review, rehearing, re-argument or certiorari has expired and as to which no appeal or petition for review, rehearing, re-argument or certiorari has been filed and remains pending.

"Force Majeure" means that term defined in Section 12.13 of this Agreement.

"Property" means that certain tract or parcel of land bearing a municipal address of 224 Julian Circle, Lafayette, Louisiana, and being more particularly described in Exhibit A to the Act of Cash Sale attached as Exhibit A to this Agreement and by this reference incorporated herein, together with all buildings, plants, facilities, fixtures, and improvements situated thereon or attached thereto (including without limitation a building consisting of approximately                      square feet), together with all rights, ways, privileges, servitudes, advantages, easements, and appurtenances pertaining thereto, including without limitation all of Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys strips, gores, rights-of-way, leases, rents, security deposits, licenses, and permits related to any of the foregoing, and together with all furniture and equipment of Seller's tangible personal property located on or in the aforementioned tract or parcel of land or the buildings or improvements thereon, and all accessions, additions, replacements, substitutions, and records of any kind relating to any of the foregoing.

"Purchase Price" means the monetary consideration to be paid by Purchaser to Seller for the Property, in cash, in the amount of One hundred eighty (\$ 189,000 ) Dollars, subject to the adjustments, terms, and conditions set forth in this Agreement.

"Purchaser's Broker" means that term as defined in Section 9.01 of this Agreement.

"Seller's Broker" means that term as defined in Section 9.01 of this Agreement.

## ARTICLE II

### PURCHASE AND SALE; PURCHASE PRICE

2.01 Purchase and Sale. Subject to Court Approval, Seller hereby agrees to sell and convey, and Purchaser, as a good faith purchaser for value within the meaning of Section 363(m) of the Bankruptcy Code, hereby agrees to purchase, the Property for the Purchase Price (subject to the credits and adjustments set forth in this Agreement, if any) and upon and subject to the other terms, provisions, and conditions set forth in this Agreement, in full ownership, free and clear of all mortgages, liens, privileges, pledges, security interests, claims, reservations, restrictions, encroachments, tenancies, rights of first refusal, options, encumbrances, liabilities, and defects in title, and with complete transfer and subrogation of all rights and actions of warranty against all former proprietors of the Property, together with all rights of prescription, both liberative and acquisitive, to which Seller may be entitled.

2.02 Payment of Purchase Price. The Purchase Price shall be payable at Closing by Purchaser to Seller by delivery of a cashier's check or federal wire transfer of readily available funds to an account designated by Seller, or as otherwise agreed to by Seller. Purchaser, at its sole option, may elect at Closing to instruct the Escrow Agent to either apply the Deposit towards the Purchase Price or to have the Deposit returned to Purchaser.

2.03 Conveyance. At Closing, Seller will execute and deliver the Act of Cash Sale to Purchaser.

## ARTICLE III

### CONDITION OF PROPERTY

THE PROPERTY WILL BE CONVEYED "AS-IS, WHERE IS," WITH ALL FAULTS, AND WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF CONDITION, FITNESS FOR A PARTICULAR PURPOSE OR HABITABILITY. PURCHASER HEREBY EXPRESSLY WAIVES AND RENOUNCES ANY AND ALL RIGHTS IN REDHIBITION PURSUANT TO LOUISIANA CIVIL CODE ARTICLE 2520, ET SEQ. ALL IMPLIED WARRANTIES WITH RESPECT TO THE PROPERTY, INCLUDING THOSE RELATED TO FITNESS FOR A PARTICULAR PURPOSE, WILL BE, AND ARE HEREBY DISCLAIMED BY SELLER. THIS WAIVER APPLIES WITH RESPECT TO ALL DEFECTS, WHETHER APPARENT OR LATENT, VISIBLE OR NOT AND REGARDLESS OF WHETHER PURCHASER IS PRESENTLY AWARE OF SUCH DEFECTS. PURCHASER ACKNOWLEDGES SELLER AND ITS REPRESENTATIVES HAVE MADE NO WARRANTIES AS TO ANY MATTER, INCLUDING MERCHANTABILITY, QUANTITY OR QUALITY OF THE PROPERTY, OR FITNESS FOR INTENDED OR ORDINARY USE. PURCHASER HEREBY WAIVES ANY AND ALL RIGHTS PURCHASER MAY HAVE IN CONNECTION THEREWITH. PURCHASER UNDERSTANDS THE MEANING AND SIGNIFICANCE OF THIS PROVISION.

## ARTICLE IV

### CLOSING

4.01 Time of Closing. The Closing shall commence at a place and time mutually agreed upon by the parties on the Closing Date.

4.02 Seller's Obligations. At Closing, Seller, at its sole cost and expense, shall deliver, or cause to be delivered, to Purchaser the following:

A. The Act of Cash Sale, fully executed and acknowledged, conveying the Property to Purchaser, in form and content similar to that attached hereto as Exhibit A;

B. The Non-Foreign Status Affidavit, duly executed and acknowledged, and in form and content similar to that attached hereto as Exhibit B and made a part hereof for all purposes;

C. Reasonable evidence of Seller's capacity and authority to execute and deliver the documents required by this Agreement;

D. Actual, exclusive possession of the Property, free and clear of all tenancies and parties in possession;

E. Such documents not inconsistent with the terms and provisions of this Agreement which may be reasonably required by Purchaser or the Bankruptcy Court to consummate the sale of the Property as set forth in this Agreement; and

F. Any other additional documents and instruments as are reasonably necessary to the proper consummation of this Agreement.

4.03 Purchaser's Obligations. At Closing, Purchaser shall deliver to Seller the following:

A. The Purchase Price;

B. Reasonable evidence of Purchaser's capacity and authority to execute and deliver the documents required by this Agreement;

C. Such documents not inconsistent with the terms and provisions of this Agreement which may be reasonably required by Seller or the Bankruptcy Court to consummate the purchase of the Property as set forth in this Agreement; and

D. Any other additional documents and instruments as are reasonably necessary to consummate this Agreement.



4.04 Prorations. General and special real estate taxes and general assessments for the then current year relating to the Property and rents, if any, shall be (a) prorated as of the Closing Date and (b) shall be adjusted in cash at the Closing. If the Closing shall occur before the tax rate is fixed for the then current year, the apportionment of the taxes shall be estimated upon the basis of the tax rate for the immediately preceding year applied to the latest assessed valuation. Furthermore, any special assessments applicable to the Property levied prior to the date of Closing shall be paid off at Closing by Seller, at Seller's sole cost and expense. In the event any adjustments pursuant to this Section 4.04 are, subsequent to Closing, found to be erroneous, then Seller shall pay such additional amount owed by Seller to Purchaser within ten (10) days from receipt of written notice from Purchaser with copies of the tax bills indicating the need for the parties to readjust for taxes owed the year of Closing. In the event Seller is entitled to a refund on the taxes prorated at Closing, Purchaser shall refund such amounts due to Seller upon request within thirty (30) days after Purchaser's payment of said taxes. The covenants of Seller and Purchaser in this Section 4.04 shall not merge with the Act of Cash Sale or any Closing documents to be delivered hereunder, but shall survive the Closing.

4.05 Closing Costs. All costs of closing the sale and purchase of the Property shall be borne as follows:

- A. Costs and expenses of placing title in proper condition, including without limitation costs of cancellation of any encumbrances or liens encumbering the Property, to be paid by Seller.
- B. Recording fees for the Act of Cash Sale to be paid by Purchaser.
- C. Escrow fee, if any, charged by the Escrow Agent to be paid one-half (1/2) by Seller and one-half (1/2) by Purchaser.
- D. Attorneys' fees incurred by Seller and Purchaser to be paid by each, respectively.
- E. Any other reasonable Closing costs, unless otherwise specified in this Agreement, to be borne in accordance with custom in Lafayette Parish, Louisiana.

## **ARTICLE V**

### **DEPOSIT**

5.01 Delivery of Agreement and Payment of Deposit. Purchaser shall execute three (3) originals of this Agreement and deliver same to Seller with delivery of the Deposit to Escrow Agent via a cashier's check made payable to Escrow Agent in an amount not less than \$15,000.00 and the balance, if any, in readily available funds to an account designated by Escrow Agent. After Seller executes the triplicate originals of this Agreement, Seller shall then deliver same to the Escrow Agent. If Seller fails to execute the Agreement and deliver it to the Escrow Agent within five (5) business days after Purchaser delivers the Agreement and the Deposit, then the offer of Purchaser to purchase the Property upon the terms and provisions of

this Agreement shall lapse and be null and void and the Escrow Agent shall return the Deposit to Purchaser. Upon receipt by the Escrow Agent of the triplicate originals of the Agreement executed by both Seller and Purchaser together with Purchaser's Deposit, the Escrow Agent shall provide each of Seller and Purchaser with one (1) fully-executed and acknowledged original Agreement. Immediately upon receipt by the Escrow Agent, the Deposit shall be deposited in a non-interest-bearing account, insured by the Federal Deposit Insurance Corporation and the Escrow Agent shall identify the depository and account number to Purchaser. At Closing, the Deposit shall be applied towards the Purchase Price or returned in full to Purchaser. The Deposit will not be considered earnest money.

5.02 Distributing Deposit. In order to reduce the administrative difficulties sometimes encountered by escrow agents in determining the correct disposition of the Deposit, Seller and Purchaser hereby irrevocably instruct the Escrow Agent as follows in connection with the Deposit:

A. If Purchaser delivers to the Escrow Agent and Seller a written notice stating that (i) this Agreement has been terminated by Purchaser and specifying the specific provision by which Purchaser is exercising its termination rights and (ii) Seller has not objected thereto within two (2) business days after such notice is given or deemed given as established in Article VIII below; in such event, unless precluded by an order of a court purporting to have jurisdiction over this matter, the Escrow Agent will immediately release the Deposit to Purchaser without the need for any approval by Seller -- and even despite any potential objection by Seller, it being agreed that the Escrow Agent may conclusively rely upon the certificate of Purchaser and that Seller's sole remedy, if the certification is incorrect is against the Purchaser and not the Escrow Agent.

B. If Seller delivers to the Escrow Agent and Purchaser a written notice stating that (i) this Agreement has been terminated because of a default by the Purchaser and (ii) Purchaser has not objected thereto within two (2) business days after such notice is given or deemed given as established in Article VIII below; in such event, unless precluded by a court purporting to have jurisdiction over this matter, the Escrow Agent will immediately deliver the entire Deposit to Seller without the need for any approval by Purchaser -- and even despite any potential objection by Purchaser, it being agreed that the Escrow Agent may conclusively rely upon the certificate of Seller and Purchaser's sole remedy, if the certification is incorrect, is against the Seller and not the Escrow Agent.

5.03 Attorneys' Fees. The foregoing Section 5.02 notwithstanding, in the event the Escrow Agent requests authorization from either party before releasing the Deposit, in whole or in part, and such party hereto fails or refuses to sign or deliver such an instruction letter when the other party is entitled to disbursement of the Deposit, such party shall pay, upon the final order of a court with appropriate jurisdiction, all reasonable attorneys' fees incurred by the party so entitled to the Deposit in connection with the recovery thereof and interest on such amount disbursed at the lesser of eighteen percent (18%) per annum or the maximum rate allowed by state or federal law from the date of refusal to sign such a letter releasing the Deposit.

## ARTICLE VI

### BREACH BY SELLER OR TERMINATION BY PURCHASER

If Seller shall fail to fully and timely perform any of its obligations hereunder, either prior to or at the Closing for any reason other than (a) the termination of this Agreement by Seller pursuant to a right of termination provided for in this Agreement or (b) Purchaser's failure to perform Purchaser's obligations under this Agreement, then Purchaser shall have the following remedies, which shall be Purchaser's exclusive remedies: (i) to enforce specific performance of Seller's obligations under this Agreement, or (ii) to terminate this Agreement and receive a refund of the Deposit from the Escrow Agent by giving written notice thereof to Seller prior to or at Closing whereupon neither party hereto shall have any further rights or obligations hereunder except for those that specifically survive a termination hereof.

## ARTICLE VII

### BREACH BY PURCHASER

If Purchaser shall fail to fully and timely perform any of its obligations hereunder (either prior to or at the Closing) for any reason other than (a) the termination of this Agreement by Purchaser pursuant to a right of termination provided for in this Agreement or (b) Seller's failure to perform Seller's obligations under this Agreement, then Seller, as Seller's sole and exclusive remedy, shall be entitled to terminate this Agreement and receive the Deposit from the Escrow Agent, such amount being agreed upon as liquidated damages (and not as a penalty, Seller and Purchaser hereby acknowledge that the amount of damages resulting from a breach of this Agreement by Purchaser would be difficult or impossible to accurately ascertain) for the failure of Purchaser to perform the duties and obligations imposed upon it by the terms and provisions of this Agreement, and Seller agrees to accept and take said Deposit as its total damages and relief, whereupon neither party hereto shall have any further rights or obligations hereunder except for those that specifically survive a termination hereof.

## ARTICLE VIII

### NOTICE

Any notice, communication, request, reply, consent, approval, or advice ("Notice") in this Agreement provided or permitted to be given or made by either party to the other must be in writing and shall, unless expressly provided otherwise in this Agreement, be given or served by, and shall be effective (i) two (2) business days after depositing the same in the United States mail, postage-prepaid and registered or certified and addressed to the party to be notified, with return receipt requested, or (ii) one (1) business day after delivery to a nationally recognized overnight carrier, or (iii) upon receipt if delivered personally to the party to be notified, or (iv) the business day sent if delivered by facsimile prior to 5:00 p.m. Lafayette, Louisiana, time, and

the sending facsimile generates a written confirmation of sending. For purposes of Notice, the addresses for the parties shall, until changed as hereinafter provided, be as follows:

If to Seller, to: Kids Only III of Lafayette, LLC  
224 Julian Circle  
Lafayette, LA 70501  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

with a copy to: Weinstein Law Firm  
1414 NE Evangeline Thruway  
Lafayette, LA 70501  
Attention: Thomas E. St. Germain  
Telephone: 337-235-4001  
Facsimile: 337-235-4020

If to Purchaser, to: *Brian M. Her*  
*2310 Ambassador*  
*Lafayette, LA 70506*  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

with a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

The parties hereto shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the continental United States by at least five (5) business days' Notice to the other party as herein provided. Any Notice sent by counsel to either Seller or Purchaser to any party under this Agreement shall be deemed transmitted by Seller or Purchaser, respectively.

## ARTICLE IX

### BROKERAGE COMMISSIONS AND AUCTIONEER'S FEE

9.01 Payment. Only if and when the sale and purchase of the Property (as contemplated by this Agreement) is consummated, as evidenced by the occurrence of the events set forth in Section 4.02 and Section 4.03 on the Closing Date, Purchaser shall, in addition to the Purchase Price: (i) pay to NAI Latter Blum ("Seller's Broker"), as full consideration for its services in negotiating the sale and purchase of the Property, a brokerage fee equal to 3%

(3%) percent of the Purchase Price of the Property; and (ii) pay to [REDACTED] ("Purchaser's Broker"), as full consideration for its services in negotiating the sale and purchase of the Property, a brokerage fee equal to [REDACTED] (3%) percent of the Purchase Price of the Property. Purchaser shall additionally pay at Closing to Fisher Auction Co., Inc. ("Auctioneer"), in addition to the Purchase Price, an Auctioneer's fee equal to ~~Three~~ (3%) Percent of the Purchase Price of the Property.

9.02 SELLER'S INDEMNITY TO PURCHASER. SELLER REPRESENTS AND WARRANTS TO PURCHASER THAT IT HAS HAD NO DEALINGS OR CONTACTS OF ANY KIND WITH ANY REAL ESTATE BROKER OR AGENT OTHER THAN SELLER'S BROKER AND AUCTIONEER WITH RESPECT TO THIS AGREEMENT, THE NEGOTIATIONS THEREOF, OR ANY TRANSACTION INCIDENT OR RELATED THERETO. SELLER AGREES TO INDEMNIFY AND HOLD PURCHASER HARMLESS FROM AND AGAINST ANY CLAIMS BY ANY BROKER, AGENT, OR THIRD PARTY CLAIMING BY, THROUGH, OR UNDER SELLER FOR A BROKERAGE COMMISSION, AUCTIONEER'S FEE, OR ANY OTHER FEE RELATING TO THE SALE OF THE PROPERTY. THE FOREGOING INDEMNITY SHALL SURVIVE THE CLOSING OR THE TERMINATION OF THIS AGREEMENT.

9.03 PURCHASER'S INDEMNITY TO SELLER. PURCHASER REPRESENTS AND WARRANTS TO SELLER THAT IT HAS HAD NO DEALINGS OR CONTACTS OF ANY KIND WITH ANY REAL ESTATE BROKER OR AGENT OTHER THAN THE PURCHASER'S BROKER WITH RESPECT TO THIS AGREEMENT, THE NEGOTIATIONS THEREOF, OR ANY TRANSACTION INCIDENT OR RELATED THERETO. PURCHASER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM AND AGAINST ANY CLAIMS BY ANY BROKER, AGENT, OR THIRD PARTY CLAIMING BY, THROUGH, OR UNDER PURCHASER FOR A BROKERAGE COMMISSION, AUCTIONEER'S FEE, OR ANY OTHER FEE RELATING TO THE SALE OF THE PROPERTY. THE FOREGOING INDEMNITY SHALL SURVIVE THE CLOSING OR THE TERMINATION OF THIS AGREEMENT.

## ARTICLE X

### CONDITION PRECEDENT

In addition to any other rights and conditions of this Agreement, Seller and Purchaser hereby agree and acknowledge that Purchaser's and Seller's obligations to consummate the purchase and sale of the Property as contemplated by this Agreement is contingent upon the Bankruptcy Court, on or prior to the Closing Date, having entered the order approving the transaction contemplated by this Agreement and the Closing (the "Approval Order"), which shall be substantially in the form and substance attached hereto as Exhibit C except as otherwise agreed to by Purchaser and Seller in their respective reasonable discretion, no later than fourteen (14) days following the Effective Date, which Approval Order shall have become a Final Order as of the Closing Date unless otherwise directed by Purchaser and Seller in writing (the "Condition Precedent"). In the event that the Condition Precedent has not occurred on or prior to

the Closing Date, then Purchaser and Seller shall each have the right and option to terminate this Agreement upon written notice to the other, and Purchaser shall receive a refund of the Deposit.

## ARTICLE XI

[Intentionally omitted.]

## ARTICLE XII

### MISCELLANEOUS

12.01 GOVERNING LAW. THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF LOUISIANA AND THE ORDINANCES OF THE PARISH WHERE THE PROPERTY IS LOCATED.

12.02 Binding on Assigns This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

12.03 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability of the provision shall not affect any other provision hereunder.

12.04 Sole Agreement. This Agreement constitutes the sole and exclusive agreement of the parties hereto and supersedes any prior understanding or written or oral agreements between the parties respecting the subject matter of this Agreement.

12.05 Time of Essence. Time is of the essence in the performance of all obligations under this Agreement.

12.06 Gender and Number. Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural and vice versa unless the context requires otherwise.

12.07 Headings. The headings of the articles and sections contained in this Agreement are for convenience only and shall not be taken into account in determining the meaning of any provision of this Agreement.

12.08 Recording. Neither this Agreement nor any memorandum thereof shall be recorded in any public records without the prior written consent of Purchaser.

12.09 Counterparts/Execution. This Agreement may be executed in any number of counterparts, and all counterparts shall be deemed to constitute a single agreement. The execution and delivery of any counterpart by any person shall have the same force and effect as

if that person had executed and delivered all other counterparts. The electronic transmission, whether by e-mail, facsimile, or otherwise, of a copy hereof bearing any person's signature shall have the same force and effect as the physical delivery to the same recipient of copy hereof bearing such person's original signature.

12.10 [Intentionally Omitted.]

12.11 Attorneys' Fees. In the event either Seller or Purchaser brings legal proceedings (including mediation or arbitration) permitted hereunder against the other in order to enforce any provision of this Agreement, the party in whose favor final judgment is entered by a court of competent jurisdiction shall be entitled to recover expenses incurred by the prevailing party, including, without limitation, reasonable attorneys' fees and court costs.

12.12 Further Acts/Cooperation. Seller and Purchaser agree to cooperate with each other and to take such further actions and to execute and deliver such further documents not inconsistent with the terms of this Agreement as may be reasonably necessary in order to carry out the terms and conditions of this Agreement and their mutual intent embodied herein.

12.13 Acts of God and Force Majeure. Seller and Purchaser shall not be required to perform any covenant or obligation in this Agreement, or be liable in damages to the other, so long as the performance or non-performance of the covenant or obligation is delayed, caused by or prevented by an "act of God" or "force majeure." For purposes of this Agreement, an "act of God" or "force majeure" (hereinafter together called "Force Majeure") is defined as strikes, walkouts, sitdowns, material or labor restriction by any governmental authority, unusual transportation delays, riots, floods, walkouts, explosions, earthquakes, fire, storms, weather (including wet grounds or inclement weather which prevents construction), acts of the public enemy, wars, insurrections, and any other cause not reasonably within the control of Seller or Purchaser, as the case may be, which by the exercise of due diligence Seller or Purchaser, as the case may be, is unable, wholly or in part, to prevent or overcome.

12.14 Time Extensions; Business Day. Should the last day of any time period stated herein fall on a Saturday, Sunday, legal holiday in the Parish where the Property is located, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, legal holiday in the Parish where the Property is located. The term "business day" as used in this Agreement means any day that is not a Saturday, Sunday, legal holiday in the Parish where the Property is located.

12.15 Assignment. No party may assign this Agreement without the prior written consent of the other party and the prior approval of the Bankruptcy Court.

EXECUTED as of the dates set forth below the signature lines, but made effective as the Effective Date noted below.

KIDS ONLY III OF LAFAYETTE, LLC  
("Seller")

Brian Miller ("Purchaser")

By: Richard M. Scelfo  
Name: Richard M. Scelfo  
Title: owner  
Date: 04-27-17

By: Brian Miller  
Name: Brian Miller  
Title: \_\_\_\_\_  
Date: 4/27/17

ESCROW AGENT HEREBY ACKNOWLEDGES RECEIPT of this Agreement and agrees to accept, hold, and disburse the Deposit, upon delivery by Purchaser, in accordance with the provisions of this Agreement.

NAI Letter Blum

By: David Kellenberger  
Name: David Kellenberger  
Title: Agent  
Date: 4-27-17

ATTACHMENTS:

- Exhibit A - Pro-forma Act of Cash Sale
- Exhibit B - Pro-forma Non-Foreign Status Affidavit
- Exhibit C - Pro-forma Approval Order



**EXHIBIT A**  
**TO**  
**PURCHASE AGREEMENT**

**ACT OF CASH SALE**

**BE IT KNOWN** that on the dates and at the places designated below, before the respective undersigned witnesses and notaries public, duly commissioned and qualified as such, personally came and appeared:

Kids Only III of Lafayette, LLC, a limited liability company organized under the laws of the State of Louisiana, whose permanent mailing address is 224 Julian Circle, Lafayette, LA 70501 (the "Vendor"), represented herein by \_\_\_\_\_, its duly authorized representative, by authority granted in the \_\_\_\_\_, and the last 4 digits of whose Federal Employer Identification Number are 0222,

who declared that for and in consideration of \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Vendor does by these presents GRANT, BARGAIN, SELL, ASSIGN, TRANSFER, CONVEY AND DELIVER with complete transfer and subrogation of all rights and actions of warranty against all former proprietors of the property herein conveyed, together with all rights of prescription, both liberative and acquisitive, to which Vendor may be entitled, unto

\_\_\_\_\_.

- an individual of the full age of majority, whose address for purposes hereof is \_\_\_\_\_;
- a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, whose address for purposes hereof is \_\_\_\_\_, represented by \_\_\_\_\_, its duly authorized \_\_\_\_\_

(referred to herein as "Vendee"),

all right, title, and interest in and to the following described property (the "Property"), to-wit:

That certain tract or parcel of land bearing a municipal address of 224 Julian Circle, Lafayette, Louisiana, and being more particularly described in Exhibit A to this Act of Cash Sale and by this reference incorporated herein, together with all buildings, plants, facilities, fixtures, and improvements situated thereon or

attached thereto (including without limitation a building consisting of approximately [REDACTED] square feet), together with all rights, ways, privileges, servitudes, advantages, easements, and appurtenances pertaining thereto, including without limitation all of Vendor's right, title, and interest in any minerals, utilities, adjacent streets, alleys strips, gores, rights-of-way, leases, rents, security deposits, licenses, and permits related to any of the foregoing, and together with all furniture and equipment of Vendor's tangible personal property located on or in the aforementioned tract or parcel of land or the buildings or improvements thereon, and all accessions, additions, replacements, substitutions, and records of any kind relating to any of the foregoing,

This conveyance is made free and clear of all mortgages, liens, privileges, pledges, security interests, claims, reservations, restrictions, encroachments, tenancies, rights of first refusal, options, encumbrances, liabilities, and defects in title.

EXCEPT AS MAY BE OTHERWISE EXPRESSLY AGREED TO BY VENDEE AND VENDOR, VENDEE ACKNOWLEDGES THAT VENDOR IS CONVEYING THE PROPERTY TO VENDEE IN AN "AS IS" CONDITION, WITHOUT ANY WARRANTY WITH RESPECT TO THE PHYSICAL CONDITION OF THE PROPERTY, EVEN AS TO THE PRESENCE OF APPARENT OR HIDDEN DEFECTS AND WITH VENDEE'S FULL AND COMPLETE WAIVER OF ANY AND ALL RIGHTS FOR THE RETURN OF ALL OR ANY PART OF THE PURCHASE PRICE BY THE REASON OF ANY SUCH DEFECTS. VENDEE EXPRESSLY WAIVES THE WARRANTY OF FITNESS AND THE WARRANTY AGAINST REDHIBITORY VICIES AND DEFECTS, WHETHER APPARENT OR LATENT, IMPOSED BY LOUISIANA CIVIL CODE ARTICLE 2475, 2520, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAW, AND THE JURISPRUDENCE THEREUNDER. VENDEE ALSO WAIVES ANY RIGHTS IT MAY HAVE IN REDHIBITION OR TO A REDUCTION OF PURCHASE PRICE PURSUANT TO LOUISIANA CIVIL CODE ARTICLES 2520 THROUGH 2548, INCLUSIVE, IN CONNECTION WITH THE PROPERTY.

This sale includes a sale, transfer and delivery by Vendor to Vendee of all interests that Vendor has or may have in all of the oil, gas, and other minerals and all mineral rights in, on, and under, or in any way affecting the Property.

TO HAVE AND TO HOLD the Property in full ownership unto Vendee, its successors and assigns, forever.

Vendor represents and warrants that all taxes assessed against the Property for the year 2016 and for all years prior to 2016 have been paid in full. Taxes, rents, utilities, and all other charges associated with the Property for the year 2017 will be prorated as of the date of this Act of Cash Sale and thereafter paid by Vendee. All future tax notices shall be mailed to Vendee at the address hereinabove shown. The undersigned Notary(ies) assume no obligation or responsibility associated with an adjustment and/or amendment of the tax rolls maintained by any Sheriff's Office and/or Assessors' Office to reflect the transfer of the Property.

All parties signing this instrument have declared themselves to be of full legal capacity.

The parties hereto agree to dispense with the production of any mortgage certificate, tax receipts or other certificates that may be required by law and the undersigned Notary(ies) are released from any responsibility or liability for not producing and/or attaching same. THE PARTIES HERETO TAKE COGNIZANCE OF THE FACT THAT THE UNDERSIGNED NOTARY(IES) PUBLIC HAS(HAVE) NOT BEEN REQUESTED TO, NOR HAS HE/SHE/THEY MADE, A TITLE EXAMINATION OF THE SUBJECT PROPERTY, AND THE PARTIES HERETO AGREE TO RELEASE AND RELIEVE HIM/HER/THEM FROM ANY RESPONSIBILITY AND LIABILITY IN CONNECTION THEREWITH. THE UNDERSIGNED NOTARY(IES) HAVE NOT RENDERED, NOR HAVE HE/SHE/THEY BEEN REQUESTED TO RENDER, AN OPINION ON THE TITLE TO THE PROPERTY TRANSFERRED PURSUANT TO THIS INSTRUMENT, NOR HAVE SAID NOTARY(IES) MADE ANY WARRANTY OR REPRESENTATION AS TO THE ZONING OF THE PROPERTY, NOR HAS A TITLE INSURANCE POLICY OR COMMITMENT BEEN REQUESTED OR MADE. Further, neither Vendor nor Vendee has requested a statement from the undersigned Notary(ies) as to the tax consequences surrounding the execution of this instrument, and no such opinion has been rendered.

This Act of Cash Sale shall be effective as of the date and time of recordation in the conveyance records of Lafayette Parish, Louisiana.

This Act of Cash Sale may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which when taken together shall constitute one agreement.

**[Signatures on Following Page]**

STATE OF LOUISIANA

PARISH OF \_\_\_\_\_

THUS DONE AND SIGNED before me, the undersigned Notary Public, and the undersigned competent witnesses, on the \_\_\_\_ day of \_\_\_\_\_, 2017, in \_\_\_\_\_ Parish, Louisiana, after due reading of the whole.

WITNESSES:

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

VENDOR:

KIDS ONLY III OF LAEAYETTE, LLC

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

**DO NOT SIGN EXHIBIT ONLY**

\_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

LA Notary/Bar Roll No. \_\_\_\_\_

In and for \_\_\_\_\_ Parish, LA

My Commission expires: \_\_\_\_\_

STATE OF LOUISIANA

PARISH OF \_\_\_\_\_

THUS DONE AND SIGNED before me, the undersigned Notary Public, and the undersigned competent witnesses, on the \_\_\_\_ day of \_\_\_\_\_, 2017, in \_\_\_\_\_ Parish, Louisiana, after due reading of the whole.

WITNESSES:

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

VENDEE:

Entity Printed Name (if applicable): \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title (if applicable): \_\_\_\_\_

**DO NOT SIGN EXHIBIT ONLY**

\_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

LA Notary/Bar Roll No. \_\_\_\_\_

In and for \_\_\_\_\_ Parish, LA

My Commission expires: \_\_\_\_\_

EXHIBIT A  
to  
Act of Cash Sale

DESCRIPTION OF THE PROPERTY

Those certain parcels of ground, together with all improvements thereon, and all rights, ways, privileges, servitudes, appurtenances and advantages thereunto belonging and all appurtenances thereof, being known and designed as LOTS ONE (1) and SIX (6) of HILLSIDE ACRES SUBDIVISION, a subdivision of the Parish of Lafayette, Louisiana on that certain plat of survey prepared by Fred L. Colomb attached to that act recorded under Entry No. 328903 and made part hereof by reference, and being described with reference thereto as having a frontage on Julian Drive (now known as Julian Circle) and having such dimensions, boundaries and measurements as are more fully shown on said plat of survey, LESS AND EXCEPT: That certain parcel sold to the State of Louisiana and the Department of Transportation and Development of the State of Louisiana, designated as "Parcel 7-1" in that act recorded under Entry No. 79-12138 of the records of Lafayette Parish, Louisiana.

EXHIBIT B  
TO  
PURCHASE AGREEMENT

NON-FOREIGN STATUS AFFIDAVIT

THE STATE OF LOUISIANA     §  
PARISH OF \_\_\_\_\_     §

This Non-Foreign Status Affidavit is provided pursuant to the requirements of I.R.C. Section 1445(b)(2) in connection with the sale by KIDS ONLY III OF LAFAYETTE, LLC, a Louisiana limited liability company ("Seller"), to \_\_\_\_\_ ("Purchaser"), of the real property more particularly described in Exhibit A attached hereto and made a part hereof for all purposes, together with all appurtenances pertaining thereto (the "Property").

Under Section 1445(e) of the Internal Revenue Code, a corporation, partnership, trust, or estate must withhold tax with respect to certain transfers of real property if a holder of an interest in the entity is a foreign person. To inform Purchaser that no withholding is required with respect to Seller's interest in the Property, the undersigned hereby certifies the following on behalf Seller:

1. Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and regulations thereunder);
2. Seller's U. S. social security number is \_\_\_\_\_; and
3. Seller's address is \_\_\_\_\_.

Seller understands that this certification may be disclosed to the Internal Revenue Service by Purchaser and that any false statement contained herein could be punished by a fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete, and I further declare that I have authority to sign this affidavit on behalf of Seller.

KIDS ONLY III OF LAFAYETTE, LLC  
By \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT ONLY  
DO NOT SIGN**

SUBSCRIBED AND SWORN to before me, the undersigned Notary Public, by \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for The State of Louisiana

EXHIBIT A  
TO  
NON-FOREIGN STATUS AFFIDAVIT

Those certain parcels of ground, together with all improvements thereon, and all rights, ways, privileges, servitudes, appurtenances and advantages thereunto belonging and all appurtenances thereof, being known and designed as LOTS ONE (1) and SIX (6) of HILLSIDE ACRES SUBDIVISION, a subdivision of the Parish of Lafayette, Louisiana on that certain plat of survey prepared by Fred L. Colomb attached to that act recorded under Entry No. 328903 and made part hereof by reference, and being described with reference thereto as having a frontage on Julian Drive (now known as Julian Circle) and having such dimensions, boundaries and measurements as are more fully shown on said plat of survey, LESS AND EXCEPT: That certain parcel sold to the State of Louisiana and the Department of Transportation and Development of the State of Louisiana, designated as "Parcel 7-1" in that act recorded under entry No. 79-12138 of the records of Lafayette Parish, Louisiana.

**EXHIBIT C**  
**TO**  
**PURCHASE AGREEMENT**  
**PRO-FORMA APPROVAL ORDER**



Addendum to purchase agreement for Kids Only III at 224 Julian Circle, Lafayette, La.

This is a backup Purchase Agreement, and will be immediately effective upon termination or withdrawal of the existing Purchase Agreement.

Purchaser: Buadelle Date: 4/27/17

Print: Brian Miller

Purchaser: \_\_\_\_\_ Date: \_\_\_\_\_

Print: \_\_\_\_\_

+ Seller: Richard M. Scelfo Date: 04-27-17

Print: Richard M. Scelfo

Seller: owner Date: \_\_\_\_\_

Print: \_\_\_\_\_

**FIRST AMENDMENT TO PURCHASE AGREEMENT**

**THIS FIRST AMENDMENT TO PURCHASE AGREEMENT** ("First Amendment") is made and entered into as of \_\_\_\_\_ by and between **KIDS ONLY III OF LAFAYETTE, LLC**, a Louisiana limited liability company ("Seller"), and **Brian Miller**, an individual of the full age of majority, whose address for purposes hereof is 2310 Ambassador Caffery Parkway, Lafayette, Louisiana 70506 ("Purchaser").

**RECITALS:**

**A. Whereas**, Seller and Purchaser entered into a certain Purchase Agreement having an Effective Date of April 27, 2017 (the "Contract"), for the sale of that certain tract or parcel of land bearing a municipal address of 224 Julian Circle, Lafayette, Louisiana 70507, being known and designated as Lots One (1) and Six (6) of Hillside Acres Subdivision, Lafayette Parish, Louisiana; and

**B. Whereas**, Seller and Purchaser wish to amend the Contract as set forth herein.

**NOW THEREFORE, IT IS HEREBY AGREED:**

1. Condition Precedent. Article X (Condition Precedent) of the Contract is amended and restated in its entirety to read as follows:

**"ARTICLE X**

**CONDITION PRECEDENT**

In addition to any other rights and conditions of this Agreement, Seller and Purchaser hereby agree and acknowledge that Purchaser's and Seller's obligations to consummate the purchase and sale of the Property as contemplated by this Agreement is contingent upon the Bankruptcy Court having entered the order approving the transaction contemplated by this Agreement and the Closing (the "Approval Order"), which shall be substantially in the form and substance attached hereto as Exhibit C except as otherwise agreed to by Purchaser and Seller in their respective reasonable discretion, no later than May 16, 2017, which Approval Order shall have become a Final Order as of the Closing Date unless otherwise directed by Purchaser and Seller in writing (the "Condition Precedent"). In the event that any portion of the Condition Precedent has not occurred timely, then Purchaser and Seller shall each have the right and option to terminate this Agreement upon written notice to the other, and Purchaser shall receive a refund of the Deposit."

2. Authority. Each individual executing this First Amendment on behalf of Seller or Purchaser represents and warrants that he or she is duly authorized to execute and deliver this First Amendment on behalf of said entity in accordance with its controlling documents, and, if so required, pursuant to a duly enacted authorization or resolution, and that the aforementioned Contract, as amended hereby, is binding upon said entity.

3. Definitions. All terms used herein shall be deemed to have the same definition as set forth in said Contract unless specifically defined or re-defined herein.

4. Agreement in Counterparts; Execution. This First Amendment may be executed in counterparts and all such counterparts shall constitute one agreement binding on all the parties, notwithstanding that all the parties are not signatories to the same counterpart. The electronic transmission, whether by e-mail, facsimile, or otherwise, of a copy hereof bearing any person's signature shall have the same force and effect as the physical delivery to the same recipient of copy hereof bearing such person's original signature.

5. Amendment Supplemental. This First Amendment shall operate to amend the Contract only to the extent that the terms of the Contract are inconsistent with the provisions of this First Amendment. Except as amended or modified by this First Amendment, all terms and conditions of the Contract shall remain in full force and effect, and the Contract as supplemented and amended by this First Amendment is hereby reaffirmed.

6. Time of Essence. Time is of the essence in the execution of this First Amendment.

**SELLER:**

**KIDS ONLY III OF LAFAYETTE, LLC**, a Louisiana limited liability company.

By: Mike Scelfo 05/01/2017

Printed Name: Richard M. Scelfo  
Title: Owner  
Date: 05/01/2017

**PURCHASER:**

Brian Miller

**BRIAN MILLER** 05/02/2017 9:41:17 PM CDT

Date: 05/02/2017