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Hearing Date: December 22, 2017
Hearing Time: 10:00 A.M.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

LIFSCHULTZ ESTATE MANAGEMENT, LLC,

Debtor.

Post-Confirmation
Chapter 11
Case No. 16-23144(RDD)

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**DEBTOR'S MOTION SEEKING ENTRY OF: (I) A SALE PROCEDURES
ORDER (A) APPROVING BIDDING PROCEDURES, (B) SCHEDULING
AN AUCTION AND SALE APPROVAL HEARING; AND (II) SALE APPROVAL
ORDER (A) AUTHORIZING THE SALE OF ALL OF THE DEBTOR'S
REAL PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS
INTEREST AND ENCUMBRANCES, AND
(B) GRANTING THE SUCCESSFUL BIDDER GOOD FAITH STATUS**

**TO: THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:**

Lifschultz Estate Management, LLC, the above captioned reorganized debtor ("Debtor"), by its attorneys, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, hereby files this motion ("Motion") pursuant to sections 105(a) and 363(b), (f) and (m), 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq., as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Bankruptcy Code"), Rules 2002(a)(2), 6004 and 9007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 2014-1 and 6004-1 of

the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”) and Administrative Guideline Order GM-331 for the United States Bankruptcy Court for the Southern District of New York, for entry of the following order:

Sale Procedures Order (substantially in the form annexed hereto as **Exhibit A**):

(i) establishing bidding procedures, annexed hereto as **Exhibit B**, to govern the sale (the “Sale”) of the Debtor’s real property and improvements thereon located at 220 Hommocks Road, Larchmont, New York (the “Property”, as further defined in the Purchase and Sale Agreement (the “PSA”, annexed hereto as **Exhibit C**) dated December __, 2017, between the Debtor as seller and LSF9 Master Participation Trust as purchaser (the “Purchaser”); (ii) scheduling an auction to sell the Property, subject to higher and better bids (the “Auction”); and (iii) scheduling a hearing to approve the Sale of the Property in accordance with the Auction (the “Sale Hearing”).

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Application is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. This proceeding has been initiated pursuant to Bankruptcy Code §§ 105(a), 363(b), (f) and (m), 503, 507, Bankruptcy Rules 2002(a)(2), 6004 and 9007 and Local Rules 2014-1 and 6004-1.

Background

4. On August 23, 2016 (the “Filing Date”), the Debtor filed a voluntary petition for reorganization pursuant to Chapter 11 of the Bankruptcy Code. The Debtor has continued in possession of its property and the management of its business affairs as a debtor-in-possession pursuant to §§1107 and 1108 of the Bankruptcy Code.

5. No Official Committee of Unsecured Creditors has been appointed. No trustee or examiner has been appointed.

6. On June 5, 2017, the Court entered an Order Confirming the Debtor’s Second Amended Liquidating Plan (the “Plan”).

7. The Plan provided the Debtor an exclusive period of time (5 months from the Plan effective date) to sell or refinance the Property (as defined below) on or before October 19, 2017. In the event that the Debtor failed to effectuate such refinance or sale, the Debtor would be required to enter into a “stalking horse” contract of sale with the first mortgagee, LSF9 Participation Trust (“Purchaser”) and thereafter conduct an auction sale for the Property, with LSF9 being entitled to credit bid its entire secured claim pursuant to the Plan and Section 363(k) of the Bankruptcy Code.

8. The Debtor was unable to sell or refinance the Property by the 150 post-effective date deadline, and the Debtor therefore was required to enter into a stalking horse contract with the Purchaser.

9. As of November 19, 2017, the Purchaser was owed the approximate amount of \$11, 803,082.05.

10. The only other creditors of the Debtor are (a) the Town of Mamaroneck, who has an allowed secured claim for unpaid real estate taxes in the current amount of approximately

\$150,000 and (b) Larry Lifschultz who holds a disputed second priority mortgage in the approximate amount of \$1,000,000.¹

The Property

11. The Debtor currently owns a 3 and ½ to 4 acre parcel of improved residential real property located at 200 Hommocks Road, Larchmont, New York. The Property was the former estate property of Sidney Lifschultz, father of David and Larry Lifschultz. The Property consists of 2 houses, extensive grounds and has 3 separate water sides, including directly on Long Island Sound.

12. Despite its attractive location, the Property suffers from historic sea/water erosion exacerbated by Super Storm Sandy and other Northeasters that have hit Long Island Sound over the past few years.

13. The main residence requires significant renovation if not a complete tear down. The other house is also old and in need of significant rehabilitation.

Marketing Efforts

14. The Property has been extensively marketed over the past several years in various fashions and by several different real estate professionals. These marketing campaigns have been conducted both prior to the Filing Date and since.

¹ Mr. Lifschultz's claim is currently being litigated in the Surrogate Court, wherein David Lifschultz has moved to expunge Larry Lifschultz's \$1,000,000 claim against, inter alia, the Property by virtue of his alleged violations of the estate settlement agreement which gave rise to his claim in the first instance.

15. Although the Debtor had previously received several informal offers to purchase the Property, no formal offers have been made in years and the multiple listing agreement has expired.

16. The Debtor recently brought Auction Advisors to come evaluate the Property in connection with potentially hiring them for the auction sale contemplated herein. Auction Advisors concluded that the Property would probably not realize anywhere near the amount currently owed to the Purchaser even if additional marketing efforts were employed.

17. Notwithstanding, the Court directed that any post-confirmation sale of the Property be subject to bid procedures to be approved by the Bankruptcy Court.

The Purchase and Sale Agreement

18. On December __, 2017, after arms-length negotiations, the Debtor and the Purchaser agreed upon the terms the PSA. An unexecuted copy of the PSA is attached hereto as **Exhibit C**. An executed copy will be filed with the Court prior to the return date of this Motion. Subject to this Court's approval of higher and/or better offers through an auction process, the Debtor seeks approval to sell the Property (as defined in the PSA) to the Purchaser on the following terms and conditions:

A. The PSA²

Seller	Important Properties, LLC
Purchaser	LSF9 Participation Trust
Purchase Price	No less than \$11,803,082.05 in the form of a credit bid under Section 363(k) of the Bankruptcy Code plus (a) assumption/payment of all outstanding real estate taxes and (b) \$10,000 for Debtor's counsel fees

² The following summary is qualified entirely by the terms of the PSA. To the extent there are any inconsistencies between the description of the PSA contained herein and the terms and conditions of the PSA, the terms of the PSA shall control.

incurred in connection with the sale.

Deposit \$10,000

Property All of Seller's right, title and interest in and to the following, free and clear of all liens, claims, encumbrances and interests of any kind (including, without limitation, those of all federal, State and local taxing authorities):

The improved real property located at 220 Hommocks Rd., Larchmont, New York

Excluded Property All furniture, household furnishings, lighting fixtures, wall sconces, machinery, equipment, tools and other personal property of any kind.

Representations and Warranties; Covenants Strictly limited to Bankruptcy Court approval. Other than ownership of title, no other representations or warranties of any kind. Property being sold as is/where is, subject to all wear and tear and property and/or environmental conditions.

Bid Protections None.

Bid Procedures Next highest bidding increment: \$10,000 greater than the Purchase Price must be accompanied by 10% cash or wire downpayment and proof of funds/financial wherewithal to close.

Closing Date The closing shall take place on the earlier to occur of, ten (10) business days following receipt by Purchaser's counsel, via facsimile and email, a final and non-appealable sale approval order.

RELIEF REQUESTED

19. By this motion, the Debtor is seeking entry of the Sale Procedures Order, substantially in the form annexed hereto as **Exhibit A**.

BASIS FOR RELIEF

I. The Sale Procedures Order

A. The Proposed Bidding Procedures

20. The Sale of the Property pursuant to the PSA is subject to higher and/or better offers. In order to ensure that the highest and best offer is received for the Property, the Debtor has established the proposed Bidding Procedures to govern the submission of competing bids at an Auction. Accordingly, the Debtor seeks this Court's approval of the Bidding Procedures set forth in **Exhibit B** and incorporated herein in their entirety.

21. The Bidding Procedures provide that bidders submit initial overbids in an amount of \$10,000, with each subsequent higher and better offer being in increments of not less than \$10,000.

22. All bids submitted for the purchase of the Debtor's Property shall remain open, and all deposits held in the attorney escrow account of the Debtor's counsel until the sale of the Property to the Successful Bidder is consummated. In the event that the Successful Bidder is unable to consummate on the sale of the Property, the next highest and/or best bidder (the "Backup Bidder") will then be required to consummate on the sale of the Property.

B. Bidder Qualification

23. In order for a potential purchaser of the Property to qualify as a Bidder, the Debtor proposes that the purchaser's Competing Bid must be received by **January 16, 2018 at 5:00 p.m.** (the "Bid Deadline"). To be considered a Qualified Competing Bid, each Competing Bid must comply with all of the following requirements:

- (a) it is in writing and is irrevocable through a closing of the sale of the Property;

- (b) it includes a duly authorized and executed purchase and sale agreement, substantially in the form of the PSA, as well as copies of such materials marked to show any amendments and modifications to the Purchase Agreement (the “Marked Agreement”) and a marked copy of the proposed order to approve the Sale by the Bankruptcy Court;
- (c) it provides for (i) a cash purchase price for the Property, expressed in U.S. Dollars, of not less than \$10,000 in excess of the Purchase Price (the “Competing Bid”);
- (d) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Debtor to make a reasonable determination as to the Bidder’s financial and other capabilities to consummate the transaction contemplated by the Marked Agreement;
- (e) it is not conditioned on any contingencies, such as, without limitation: (i) the outcome of unperformed due diligence by the Bidder, and/or (ii) obtaining financing;
- (f) it includes an acknowledgement and representation that the Bidder: (i) has had an opportunity to conduct any and all required diligence regarding the Property prior to making its offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Property or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Marked Agreement; and (iv) is not entitled to any expense reimbursement or break-up fee in connection with its bid;
- (g) it includes evidence, in form and substance reasonably satisfactory to the Debtor, of authorization and approval from the Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery, and closing of the Marked Agreement; and
- (h) it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Seller), certified check or such other form acceptable to the Seller, payable to the order of the Seller (or such other party as the Seller may determine) in an amount equal to 10% of the Competing Bid.

24. For the avoidance of doubt, and notwithstanding the foregoing, any overbid submitted by the Purchaser at any Auction on substantially the same terms as its initial offer

(apart from any increase in price) shall be a Qualified Competing Bid.

25. The Debtor believes that this aforementioned proposed Bidding Procedures are fair and reasonable and will permit all parties truly interested in acquiring the Property an opportunity to submit a bid that can be weighed or compared against the Purchaser's stalking horse offer.

C. The Proposed Bidding Procedures Are Adequate and Should Be Approved

26. In determining whether bidding procedures governing the sale of a debtor's Property are adequate, Court have consistently deferred to the debtor's business judgment for their specific industry. See, In re Integrated Resources, Inc., 147 B.R. 650, 656-57 (Bankr. S.D.N.Y. 1992)(holding that where overbid procedures are negotiated by the chapter 11 debtor, the business judgment rule applies and said procedures are "presumptively valid").

27. Furthermore, the purpose of bidding procedures is to solicit the highest and best bid, which would in turn best benefit the creditors. In re Financial News Network Inc., 980 F.2d 165 (2nd. Cir., 1992)(stating that the bankruptcy court's principal responsibility relating to bidding procedures that govern sale is to secure best possible bid for benefit of creditors).

28. Thus, courts deem appropriate those bidding procedures intended to maximize the value of the debtor's estate. See, e.g., Financial News, 980 F.2d at 170-71 (allowing bidder to supplement one of two bids for Chapter 11 debtor's Property after bidding was closed since the revision was consistent with both rules by which particular auction was being conducted and reasonable expectations of bidders); Integrated Resources, 147 B.R. at 656-57.

29. The Debtor believes that the Bidding Procedures proposed will additionally procure serious parties interested in acquiring the Property and will result in realizing the full value of the Property. The Debtor's Bidding Procedures are designed to facilitate a competitive

bidding process in an expeditious manner, especially in light of the fact that the Debtor has significant time constraints to sell and close under the PSA. The Bidding Procedures will allow the Debtor to conduct the Auction in an open fashion that will encourage participation from those bidders that demonstrate they are financially capable to consummate the transaction.

30. In addition, the Bidding Procedures provide for an “overbid” provision. For a Competing Bid to be considered, it must be in a cash amount of at least \$10,000 greater than the Purchase Price, which amount equals the aggregate amount of the Purchase Price plus \$10,000 in an initial overbid increment (the “Initial Minimum Overbid”).

31. The Initial Minimum Overbid is necessary not only to compensate the Debtor for the risk that it assumes in foregoing a known, willing and able purchaser for a new potential acquirer and additionally to ensure that there is an increase in the net proceeds to the estate. The Debtor believes that the Initial Minimum Overbid will enable competitive bidding and maximize the value of the Property, without a chilling effect.

32. The Debtor believes, in its business judgment that the Bidding Procedures are adequate and will result in maximizing the value of its Property and are therefore appropriate under the relevant standards governing auction proceedings.

D. The Proposed Form and Manner of Notice of Sale is Adequate

33. Bankruptcy Rule 2002(a) and (c) requires the Debtor to notify creditors of the proposed sale of the Property, including the date, time and place of the Auction, terms of the Sale, and the deadline for filing any objections.

34. The Debtor proposes to comply with these requirements by serving via first class mail within three (3) days of entry of the Sale Procedures Order copies of: (i) Sale Procedures Order; (ii) Bidding Procedures; and (iii) this Motion.

35. The Debtor proposes to serve the following parties: (i) the Office of the U.S. Trustee; (ii) counsel to the Purchaser; (iii) all taxing authorities including the Town of Mamaroneck; (iv) all known creditors, whether disputed, unliquidated or contingent, of the Debtor; (vii) all entities known or reasonably believed to have asserted a lien, claim, interest, or encumbrance in any of the Property, (viii) all potential buyers known by the Debtor as having previously expressed interest in acquiring any of the Property, and (ix) all parties that have requested notice pursuant to Bankruptcy Rule 2002.

36. The Debtor submits that the foregoing notice fully complies with the requirements set forth in Bankruptcy Rule 2002 and 6004. Based upon the foregoing, the Debtor respectfully request that this Court approve the form and manner of the notice proposed above.

F. The Auction

37. If the Seller receives one or more Qualified Competing Bids in addition to the PSA, the Debtor will conduct the Auction to select the highest or best bid for the Property (the “Successful Bid”). The Auction, which shall be transcribed or recorded to the extent required under New York local practice, shall be held at 10:00 a.m. (prevailing Eastern time) on January 19, 2017 at 11:00 a.m. at the offices of at the offices of Debtor’s counsel, DelBello, Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, 11th Floor, White Plains, New York 10601, or such other location as shall be agreed by the Debtor and the Purchaser and timely communicated to all entities entitled to attend the Auction.

38. The Debtor will conduct the Auction in any manner and upon any terms and conditions satisfactory to the Court, permitted by the PSA, and consistent with the Bidding Procedures, that will achieve the maximum value for the Property. Such terms and conditions may include, by way of example, one or more rounds of sealed or open bids from the Purchaser

and any Bidder who submitted a Qualified Competing Bid. The initial bid at the Auction shall be the highest or otherwise best bid, as determined by the Debtor in its reasonable discretion, as among the Purchaser's bid and any Qualified Competing Bids, and such initial bid shall be announced to the Purchaser and any other Bidder submitting a Qualifying Competing Bid at the commencement of the Auction.

39. Any subsequent bidding for the Property at the Auction shall be in increments of at least Ten Thousand Dollars (\$10,000.00) or any other reasonable amount established by the Debtor at the Auction.

40. At the conclusion of the Auction, the Debtor shall submit the Successful Bid to the Court at the Sale Hearing, for entry of a Sale Approval Order. Any Bid that fails to comply with the Bidding Procedures or any other procedures established at the Auction may be refused.

41. If no Qualified Competing Bids are received, the Debtor and the Purchaser intend to seek immediate Court approval of the PSA without conducting an Auction.

42. Prior to the conclusion of the Auction, the Debtor and its counsel will (a) review and evaluate the Purchaser's bid and each Qualified Competing Bid, (b) identify the highest or otherwise best offer for the Property received at the Auction (such bid, the "Successful Bid" and the bidder making such bid, the "Successful Bidder") and (c) communicate to the Purchaser and the Qualified Competing Bidders the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Purchaser shall be final, subject to approval by the Court.

43. The Debtor will sell the Property to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Court at the Sale Hearing.

44. For the avoidance of doubt, the Debtor shall not consider or support any bid (whether or not such bid is a Qualified Competing Bid) for any of the Property received after the close of the Auction.

45. If, following the entry of the Sale Approval Order, the Successful Bidder fails to consummate the Sale because of a breach or failure to perform on the part of the Successful Bidder, the highest or otherwise best bid (“Back-Up Bid”) will be deemed the new Successful Bid, and the Debtor will be authorized and directed to consummate the Sale with the bidder who submitted the Back-Up Bid without further order of the Court. In such case, the good faith deposit of the Successful Bidder shall be forfeited to the Debtor and the Debtor shall have the right to seek any and all other remedies and damages from the defaulting Successful Bidder to the extent permissible under the applicable purchase agreement and applicable law.

II. This Court Should Approve the Sale of the Debtor’s Property to the Successful Bidder

46. As set forth above, the Debtor entered into the PSA with Purchaser which provides for a sale of all of the Debtor’s Property. The agreed Purchase Price is approximately \$12,000,000.

47. Following the Auction, the Debtor will seek this Court’s approval of the sale of the Debtor’s Property free and clear of all liens, claims, interests and encumbrances to the Successful Bidder.

48. All of the sale proceeds will be held in escrow by Debtor’s counsel, with all liens, claims, interests and encumbrances, if any, to attach to the proceeds in accordance with Section 363(f) of the Bankruptcy Code, pending further Order of the Court.

49. The estimated claims of the Debtor’s estate are as follows:

- a) Administrative expenses incurred in connection with the sale of approximately \$10,000 (anticipated through closing);
- b) Allowed Secured Claim of Town of Mamaroneck for unpaid real estate taxes in the approximate amount of \$150,000;
- c) Secured claim of Purchaser in the allowed amount of approximately \$11,800,000; and
- d) Disputed second mortgage claim of Larry Lifschultz in the approximate amount of \$1,000,000.

The APA provides for the satisfaction of the allowed claims set forth in a), b) and c) above, thereby satisfying the requirements of a sale under Section 363(f)(2) of the Bankruptcy Code.

50. Pursuant to Section 363 (b) and (f) of the Bankruptcy Code, the Debtor seeks entry of an order authorizing the sale, assignment and transfer the Property. Section 363(b)(1) of the Bankruptcy Code provides, in pertinent part, "The trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." §363 (f) of the Code states as follows:

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

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

51. The conditions set forth in 11 U.S.C. §363(f) are in the disjunctive, which means that only one of the tests must be met. The Debtor believes that the Purchase Price for the sale of the Property in this manner is in the best interests of the estates and their creditors, for a variety of reasons, including the following: (i) the Debtor believes that an immediate sale of the Property is in the best interests of creditors and the estate at large; (ii) the Purchase Price is adequate and represents the minimum fair market value of the Property to be sold; and (iii) the sale proceeds will be used to satisfy the secured claims of the Town of Mamaroneck and Purchaser, respectively.

52. The Debtor can sell the Property free and clear of Larry Lifschultz's secured claim in accordance with Section 363(f)(4) of the Bankruptcy Code as his claim is in bona fide dispute.

53. It is therefore submitted that Section 363(f) will be satisfied and an immediate sale of the Property is in the best interests of creditors and the estate and will prevent unnecessary, irreparable harm to the creditors and the estate.

54. In connection with this motion, the Debtor proposes to invite interested parties to make higher or better offers by way of conducting an auction of the Property in contemplation of sales free and clear of all liens, claims, interests and encumbrances, with all such liens, claims, interests and encumbrances to attach to the sale proceeds.

55. The Debtor seeks authority to conduct the Auction free and clear of all liens with the liens to attach to the proceeds of sale (i.e., gross proceeds, less expenses) pursuant to 11 U.S.C. §363(f). Since the Auction contemplated hereby is not in the ordinary course, its authorization requires notice and a hearing pursuant to Section 363(b) of the Code. Auction sales

are specifically authorized under the Bankruptcy Code and F.R.B.P. Rule 6004(f) provides that, “All sales not in ordinary course of business may be by private sale or public auction.”

56. It is within the discretion of the Court to determine whether to approve or disapprove of a method for the disposition of property. In re Alves, 52 B.R. 353 (Bankr. D.R.I. 1985); See, generally, In re Stogsdill, 102 B.R. 587 (Bankr. W.D. Tex. 1989). As stated above, the Property constitutes substantially all of the Debtor’s assets.

57. The Debtor respectfully submits that the PSA, subject to higher and better offers received at an Auction, will provide the greatest recovery for the Debtor’s estate than would be provided by any other available alternative. In addition, the terms and conditions of the PSA will be tested in the market through an auction process, which will support the fairness and reasonableness of the consideration being received. Therefore, the Debtor requests that the Court authorize and approve the Sale of the Property.

B. Protections as a Good Faith Purchaser

61. Section 363(m) of the Bankruptcy Code protects a good-faith purchaser’s interest in property purchased from a debtor notwithstanding that the sale conducted under Section 363(b) is later reversed or modified on appeal. *See Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994) (“Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification of an unstayed order, whether or not the transferee knew of the pendency of the appeal”).

62. The selection of the Successful Bidder will be the product of an arm’s-length, good-faith negotiation in a competitive purchasing process. Based on the record to be made at the Sale Hearing, the Debtor will request a finding that the Successful Bidder is a good-faith purchaser entitled to the protections of Section 363(m) of the Bankruptcy Code.

NOTICE

63. Notice of this Motion has been provided to (i) the Office of the U.S. Trustee; (ii) counsel to the Town of Mamaroneck; (iii) all taxing authorities; (iv) counsel to the Purchaser; (v) all known creditors of the Debtor including Larry Lifschultz; (vi) all entities known or reasonably believed to have asserted a lien, claim, interest, or encumbrance in any of the Property, (v) all potential buyers known by the Debtor as having previously expressed interest in acquiring any of the Property, (vi) the United States Trustee and (vii) all parties that have requested notice pursuant to Bankruptcy Rule 2002. The Debtor submits that said notice is adequate and proper.

NO PRIOR REQUEST

64. No prior Motion for the relief requested herein has been made to this or any other Court.

CONCLUSION

65. For all of the foregoing reasons, the Debtor respectfully requests entry of (i) the Sale Procedures Order, substantially in the form annexed hereto as Exhibit A, and (ii) after the Auction and a Sale Hearing, entry of the Sale Approval Order, substantially in the form annexed hereto as Exhibit D.

WHEREFORE, the Debtor respectfully requests that the Court grant all of the relief requested herein, together with such other and further relief as is just and proper under the circumstances.

Dated: White Plains, New York
December 5, 2017

DELBELLO DONNELLAN WEINGARTEN
WISE & WIEDERKEHR, LLP
Attorneys for the Reorganized Debtor
One North Lexington Avenue
White Plains, New York 10601
(914) 681-0200

By: /s/ Jonathan S. Pasternak
Jonathan S. Pasternak
Erica Feynman Aisner

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

LIFSCHULTZ ESTATE MANAGEMENT, LLC,

Debtor.

-----X

Post-Confirmation

Chapter 11

Case No. 16-23144(RDD)

**ORDER (I) APPROVING BIDDING PROCEDURES AND
(II) SCHEDULING AN AUCTION AND SALE HEARING**

Upon the motion (the “Motion”) of Lifschultz Estate Management, LLC, the above captioned reorganized debtor in the above-captioned Chapter 11 case (the “Debtor”), by its attorneys, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, seeking entry of an Order (i) establishing bidding procedures, annexed hereto as Exhibit A to govern the sale (the “Sale”) of substantially all of the Debtor’s real and personal property (the “Property”), as further defined in the Purchase and Sale Agreement (the “PSA”, annexed to the Motion as Exhibit C), dated December, 2016 between the Debtor and LSF9 Master Participation Trust 32 North Street Realty, LLC (the “Purchaser”); (ii) scheduling an auction to sell the Property, subject to higher and better bids (the “Auction”); and (iii) scheduling a hearing to approve the Sale of the Property in accordance with the Auction (the “Sale Hearing”), and a hearing having been held to consider the Motion on December 22, 2017, and it appearing that all objections, if any, having either been resolved, withdrawn or overruled, and good and sufficient cause having been shown, it is hereby

Bidding Procedures

Set forth below are the bidding procedures (the “Bidding Procedures”) to be employed with respect to the transactions contemplated by the Purchase and Sale Agreement between Important Properties, LLC (the “Seller”) and LSF9 Master Participation Trust (the “Buyer”), dated as December, 2017 (the “Purchase Agreement”), concerning the sale of the Property (defined below).

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Purchase Agreement. In the event of any inconsistency between the provisions of these Bidding Procedures and the provisions of the Purchase Agreement, the Purchase Agreement shall control. Any person or entity interested in the specific terms of the Sale (defined below) should refer to the Purchase Agreement, a copy of which is available from counsel to the Seller, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, 11th Floor, White Plains, New York 10601, Attention: Jonathan S. Pasternak, Esq., Telephone: (914) 681-0200, Facsimile: (914) 684-0288, email: jpasternak@ddw-law.com.

The Seller has determined that: (A) the transactions contemplated by the Purchase Agreement (such transactions being referred to collectively as the “Sale”) shall be subject to competitive bidding as set forth in these Bidding Procedures; (B) the transfer of the Seller’s rights, title and interests in and to the Property (as defined below) shall be subject to approval by the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) pursuant to Sections 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the “Bankruptcy Code”); and (C) the Sale shall be subject to such other closing conditions and other terms and conditions as are set forth in the Purchase Agreement.

Bidding Process

These Bidding Procedures describe, among other things, the Property available for sale, the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Property, the manner in which bids become Qualified Competing Bids (as defined below), the receipt and negotiation of bids received, the conduct of any Auction (as defined below), the ultimate selection of the Successful Bidder (as defined below), and the Bankruptcy Court’s approval thereof (collectively, the “Bidding Process”).

Assets To Be Sold

The improved real property located at 220 Hommocks Rd., Larchmont, New York (as more specifically defined in the Purchase Agreement).

Notice And Solicitation Of Bids

Within one (1) Business Day following the entry of the Bidding Procedures Order or as soon as reasonably practicable thereafter, the Seller may provide notice, in form and substance satisfactory to the Buyer, of the Sale, the Bidding Procedures, the time and place of the Auction (as defined below), the time and place of the Sale Hearing (as defined below), and the objection deadline for the Sale Hearing to potential bidders who may wish to participate in the Bidding Process by submitting higher and better offers (“Competing Bids”) to purchase the Property.

Any person or entity other than the Buyer that desires to submit a Competing Bid (a “Bidder”) must do so in writing, provided that such Competing Bid satisfies all of the requirements for Qualified

Competing Bids (as set forth below) and is received by the Seller and its counsel at the following address **January 16, 2018 not later than 5:00 p.m. (EST)** (the “Bid Deadline”) (unless the Seller and the Buyer agree to an extension): Seller’s counsel: DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, Attention: Jonathan S. Pasternak, Esq., One North Lexington Avenue, 11th Floor, White Plains, NY 10601. Upon receipt, the Seller shall promptly provide copies of all Competing Bids to the Buyer.

Qualified Competing Bids

To be considered a qualified Competing Bid (a “Qualified Competing Bid”), each Competing Bid must be received by the Bid Deadline and must comply with all of the following requirements:

- (a) it is in writing and is irrevocable through a closing of the sale of the Property;
- (b) it includes a duly authorized and executed asset purchase agreement substantially in the form of the Purchase Agreement together with all exhibits thereto, as well as copies of such materials marked to show any amendments and modifications to the Purchase Agreement (the “Marked Agreement”);
- (c) it provides for (i) a cash purchase price for the Property, expressed in U.S. Dollars, of not less than \$10,000 in excess of the Purchase Price (as defined in the Contract of Sale;
- (d) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Seller to make a reasonable determination as to the Bidder’s financial and other capabilities to consummate the transaction contemplated by the Marked Agreement;
- (e) it is not conditioned on any contingencies, such as, without limitation: (i) the outcome of unperformed due diligence by the Bidder, and/or (ii) obtaining financing;
- (f) it includes an acknowledgement and representation that the Bidder: (i) has had an opportunity to conduct any and all required diligence regarding the Property prior to making its offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Property or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Marked Agreement; and (iv) is not entitled to any expense reimbursement or break-up fee in connection with its bid; and
- (g) it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Seller), certified check or such other form acceptable to the Seller, payable to the order of the Seller (or such other party as the Seller may determine) in an amount equal to ten (10%) percent of the Competing Bid.

For the avoidance of doubt, and notwithstanding the foregoing, any overbid submitted by the Buyer at any Auction on substantially the same terms as its initial offer (apart from any increase in price) shall be a Qualified Competing Bid.

Auction

If the Seller receives one or more Qualified Competing Bids in addition to the Purchase Agreement, the Seller, through Auction Advisors, will conduct an auction (the "Auction") of the Property to select the highest or best bid for the Property (the "Successful Bid"). The Auction, which shall be transcribed or recorded to the extent required under New York local practice, shall be held at **11:00 a.m. (prevailing Eastern time) on January 19, 2018**, at the offices of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, 11th Floor, White Plains, NY, or such other location as shall be timely communicated to all entities entitled to attend the Auction.

The Seller may conduct the Auction in any manner and upon any terms and conditions satisfactory to the Court, permitted by the Purchase Agreement, and consistent with these Bidding Procedures, that will achieve the maximum value for the Property. Such terms and conditions may include, by way of example, one or more rounds of sealed or open bids from the Buyer and any Bidder who submitted a Qualified Competing Bid. The initial bid at the Auction shall be the highest or otherwise best bid, as determined by the Seller in its reasonable discretion, as among the Buyer's bid and any Qualified Competing Bids, and such initial bid shall be announced to the Buyer and any other Bidder submitting a Qualifying Competing Bid at the commencement of the Auction. Any subsequent bidding for the Property at the Auction shall be in increments of at least Ten Thousand Dollars (\$10,000.00) or any higher reasonable amount established by the Seller at the Auction.

At the conclusion of the Auction, the Seller shall submit the Successful Bid to the Court at the Sale Hearing (as defined below), for entry of a Sale Approval Order. Any Bid that fails to comply with the Bidding Procedures or any other procedures established at the Auction may be refused.

If no Qualified Competing Bids are received, the Seller and the Buyer intend to seek immediate Court approval of the Purchase Agreement without conducting an Auction.

Selection Of Successful Bid

Prior to the conclusion of the Auction, the Seller will (a) review and evaluate the Buyer's bid and each Qualified Competing Bid, (b) identify the highest or otherwise best offer for the Property received at the Auction (such bid, the "Successful Bid" and the bidder making such bid, the "Successful Bidder") and (c) communicate to the Buyer and the Qualified Competing Bidders the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Seller shall be final, subject to approval by the Bankruptcy Court.

The Seller will sell the Property to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Bankruptcy Court at the Sale Hearing. For the avoidance of doubt, the Seller shall not consider or support any bid (whether or not such bid is a Qualified Competing Bid) for any of the Property received after the close of the Auction.

If, following the entry of the Sale Approval Order, the Successful Bidder fails to consummate the Sale because of a breach or failure to perform on the part of the Successful Bidder, the highest or otherwise best bid ("Back-Up Bid") will be deemed the new Successful Bidder and legally obligated and bound to consummate the transaction, and the Seller will be authorized, but not required, to consummate the Sale with the bidder who submitted the Back-Up Bid without further order of the Court. In such case, the good faith deposit of the Successful Bidder shall be forfeited to the Seller and the Seller shall have the right to seek any and all other remedies and damages from the defaulting Successful Bidder to the extent permissible under the applicable purchase agreement and applicable law.

Bid deposits for any unsuccessful bidder will be returned within three (3) business days of conclusion of the Auction, except in the case of the Back-Up Bidder, if any, whose deposit shall be released 3 days after closing in the event it is not deemed the new Successful Bidder.

Sale Hearing

A hearing to approve the sale of the Property to the Buyer or other Successful Bidder will be held on January __, 2018 at 10:00 a.m. before the United States Bankruptcy Court for the Southern District of New York, located at 300 Quarropas Street, Courtroom 118, White Plains, NY 10601 (the "Sale Hearing").

If no Qualified Competing Bids are timely submitted and no objections to the proposed sale are timely received, the Court may enter the Sale Approval Order without holding a Sale Hearing. If timely objections to the proposed transaction are received, then the Seller will seek Court approval at a Sale Hearing. Closing of a sale of the Property is expressly conditioned upon entry of the Sale Approval Order as described in the Purchase Agreement and Sale Motion.

Free Of Any And All Liens, Claims, Interests, and Encumbrances

All of the rights, title, and interests of the Seller in and to the Property, or any portion thereof, to be acquired will be sold, conveyed, transferred, and assigned free and clear of all Liens, Claims, Interests, and Encumbrances pursuant to Section 363(f) of the Bankruptcy Code, such Liens, Claims, Interests, and Encumbrances to attach to the net proceeds of the sale of such Property. The Debtor's non-residential real property lease for the rental of the Property shall be assumed by the Debtor and assigned to the Purchaser at closing.

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

NOTE: FIRE AND CASUALTY LOSSES AND CONDEMNATION.

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

RESIDENTIAL CONTRACT OF SALE

Contract of Sale made as of December ____, 2017 BETWEEN
Lifschultz Estate Management LLC
Address: 220 Hommocks Road, Larchmont, New York 10538
Fed. I.D. No(s): _____ hereinafter called "Seller" and

LSF9 Master Participation Trust

Address: c/o Hogan Lovells, 875 Third Avenue, New York, New York 10022
Fed I.D. No(s): _____ hereinafter called "Purchaser".

The parties hereby agree as follows:

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

Street Address:

220 Hommocks Road
Larchmont, New York 10538

Tax Map Designation: Sec: 4, Block: 416, Lot: 1

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

2. Personal Property. This sale also includes all fixtures and articles of personal property now attached or appurtenant to the Premises, unless specifically excluded below. Seller represents and warrants that at Closing they will be paid for and owned by Seller, free and clear of all liens, encumbrances. **All such property shall be conveyed in "AS IS" "WHERE IS" condition without any warranties or representations whatsoever.**

Excluded from this sale are all furniture, household furnishings, lighting fixtures, wall sconces, machinery, equipment, tools and other personal property of any kind.

3. Purchase Price. The purchase price shall be \$11,803,082.05 (figure is as of 11/19/17) – need per diem/updated figures, payable in the form of a credit bid pursuant to 11 U.S.C. §363(k), plus the assumption of (a) all outstanding real estate taxes due at Closing, (b) all United States Trustee fees due as of, and by virtue of (regardless of whether they have been invoiced or not), the Closing, (c) all of Seller's ordinary course title/ closing costs and (d) \$10,000 in cash in payment of Seller's legal fees incurred in

connection with this transaction (collectively, the "Purchase Price").

(a) On the signing of this contract, by Purchaser's check payable to the Escrowee (as hereinafter defined), subject to collection, to be held in escrow pursuant to paragraph 6 of this contract (the "Downpayment"):

\$10,000

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

\$

(c) by a purchase money note and mortgage from Purchaser to Seller:

\$

(d) balance at Closing in accordance with paragraph 7:

\$TBD

4. Existing Mortgage. If this sale is subject to an existing mortgage as indicated in paragraph 3(b) above:

(a) The Premises shall be conveyed subject to the continuing lien of the existing mortgage, which is presently payable, with interest at the rate of percent per annum, in monthly installments of \$ which include principal, interest and escrow amounts, if any, and with any balance of principal being due and payable on _____.

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

only payments required by the existing mortgage will be made between the date hereof and Closing.

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

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

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

5. Purchase Money Mortgage. If there is to be a purchase money mortgage as indicated in paragraph 3(c) above:

(a) The purchase money note and mortgage shall be drawn by the attorney for Seller in the form attached or, if not, in the standard form adopted by the New York State Land Title Association. Purchaser shall pay at Closing the mortgage recording tax, recording fees and the attorney's fees in the amount of \$ _____ for its preparation.

(b) The purchase money note and mortgage shall also provide that it is subject and subordinate to the

~~lien of the existing mortgage and any extensions, modifications, replacements or consolidations of the existing mortgage, provided that (i) the interest rate thereof shall not be greater than _____ percent per annum and the total debt service thereunder shall not be greater than \$ _____ per annum, and (ii) if the principal amount thereof shall exceed the amount of principal owing and unpaid on the existing mortgage at the time of placing such new mortgage or consolidated mortgage, the excess be paid to the holder of such purchase money mortgage in reduction of the principal thereof. The purchase money mortgage shall also provide that such payment to the holder thereof shall not alter or affect the regular installments, if any, of principal payable thereunder and that the holder thereof will, on demand and without charge therefor, execute, acknowledge and deliver any agreement or agreements further to effectuate such subordination.~~

6. Downpayment in Escrow. (a) Seller's attorney ("Escrowee") shall hold the Downpayment for Seller's account in escrow in a segregated bank account at **Manufacturer's and Traders Trust Company** until Closing or sooner termination of this contract and shall pay over or apply the Downpayment in accordance with the terms of this paragraph. Escrowee shall ~~(not)~~ hold the Downpayment in an interest-bearing account for the benefit of the parties. If interest is held for the benefit of the parties, it shall be paid to the party entitled to the Downpayment and the party receiving the interest shall pay any income taxes thereon. If interest is not held for the benefit of the parties, the Downpayment shall be placed in an IOLA account or as otherwise permitted or required by law. The Social Security or Federal Identification numbers of the parties shall be furnished to Escrowee upon request. At Closing, the Downpayment shall be paid by Escrowee to Seller. If for any reason Closing does not occur and either party gives Notice (as defined in paragraph 25) to Escrowee demanding payment of the Downpayment, Escrowee shall give prompt Notice to the other party of such demand. If Escrowee does not receive Notice of objection from such other party to the proposed payment within ten (10) business days after the giving of such Notice, Escrowee is hereby authorized and directed to make such payment. If Escrowee does receive such Notice of objection within such ten (10) day period or if for any other reason Escrowee in good faith shall elect

not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by Notice from the parties to this contract or a final, nonappealable judgment, order or decree of a court. However, Escrowee shall have the right at any time to deposit the Downpayment and the interest thereon with the clerk of a court in the county in which the Premises are located and shall give Notice of such deposit to Seller and Purchaser. Upon such deposit or other disbursement in accordance with the terms of this paragraph, Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

(b) The parties acknowledge that, although Escrowee is holding the Downpayment for Seller's account, for all other purposes Escrowee is acting solely as a stakeholder at their request and for their convenience and that Escrowee shall not be liable to either party for any act or omission on its part unless taken or suffered in bad faith or in willful disregard of this contract or involving gross negligence on the part of Escrowee. Seller and Purchaser jointly and severally agree to defend, indemnify and hold Escrowee harmless from and against all costs, claims and expenses (including reasonable attorneys' fees) incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith or in willful disregard of this contract or involving gross negligence on the part of Escrowee.

(c) Escrowee may act or refrain from acting in respect of any matter referred to herein in full reliance upon and with the advice of counsel which may be selected by it (including any member of its firm) and shall be fully protected in so acting or refraining from action upon the advice of such counsel.

(d) Escrowee acknowledges receipt of the Downpayment by check subject to collection and Escrowee's agreement to the provisions of this paragraph by signing in the place indicated on the signature page of this contract.

(e) Escrowee or any member of its firm shall be permitted to act as counsel for Seller in any dispute as to the disbursement of the Downpayment or any other dispute between the parties whether or not

Escrowee is in possession of the Downpayment and continues to act as Escrowee.

7. Acceptable Funds. All money payable under this contract, unless otherwise specified, shall be paid by:

- (a) Cash, but not over \$1,000.00;
- (b) Good certified check of Purchaser drawn on or official check issued by any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York, unendorsed and payable to the order of Seller, or as Seller may otherwise direct upon not less than three (3) business days notice to Purchaser;
- (c) As to money other than the purchase price payable to Seller at Closing, uncertified check of Purchaser up to the amount of \$500.00;
- (d) Electronic funds transfer; and
- (e) As otherwise agreed to in writing by Seller or Seller's attorney.

8. Intentionally Omitted.

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

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

10. Governmental Violations and Orders. (a) Seller shall comply with all notes or notices of violations of law or municipal ordinances, orders or requirements noted or issued as of the date of closing by any governmental department having authority as to lands, housing, buildings, fire, health, environmental and labor conditions affecting the Premises. The Premises shall be conveyed free of them at Closing. Seller shall furnish Purchaser with any authorizations necessary to make the searches that could disclose these matters.

~~(b) All obligations affecting the Premises pursuant to the Administrative Code of the City of New York incurred prior to Closing and payable in money shall be discharged by Seller at or prior to Closing.~~

11. Seller's Representations.

- (a) Seller represents and warrants to Purchaser that:
 - (i) The Premises abut or have a right of access to a public road;
 - (ii) Seller is the sole owner of the Premises and has the full right, power and authority to sell, convey and transfer the same in accordance with the terms of this contract;
 - (iii) Seller is not a "foreign person", as that term is defined for purposes of the Foreign Investment in Real Property Tax Act, Internal Revenue Code ("IRC") Section 1445, as amended, and the regulations promulgated thereunder (collectively "FIRPTA");
 - (iv) The Premises are not affected by any exemptions or abatements of taxes, except for possibly the STAR exemption.

(b) Seller covenants and warrants that all of the representations and warranties set forth in this contract shall be true and correct at Closing.

(c) Except as otherwise expressly set forth in this contract, none of Seller's covenants, representations, warranties or other obligations contained in this contract shall survive Closing.

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

representatives shall have the right, at reasonable times and upon reasonable notice (by telephone or otherwise) to Seller, to inspect the Premises before Closing.

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

14. Closing, Deed and Title. (a) "Closing" means the settlement of the obligations of Seller and Purchaser to each other under this contract, including the payment of the purchase price to Seller, and the delivery to Purchaser of a Bargain and Sale with Covenants Against Grantor's Acts Deed in proper statutory short form for record, duly executed and acknowledged, so as to convey to Purchaser fee simple title to the Premises, free of all encumbrances except as otherwise herein stated. The deed shall contain a covenant by Seller as required by subd. 5 of Section 13 of the Lien Law.

~~(b) If Seller is a corporation, it shall deliver to Purchaser at the time of Closing (i) a resolution of its Board of Directors authorizing the sale and delivery of the deed, and (ii) a certificate by the Secretary or Assistant Secretary of the corporation certifying such resolution and setting forth facts showing that the transfer is in conformity with the requirements of Section 909 of the Business Corporation Law. The deed in such case shall contain a recital sufficient to establish compliance with that Section.~~

15. Closing Date and Place. Closing shall take place at the office of Seller's attorney:

DelBello Donnellan Weingarten Wise &
Wiederkehr, LLP
One North Lexington Avenue
White Plains, NY 10601

on or before the later of (a) **January 31, 2018**, or the next business day following entry of an Order of the Bankruptcy Court approving the sale of the Property to Seller.

XXXXXX

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

(a) The accuracy, as of the date of Closing, of the representations and warranties of Seller made in this contract.

(b) The delivery by Seller to Purchaser of a valid and subsisting Certificate of Occupancy or other required certificate of compliance, or evidence that none was required, covering the building(s) and all of the other improvements located on the property authorizing their use as a legal **single** family dwelling at the date of Closing.

~~(c) The delivery by Seller to Purchaser of a duly executed and sworn affidavit (in form prescribed by law) claiming exemption of the sale contemplated hereby, if such be the case, under Article 31-B of the Tax Law of the State of New York and the Regulations promulgated thereunder, as the same may be amended from time to time (collectively, the "Gains Tax Law"); or if such sale shall not be exempt under the Gains Tax Law, Seller and Purchaser agree to comply in a timely manner with the requirements of the Gains Tax Law and, at Closing, Seller shall deliver to Purchaser (i) an official return showing no tax due, or (ii) an official return accompanied by a certified or official bank check drawn on a New York State banking institution payable to the order of the New York State Department of Taxation and Finance in the amount of the tax shown to be due thereon. Seller shall (x) pay promptly any additional tax that may become due under the Gains Tax Law, together with interest and penalties thereon, if any, which may be assessed or become due after Closing, and/or execute any other documents that may be required in respect thereof, and (y) indemnify, defend and save Purchaser harmless from and against any of the foregoing and any damage, liability, cost or expense (including reasonable attorneys' fees) which may be suffered or incurred by Purchaser by reason of the nonpayment thereof. The provisions of this subparagraph (c) shall survive Closing.~~

(d) The delivery by Seller to Purchaser of a certification stating that Seller is not a foreign

person, which certification shall be in the form then required by FIRPTA. If Seller fails to deliver the aforesaid certification or if Purchaser is not entitled under FIRPTA to rely on such certification, Purchaser shall deduct and withhold from the purchase price a sum equal to 10% thereof (or any lesser amount permitted by law) and shall at Closing remit the withheld amount with the required forms to the Internal Revenue Service.

(e) The delivery of the Premises and all building(s) and improvements comprising a part thereof in broom clean condition, vacant and free of leases or tenancies, together with keys to the Premises.

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

(g) The delivery by the parties of any other affidavits required as a condition of recording the deed.

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

18. Apportionments and Other Adjustments; Water Meter and Installment Assessments. (a) To the extent applicable, the following shall be apportioned as of midnight of the day before the day of Closing:

(i) taxes, water charges and sewer rents, on the basis of the fiscal period for which assessed; ~~(ii) fuel;~~
~~(iii) interest on the existing mortgage;~~ (iv) premiums ~~on existing transferable insurance policies and renewals of those expiring prior to Closing;~~ (v) vault charges; ~~(vi) rents as and when collected.~~

(b) If Closing shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis of the tax rate for the immediately preceding fiscal period applied to the latest assessed valuation.

(c) If there is a water meter on the Premises, Seller shall furnish a reading to a date not more than thirty (30) days before Closing and the unfixed meter charge and sewer rent, if any, shall be apportioned on the basis of such last reading.

(d) If at the date of Closing the Premises are affected by an assessment which is or may become payable in annual installments, and the first installment is then a lien, or has been paid, then for the purposes of this contract, all the unpaid installments shall be considered due and shall be paid by Seller at or prior to Closing.

(e) Any errors or omissions in computing apportionments or other adjustments at Closing shall be corrected within a reasonable time following Closing. This subparagraph shall survive Closing.

19. Intentionally Blank

20. Intentionally Blank

21. Title Examination; Seller's Inability to Convey; Limitations of Liability. (a) Purchaser shall order an examination of title in respect of the Premises from a title company licensed or authorized to issue title insurance by the New York State Insurance Department or any agent for such title company promptly after the execution of this contract or, if this contract is subject to the mortgage contingency set forth in paragraph 8, after a mortgage commitment has been accepted by Purchaser. Purchaser shall cause a copy of the title report and of any additions thereto to be delivered to the attorney(s) for Seller promptly after receipt thereof.

(b)(i) If at the date of Closing Seller is unable to transfer title to Purchaser in accordance with this contract, or Purchaser has other valid grounds for refusing to close, whether by reason of liens, encumbrances or other objections to title or otherwise (herein collectively called "Defects"), other than those subject to which Purchaser is

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

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

22. Affidavit as to Judgments, Bankruptcies, etc. If a title examination discloses judgments, bankruptcies or other returns against persons having names the same as or similar to that of Seller, Seller shall deliver an affidavit at Closing showing that they are not against Seller or, in the alternative, an order from the Bankruptcy Court deeming this sale free and clear of all such judgments, etc.

23. Defaults and Remedies. (a) If Purchaser defaults hereunder, Seller's sole remedy shall be to receive and retain the Downpayment as liquidated damages, it being agreed that Seller's damages in case of Purchaser's default might be impossible to ascertain and that the Downpayment constitutes a fair and reasonable amount of damages under the circumstances and is not a penalty.

(b) If Seller defaults hereunder, Purchaser shall have such remedies as Purchaser shall be entitled to at law or in equity, including, but not limited to, specific performance.

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

25. Notices. Any notice or other communication ("Notice") shall be in writing and either (a) sent by either of the parties hereto or by their respective attorneys who are hereby authorized to do so on their behalf or by the Escrowee, by e-mail, registered or certified mail, postage prepaid, or

(b) delivered in person or by overnight courier, with receipt acknowledged, to the respective addresses given in this contract for the party and the Escrowee, to whom the Notice is to be given, or to such other address as such party or Escrowee shall hereafter designate by Notice given to the other party or parties and the Escrowee pursuant to this paragraph. Each Notice mailed shall be deemed given on the third business day following the date of mailing the same, except that any notice to Escrowee shall be deemed given only upon receipt by Escrowee and each Notice delivered in person or by overnight courier shall be deemed given when delivered.

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

27. Broker. Seller and Purchaser each represents and warrants to the other that it has not dealt with any broker in connection with this sale. Seller and Purchaser shall indemnify and defend each other against any costs, claims and expenses, including reasonable attorneys' fees, arising out of the breach on their respective parts of any representation or agreement contained in this paragraph. The provisions of this paragraph shall survive Closing or, if Closing does not occur, the termination of this contract.

28. Miscellaneous. (a) All prior understandings, agreements, representations and warranties, oral or written, between Seller and Purchaser are merged in this contract; it completely expresses their full agreement and has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this contract.

(b) Neither this contract nor any provision thereof may be waived, changed or canceled except in writing. This contract shall also apply to and bind the heirs, distributees, legal representatives, successors and permitted assigns of the respective parties. The parties hereby authorize their respective attorneys to agree in writing to any changes in dates and time periods provided for in this contract.

(c) Any singular word or term herein shall also be read as in the plural and the neuter shall include the masculine and feminine gender, whenever the sense of this contract may require it.

(d) The captions in this contract are for convenience of reference only and in no way define, limit or describe the scope of this contract and shall not be considered in the interpretation of this contract or any provision hereof.

(e) This contract shall not be binding or effective until duly executed and delivered by Seller and Purchaser.

(f) Seller and Purchaser shall comply with IRC reporting requirements, if applicable. This subparagraph will survive Closing.

(g) Each party shall, at any time and from time to time execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other in order to carry out the intent and purpose of this contract. This subparagraph shall survive Closing.

(h) This contract is intended for the exclusive benefit of the parties hereto and, except as otherwise expressly provided herein shall not be for the benefit of, and shall not create any rights in, or be enforceable by, any other person or entity.

See rider attached hereto and made a part hereof.

IN WITNESS WHEREOF, this contract has been duly executed by the parties hereto.

Seller

e-mail: eaisner@ddw-law.com
Tel.: (914) 681-0200 Fax: (914) 684-0288

Attorney for Seller: Erica R. Aisner, Esq.
DelBello Donnellan Weingarten Wise &
Wiederkehr, LLP
Address: One North Lexington Avenue
White Plains, New York 10601

Attorney for Purchaser: Nicole Schiavo, Esq.

Hogan Lovells US LLP

Address: **875 Third Avenue**

New York, New York 10022

e-mail: Nicole.schiavo@hoganlovells.com

Tel.: (212) 918-3000

Fax: (212) 918-3100

Purchaser

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

DelBello Donnellan Weingarten Wise & Wiederkehr, LLP

By: _____
Escrowee

CONTRACT OF SALE

**LIFSCHULTZ ESTATE MANAGEMENT,
LLC,**

Sellers

- to -

LSF9 MASTER PARTICIPATION TRUST

Purchaser

PREMISES

Section 4

Block 416

Lot 1

County Westchester

Street Number Address: 220 Hommocks Road,
Larchmont

RIDER TO RESIDENTIAL CONTRACT OF SALE

by and between

LIFSCHULTZ ESTATE MANAGEMENT, LLC “Seller”

and

LSF9 MASTER PARTICIPATION TRUST “Purchaser”

Premises: 220 Hommocks Rd., Larchmont, NY 10538

29. In the event of any conflict or inconsistency between the terms and conditions of this Rider and the terms and conditions of the pre-printed form of Residential Contract of Sale to which this Rider is attached, the terms and conditions of this Rider shall control. Any reference to “this contract” in the printed form of Residential Contract of Sale shall be deemed to include the provisions of this Rider.

30. Supplementing Paragraph 6 of the preprinted form of Residential Contract of Sale to which this Rider is attached, the Seller and the Purchaser agree that:

(a) Escrowee shall be protected in relying upon the accuracy, acting in reliance upon the contents, and assuming the genuineness, of any notice, demand, certificate, signature, instrument or other document which is given to Escrowee pursuant to this contract without the necessity of Escrowee verifying the truth or accuracy of such notice, demand, certificate, signature, instrument or other document; and

(b) Escrowee shall not have any liability or obligation for loss of all or any portion of the down payment by reason of the insolvency or failure of the institution or depository with whom the escrow account is maintained.

31. In addition to the permitted exceptions of Paragraph 9 of the printed form of Residential Contract of Sale to which this Rider is annexed, the Premises are sold and shall be conveyed subject to the following, providing same is insurable by the title insurance company and reasonably acceptable to Purchaser’s lender:

(f) Possible minor encroachments not to exceed one foot of retaining walls, hedges and fences and minor variations between record lines and hedges, fences and retaining walls and changes or alterations in the lines of streets, roads or avenues shall not be deemed to be an objection to title.

(g) Any additional covenants, restrictions, limitations, burdens, conditions, rights of way, easements, agreements or restrictions of record which are (i) not violated by the existing structures or use of the Premises and which will not be violated by continuing the same use of said structures, (ii) do not contain any outstanding options, purchase rights, or require any affirmative acts or monetary payments, and (iii) do not contain any provision whereby a future violation will result in forfeiture or reversion of title.

(h) Rights, if any, acquired by any utility company to maintain and operate lines, wires, cables, poles and distribution boxes in, over and upon the Premises, provided that the same do not unreasonably interfere with the use of the Premises as a single family dwelling.

(i) De Minimus variations between the metes and bounds description of the Premises contained in this contract and (i) the filed map description of the Premises and (ii) the location of any shrubs, hedges, trees or other plantings at or near the record line of ownership, provided that title to the Premises is not thereby rendered uninsurable.

- (j) Laws, zoning and governmental regulations that affect the use and maintenance of the Premises, provided that the same permit the use of the Premises as a legal single family residence.
- (k) The lien of water charges and other governmental charges not yet due and payable, which, in the case of water charges, are to be apportioned as herein provided.
- (l) Any state of facts an accurate survey may disclose, provided title is not rendered uninsurable thereby and further to any state of facts which a survey inspection or other personal inspection of the Premises may disclose, unless same shall render title uninsurable.
- (m) Standard printed exceptions contained in the form of fee title insurance policy then issued by the title insurance company insuring Purchaser's title to the Premises.

The permitted exceptions of Paragraph 9 of the printed form of Residential Contract of Sale to which this Rider is annexed and the title exceptions set forth in this paragraph 31 are hereinafter collectively referred to as the “**Permitted Exceptions**”. Purchaser agrees to accept title to the Premises such as a title company licensed to do business in New York will approve and insure, subject to the Permitted Exceptions. A policy shall be deemed acceptable if it shall insure: (1) in the case of encroachments not herein mentioned, the building or the portions thereof which encroach may remain undisturbed so long as the building stands; (2) in the case of covenants, easements, agreements and restrictions of record not hereinabove excepted, that they are not violated by the Premises or its use and do not render title uninsurable; and (3) in the case of transfer, inheritance, estate, franchise, dissolution, license or similar taxes, charges or liens of any nature not hereinbefore excepted, that the collection shall not be enforced against the Premises.

32. Supplementing Paragraph 12 of the preprinted form of Residential Contract of Sale to which this rider is annexed, Purchaser acknowledges, understands and agrees as of the date hereof and as of the Closing Date as follows: Seller has not made, and does not make, any representations as to the physical condition, rent, leases, expenses, operation, or any other matter or thing affecting or relating to the Premises or the personal property included in this sale, if any, except as herein specifically set forth. Except as otherwise expressly set forth in this contract, the sale of the Premises hereunder is and will be made on an “as is, where is” basis, less wear and tear, and Seller has not made, does not make and specifically negates and disclaims any representations, warranties or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future of, as to, concerning or with respect to the Premises or any other matter whatsoever. Seller (a) is a repurchase of the Premises and (b) makes no representation or warranty with respect to the Premises, other than as expressly set forth in the preprinted portion of this Residential Contract of Sale and this Rider. This Section 32 shall survive the Closing.

33. Supplementing and modifying Paragraph 21 of the preprinted form of Residential Contract of Sale to which this Rider is attached, Purchaser shall order a title report immediately upon receipt of fully executed contracts and shall arrange to have Seller's attorney provided a copy immediately upon its completion. Purchaser shall notify the Seller, within a reasonable time (not to exceed five (5) business days) following receipt by Purchaser of a title commitment or any continuation thereof or the closing of any such objections to title. Notwithstanding anything contained herein to the contrary, the Seller shall be entitled to a reasonable adjournment or adjournments of the Closing Date to remove any defects or objections to title which the Seller may be required or desires to cure or to render the condition of the Premises as provided herein. The Seller shall not be liable to the Purchaser for any loss or damage suffered by Purchaser by reason of the Seller's delay in Closing title to the Premises for any reason provided same does not exceed the expiration date of the Loan Commitment letter which expiration shall be no earlier than fifteen (15) days after the Closing Date set forth in Paragraph 15 of the preprinted form of Residential Contract of Sale.

34. Modifying Paragraph 23 (b) of the preprinted form of Residential Contract of Sale to which this Rider is annexed, if Seller should be unable to convey a good marketable title for any reason, the sole obligation of Seller shall be to refund Purchaser's downpayment made hereunder and to reimburse Purchaser for the cost of the title examination and survey, if any, and upon making of such refund and reimbursement, this agreement shall wholly cease and terminate and neither party shall have any further claim against the other and the lien, if any, of Purchaser against the Premises shall wholly cease. Except as specifically provided, Seller shall not be required to bring a proceeding or make application on any type, whether judicial, quasi-judicial or administrative in nature, in order to comply with the terms of this contract. If such proceeding is required, Seller may terminate this contract by returning the contract deposit and reimbursing to Purchasers the net cost of the title search and survey, if any.

35. Supplementing and modifying Paragraph 25 of the preprinted form of Residential Contract of Sale to which this Rider is attached, the respective attorneys of the parties, as herein identified, are hereby authorized to give any notice which the party is required to give or may give under this contract, to agree to adjournments of the Closing or agree to extensions of the time periods as provided herein, and/or to initial any changes in this contract after execution thereof by the parties hereto.

36. Supplementing and modifying Paragraph 28 of the preprinted form of Residential Contract of Sale to which this Rider is annexed,

(i) It is expressly understood and agreed by the parties hereto that this contract shall not constitute an offer or create any rights in favor of the Purchaser and shall in no way obligate or be binding upon the Seller and this contract shall have no force or effect unless and until the same is duly executed by the Seller and the Purchaser and a fully executed counterpart hereof is delivered by the Seller to the Purchaser and the down payment has been collected.

(j) The Purchaser agrees to pay any sales tax which may be assessed by any governmental authority in connection with the transfer or conveyance of any personal property under this contract. The Purchaser shall indemnify and hold the Seller harmless for all sales tax which may be assessed. This representation and indemnification shall survive Closing.

(k) The Purchaser agrees that this contract is not to be assigned or recorded and any attempt to do so shall be a default hereunder.

(l) The delivery of the deed by the Seller and the acceptance of same by the Purchaser shall be deemed the full performance and compliance with the obligations and covenants to be performed by Seller under the terms and conditions of this contract, except as otherwise specifically provided in this contract.

(m) In the event that the check given as all or a portion of the Downpayment and delivered by the Purchaser to the Seller upon the execution of this contract is dishonored for any reason by the bank upon which it is drawn, then the Seller, in addition to any other rights and remedies which it may have, may declare this contract null and void, and thereupon the Seller shall be relieved and released from all obligations hereunder. Purchaser shall have the right to provide a replacement bank or Cashier's check within three (3) business days and the Seller shall not be permitted to cancel.

37. Every purchaser of any interest in residential property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk for developing lead poisoning. Lead poisoning in young child may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase. Seller represents that, to Seller's actual knowledge, without investigation, Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing and that Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

The Purchaser acknowledges that:

(i) The Purchaser hereby acknowledges that it has received the foregoing information and that Purchaser has received the pamphlet Protect Your Family From Lead in Your Home.

(ii) The Purchaser hereby waives the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

39. The Seller and the Purchaser hereby acknowledge that Section 462(2) of Article 14 of the New York State Real Property Law may require the Seller to provide the Purchaser with a Property Condition Disclosure Statement and that, if so required, the Seller's failure to do so will result in a Five Hundred and 00/100 Dollar (\$500.00) credit against the balance of the purchase price due at the Closing. The Purchaser acknowledges that the Seller has elected not to provide the Purchaser with the referenced Property Disclosure Statement and any update that may be required in addition thereto, and that in lieu thereof, if the Property Condition Disclosure Statement is required to be delivered to the Purchaser, the Purchaser will receive a Five Hundred and 00/100 Dollar (\$500.00) credit against the balance of the purchase price at the Closing as the Purchaser's only remedy and recourse against the Seller for the Seller's failure to provide such Statement. Purchaser represents that Purchaser has obtained a home inspection or house engineering inspection and is satisfied with the results thereof, or has had the opportunity to obtain a home inspection or house engineering inspection and has knowingly and expressly waived Purchaser's right to obtain such an inspection. The Purchaser acknowledges that Purchaser is purchasing the Premises based upon Purchaser's own inspection or the inspection of Purchaser's agent(s) and/or contractor(s), without any representation or warranty of any kind by the Seller except as expressly set forth elsewhere in this contract, and hereby waives the Property Condition Disclosure Statement as a condition to this contract or closing. It is expressly agreed between the parties that the provisions of this paragraph shall survive Closing.

40. The parties agree that Seller shall not be obligated to make any repairs, alterations, replacements or modifications to the Premises. The transaction is not contingent upon Purchaser's ability to sell real property or a co-operative apartment. To the best of Purchaser's knowledge, Purchaser knows of no reason why Purchaser's credit is insufficient to warrant the granting of acquisition financing, that Purchaser has no judgments outstanding against him, has never been adjudicated as bankrupt and knows of no negative items in Purchaser's credit history. It is understood that this representation is a material one made to induce the Seller to enter into this contract.

41. The parties hereto agree that trial by jury in any action, proceeding or counterclaim arising out of or from this agreement is waived.

42. No representation or warranty of Seller contained in this contract shall survive the Closing unless this contract specifically otherwise provides.

43. MORTGAGE PICK-UP FEE: In connection with any mortgage pick-up fee or similar fee that shall be imposed by Purchaser's title company in connection with the payoff of any mortgage encumbering the Premises, Seller shall be responsible for paying up to Two Hundred Dollars (\$200.00) per mortgage that shall be discharged at Closing. Any and all amounts charged by Purchaser's title company in excess of said amount shall be paid by Purchaser.

44. **BANKRUPTCY COURT APPROVAL. SALE PROCEDURES.** The parties hereto agree and acknowledge that this Contract of Sale is specifically subject to approval by entry by the Bankruptcy Court of a final and non-appealable approval order acceptable to both Purchaser and Seller in their respective sole discretion (the "Approval Order"), which order shall, inter alia, authorize the sale of the Property free and clear of all liens, claims, mortgages and encumbrances and transfer taxes pursuant to Sections 363(f) and 1146(a) of the Bankruptcy Code. The Approval Order shall be subject to the prior entry of a sales procedure order to be entered on or before December 31, 2017 which shall contain the following minimum terms and conditions (the "Sale Procedures Order"):

- a) Purchaser shall be deemed the stalking horse purchaser, with its initial bid to be the consideration to be paid under the Contract of Sale (the "Initial Bid")
- b) Purchaser shall be deemed a qualified bidder.
- c) In order to be a qualified bid, interested bidders (other than Purchaser) must submit a written offer in an amount no less than \$10,000 greater than the Initial Bid, with such offer not subject to any financing or other contingencies of any kind (other than Bankruptcy Court approval.), accompanied by a 10% cash or wire deposit, together with proof of financial wherewithal to close.
- d) Other qualified bids must be received by Seller's counsel no later than January 16, 2018 (the Bid Deadline").
- e) If any other qualified bids are timely received by the Bid Deadline, an auction sale shall be held at the offices of Seller's counsel on January 19, 2018 at 11:00 a.m., EST.
- f) If no qualified bids are received by the Bid Deadline, the Debtor will seek entry of the Approval Order at the sale approval hearing date to be set by the Court in the Sale Procedures Order.

45. This contract may be executed in one or more facsimile or PDF counterparts, each of which shall be an original and all of which together shall constitute a single contract.

Seller

Purchaser