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Hearing Date: 8/ 22 /17  
Hearing Time: 10:00 a.m.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

M2J2 LLC,

Debtor.

Chapter 11  
Case No. 16-22876 (rdd) \_\_\_\_\_

-----X

**NOTICE OF DEBTOR'S APPLICATION SEEKING TO SELL CERTAIN  
REAL PROPERTY PURSUANT TO 11 USC § 363(f);  
AND APPROVING PAYMENT OF EXPENSES, INCLUDING BROKER COMMISSION  
AND LEGAL FEES, AT CLOSING**

PLEASE TAKE NOTICE that upon the application of M2J2 LLC,, ("Debtors"), by their attorney, Nathan Horowitz, Esq., a hearing shall be held before the Honorable Robert D. Drain, United States Bankruptcy Judge, at the United States Bankruptcy Court, 300 Quarropas Street, White Plains, New York 10601 on August 22, 2017, at 10:00 a.m., seeking the following relief:

an Order, pursuant to 11 USC 105, 361, 362 and 363, allowing the Debtor to sell real property at 97 Bedford Banksville Road, Bedford, New York., free and clear of liens and alleged liens; and to approve payment of brokers' commissions, legal fees and other costs of closing title; and to preserve Debtors' exemption in the net proceeds.

Professionals to be paid:

Broker: 6% or \$123,000.00

Legal Fees: \$4,500.00

A COMPLETE COPY OF THE APPLICATION, AND EXHIBITS, MAY BE OBTAINED THROUGH THE COURT'S PACER SYSTEM, OR BY WRITTEN REQUEST TO DEBTOR'S COUNSEL.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief the Debtor seeks to obtain must be in writing, conform to the requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules of the United States Bankruptcy Court for the Southern

District of New York, and must be filed and served no later than three (3) business day prior to the hearing Date (“Objection Deadline”).

PLEASE TAKE FURTHER NOTICE that pursuant to General Order M-242, any objection filed by parties with representation shall be filed on or before the Objection Deadline (i) through the Bankruptcy Court’s Electronic Filing System which may be accessed at the Bankruptcy Court’s internet web at <http://www.nysb.uscourts.gov>, and (ii) in portable document format (PDF) using Adobe Exchange Software for conversion.

PLEASE TAKE FURTHER NOTICE that any party that is either without legal representation, or that is unable to file documents electronically or create documents in PDF format, shall file its objection on or before the Objection Deadline in either Word, WordPerfect or DOS text (ASCII) format on 3-1/2” floppy diskette in an envelope clearly marked with the case name, case number, type and title of document, document number of the document to which the objection refers and the file name of the documents.

PLEASE TAKE FURTHER NOTICE that a “hard copy” of any objections must be delivered to the Chambers of the Honorable Robert D. Drain at the United States Bankruptcy Court, 300 Quarropas Street, White Plains, New York 10601 on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE that objections, if any, must be served in accordance with the provisions of General Order M-242 so that they are received on or before the Objection Deadline by Nathan Horowitz, Esq., attorney for the Debtor, at One Barker Avenue, 3d Floor, White Plains, New York 10601

Dated: White Plains, New York  
July 19, 2017

/s/ Nathan Horowitz  
Nathan Horowitz, Esq.  
Attorney for Debtor  
One Barker Avenue, 3d Floor  
White Plains, New York 10601  
(914) 684-0551

Nathan Horowitz, Esq.  
Attorney for the Debtor  
One Barker Avenue, 3d Floor  
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Hearing Date: 8/ 22 /17  
Hearing Time: 10:00 a.m.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

M2J2 LLC, Chapter 11  
Debtor. Case No. 16-22876 (rdd)  
-----X

**APPLICATION PURSUANT TO 11 USC §363(f)  
TO SELL REAL PROPERTY FREE AND CLEAR OF LIENS AND APPROVING  
PAYMENT OF EXPENSES, INCLUDING BROKERS' COMMISSIONS  
AND LEGAL FEES, AT CLOSING**

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

M2J2 LLC, ("Debtor"), by their attorney, Nathan Horowitz, Esq., makes the following application pursuant to 11 USC § 105 and 363 and Rule 6004 to authorize the Debtor to sell certain real property free and clear of all liens and respectfully submits the following:

1. On June 28, 2016, the Debtor filed a petition for relief under Chapter 11 of Title 11 of the United States Code. Debtor remains in control of its assets and affairs as a Debtor in Possession.
2. At the time of filing, the Debtors owned commercial real property, located at 97 Bedford Banksville Road, Bedford, New York. ("Property").
3. The major purpose of this Chapter 11 was to stay a pending foreclosure action, in order to sell the Property to preserve the expected equity.
4. The Debtor has negotiated a contract for the sale of the Property land for a purchase price of \$2,050,000 ("Agreement"). A copy of the Agreement is annexed hereto as **Exhibit A**. The sale proceeds will be sufficient to pay off the mortgage, which is the only known lien.

5. Applications to retain the real estate broker and real estate counsel have been approved and Orders approving retention have been entered (Docket #'s 21 & 43).

6. On the Petition Date, the Debtor was indebted to Farm Credit East, ACA ("Farm Credit") in the approximate amount of \$1,104,500.

7. 11 USC 363(f) allows for a sale free and clear of liens when, among other reasons, the sale price exceeds all liens.

8. Debtor believes a sale is in the best interest of the Debtors and the Estate. As indicated, the purpose of this filing was to sell the Property and protect and realize the equity,

9 The retention Order for the real estate broker, Garry Klein, of Houlihan Lawrence Commercial Group, allows for compensation pursuant to the Exclusive Right to Sell Listing Agreement. This Agreement, it provides for a six (6%) commission when there is a co-broker. The co-broker is Greg Silver of Silver Properties LLC, and it is requested that as part of the approval herein, that Debtor be authorized to pay the brokerage commission, per the listing agreement, 6%.

10. It is further requested that the legal fees earned by Peter Spino, Esq., in representing the Debtor in negotiating the Contract and for services through closing be paid at Closing. As indicated in his Affidavit for Retention, his fee is \$4,500.00. A separate Affirmation of Legal Fees, with time records are included with this Application.

11. From the proceeds of the sale, the Debtor proposes to pay the brokers' commissions, and other usual and customary costs of sale, such as New York transfer tax and counsel fees as described above. Thereafter, proceeds shall be used to pay and satisfy Farm East, the mortgagee; other filed and undisputed liens. It is proposed that the amounts to pay any disputed liens be held in escrow by Debtors' counsel, and the balance, if any, to the Debtor. Debtor proposes that the liens be paid in their order of priority until the proceeds are fully paid out.

12 After substantial efforts and negotiations, the Debtors are firm in its conviction (a) that the price herein is a fair market value and in the best interest of the Debtor to sell; and (b) that the Court should authorize the consummation of the transaction as outlined in the Agreement pursuant to 11 U.S.C. §363(f).

WHEREFORE, the Debtor respectfully requests that the Court enter an Order approving the foregoing transaction pursuant to 11 U.S.C. §363(f) and for such other relief as the Court deems just and proper.

Dated: White Plains, New York  
July 19, 2017

/s/Nathan Horowitz  
Nathan Horowitz, Esq.  
One Barker Avenue, 3d Floor  
White Plains, New York 10601  
(914) 684-0551

**Contract of Sale**

**Contract of Sale** made as of July , 2017 BETWEEN

M2J2 LLC

Address: 97 Bedford Banksville, Road, hereinafter called "Seller" and

Benedetto Ceci or an entity to be formed by them, hereinafter called "Purchaser"

Address: 274 Taconic Road, Greenwich, CT 06831

**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: 97 Bedford Banksville Road, Bedford, New York 10506

Tax Map Designation\*: Section: 16 Block: 8 Lot: 20 Total acres: 21 acres +/- \*\*

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

2. **Personal Property.** This sale also includes all fixtures and articles of personal property now attached or appurtenant to the Premises, unless specifically excluded below. Seller represents and warrants that at Closing they will be paid for and owned by Seller, free and clear of all liens and encumbrances. They include, but are not limited to, plumbing, heating, lighting and cooking fixtures, bathroom and kitchen cabinets, switch plates and door hardware, storm windows, storm doors, pumps, oven, refrigerators, and built-ins not excluded below (strike out inapplicable items).

All personalty and fixtures as and if same exists in their "AS IS" condition but all in working order

Excluded from this sale are Items in Schedule C.

3. **Purchase Price.** The purchase price is \$2,050,000.00

\*a/k/a Section 1, Block 11, Lot 5A

\*\* Being and intending to be the same Premises described in deed recorded on July 18, 2006 in Control No. 461860178 and deed recorded on July 25, 2006 in Control No. 461950643 in the office of the Westchester County Clerk

payable as follows:

- A. on the signing of this Contract, by Purchaser's check payable to the Escrowee (as hereinafter defined), subject to collection, the receipt of which is hereby acknowledged, to be held in escrow pursuant to paragraph 6 of this Contract (the "Downpayment"):

**\$ 205,000.00**

- B. balance at Closing in accordance with paragraph 7:

**\$ 1,095,000.00**

- C. Paragraph 3B and 3C are reversed and reference Paragraph 5 for content of 3B.

**4. Deleted.**

**5. Purchase Money Mortgage. In the amount of \$750,000.00 from Seller to Purchaser at an interest rate of 4 percent for a term of not less than 15 years with the first five (5) years being interest only and the remaining ten (10) being principal and interest and not more than other customary conditions. No secondary financing will be allowed for the term of this loan. (Further described in Rider attached). (Preparation Fee of \$950.00).**

**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 Sterling National Bank, 40 Church Street White Plains, NY 10603 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 give Notice (as defined in paragraph 24) to Escrowee demanding payment of the Downpayment, Escrowee shall give prompt Notice to the other party of such demand. If Escrowee does not receive Notice of objection from such other party to the proposed payment within 10 business days after the giving of such Notice, Escrowee is hereby authorized and directed to make such payment. If Escrowee does receive such Notice of objection within such 10 day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by Notice from the parties to this Contract or a final, 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 of 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 in 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 3 business days notice (by telephone or otherwise) to Purchaser;
- C. As to money other than the purchase price payable to Seller at Closing, uncertified check of Purchaser up to the amount of \$ 1,000.00; and

As otherwise agreed to in writing by Seller or Seller's attorney.

8. ~~**Mortgage Contingency.** (Delete if inapplicable) (a) The obligations of Purchaser hereunder are conditioned upon issuance on or before \_\_\_\_\_, (the "Commitment Date") of a written commitment from any Institutional Lender pursuant to which such Institutional Lender agrees to make a first mortgage loan, other than a VA, FHA or other governmentally insured loan, to Purchaser, at Purchaser's sole cost and expense, of \$ \_\_\_\_\_ (inclusive of the Purchase Money Mortgage as per item 5 of this Contract) or~~
- such
- ~~lesser sum as Purchaser shall be willing to accept, at the prevailing fixed rate of interest not to exceed or initial adjustable rate of interest~~



~~not to exceed for a term of at least 30 years and on other customary commitment terms, whether or not conditional upon any factors other than an appraisal satisfactory to the Institutional Lender. For purposes of this Contract, the term "Institutional Lender" shall mean any bank, savings bank, private banker, trust company, savings and loan association, credit union or similar banking institution whether organized under the laws of this state, the United States or any other state; foreign banking corporation licensed by the Superintendent of Banks of New York or the Comptroller of the Currency to transact business in New York State; insurance company duly organized or licensed to do business in New York State; mortgage banker licensed pursuant to Article 12-D of the Banking Law; and any instrumentality created by the United States or any state with power to make mortgage loans. Purchaser shall (i) make prompt application to an Institutional Lender for such mortgage loan, (ii) furnish accurate and complete information regarding Purchaser and members of Purchaser's family, as required, (iii) pay all fees, points and charges required in connection with such application and loan, (iv) pursue such application with diligence, (v) cooperate in good faith with such Institutional Lender to obtain such commitment and (vi) promptly give Notice to Seller of the name and address of each Institutional Lender to which Purchaser has made such application. Purchaser shall comply with all requirements of such commitment (or of any other commitment accepted by Purchaser) and shall furnish Seller with a copy thereof promptly after receipt thereof. If such commitment is not issued on or before the Commitment Date, then, unless Purchaser has accepted a commitment that does not comply with the requirements set forth above, Purchaser may cancel this Contract by giving Notice to Seller within 5 business days after the Commitment Date, in which case this Contract shall be deemed cancelled and thereafter neither party shall have any further rights against, or obligations or liabilities, to, the other by reason of this Contract, except that the Downpayment shall be promptly refunded to Purchaser and except as set forth in paragraph 27. If Purchaser fails to give notice of cancellation or if Purchaser shall accept a commitment that does not comply with the terms set forth above, then Purchaser shall be deemed to have waived Purchaser's right to cancel this Contract and to receive a refund of the Downpayment by reason of the contingency contained in this paragraph. (Delete if inapplicable) (b) Purchaser and Seller agree that the submission of an application to a mortgage broker registered pursuant to Article 12-D of the New York Banking Law ("Mortgage Broker") shall constitute full compliance with the terms and conditions set forth in paragraph 8(a)(i) of this Contract, and that Purchaser's cooperation in good faith with such Mortgage Broker to obtain a commitment from an Institutional Lender (together with Purchaser's cooperation in good faith with any Institutional Lender to which Purchaser's application has been submitted by such Mortgage Broker), and the prompt giving of Notice by Purchaser to Seller of the name and address of each Mortgage Broker to which Purchaser has submitted such an application, shall constitute full compliance with the terms and conditions set forth in paragraph 8(a)(v) and (vi) of this Contract.~~

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

- a. Zoning and subdivision laws and regulations, and landmark, historic, 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. Real estate taxes that are a lien, but are not yet due and payable; and

- d. Covenants, easements and restrictions of record; and provided same do not prevent the present use or maintenance of the Premises as commercial property, specifically a nursery and garden center, or result in reverter or reversion; and
- e. Any state of facts that a visual inspection or accurate survey of the Premises may reveal, provided same do not render title unmarketable; and
- f. Intentionally Deleted;
- g. Unpaid installments of assessments not due and payable on or before the Closing Date;
- h. Intentionally Deleted;
- i. Rights of utility companies to lay, maintain, install and repair pipes, lines, poles, conduits, cable boxes and related equipment on, over and under the Premises, provided that none of such rights imposes any monetary obligation on the owner of the Premises or unreasonably interferes with the use of the Premises as a nursery and garden center.
- j. Encroachments of stoops, areas, cellar steps, trim cornices, lintels, window sills, awnings, canopies, ledges, fences, hedges, coping and retaining walls projecting from the Premises over any street or highway or over any adjoining property on to the Premises.
- k. Revocability or lack of right to maintain vaults, coal chutes, excavations or sub surface equipment beyond the line of the Premises.
- l. minor variations between record lines and tax map descriptions.

**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. Intentionally Deleted.

**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;
- iv) That the premises will be free and clear of any mortgages, liens and or encumbrances of any type except as otherwise provided for in this Contract at Closing.
- v) That currently the premises is being utilized as a Nursery and Garden Center and can continue to be utilized as such.
- vi) That any and all structures on the premises have the appropriate certificate of Occupancy for the use that same are currently being used .

B. Seller covenants and warrants that all of the representation and warranties set forth in this Contract shall be true and correct at Closing.

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

**12. Condition of Property.** Purchaser acknowledges and represents that Purchaser is fully aware of the physical condition and state of repair of the Premises and of all other property included in this sale, based on Purchaser's own inspection and investigation thereof, and that Purchaser is entering into this Contract based solely upon such inspection and investigation and not upon any information, data, statements or representations, written or oral, as to the physical condition, 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 representative, and shall accept the same "as is" in their present condition and state of repair, subject to reasonable use, wear, tear and natural deterioration between the date hereof and the date of Closing (except as otherwise set forth in this contract, 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 a reputable title insurance company 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 & Sale Deed with Covenants against Grantor's Acts 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. Closing Date and Place.** Closing shall take place at the office of Purchaser's Lending Institution, provided such office is in Westchester or New York County, at the offices of Peter Spino Jr., Esq., 7-11 South Broadway, Suite 308, White Plains, New York, at 10:00 o'clock on or before August 15, 2017.

15. **Conditions to Closing.** This Contract and Purchaser's obligation to purchase the Premises are also subject to

and conditioned upon the fulfillment of the following conditions precedent:

- a. The accuracy, as of the date of Closing, of the representations and warranties of Seller made in this Contract.
- b. The delivery by Seller to Purchaser of a valid and subsisting Certificate of Occupancy or other required certificate of compliance, or evidence that none was required, covering the building(s) and all of the other improvements located on the property authorizing their use as a nursery and garden center at the date of Closing. Seller represents that all renovations and remodeling of the premises, if any, was done in conformance with local building codes and pursuant to permits issued by the proper municipal or other governmental authorities. The representations contained in this sub-paragraph shall survive closing.
- c. The receipt of the \$750,000.00 Purchase money mortgage from the seller at 4% interest for a period of not less than Fifteen (15) years with five (5) years interest only and the remaining ten (10) years at principal and interest payment at terms mutually agreed upon.
- 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 15% 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, in broom clean condition, vacant and free of leases or tenancies, together with keys.
- f. All plumbing (including water supply and septic systems, if any), heating and air conditioning, if any, electrical and mechanical systems, equipment and machinery in the building(s) located on the property and all appliances which are included in this sale being in working order as of the date of Closing.
- g. INTENTIONALLY DELETED.
- h. The delivery by the parties of any other affidavits required as a condition of recording the deed.
- i. M2J2, LLC is currently in a pending Chapter 11 bankruptcy proceeding, in the Southern District of New York. This Contract, and closing, is conditioned upon the approval of the Bankruptcy Court for the Southern District of New York Court. Upon the full execution of the Contract, Seller shall promptly make application for approval of the sale and for distribution of the sale proceeds. Should approval not be obtained within Forty Five (45) days of the full execution of this Contract, then **either party** shall have the right to cancel the Contract by written Notice, and receive a refund of the Downpayment, unless Purchaser consents to an extension of time. Upon any such cancellation, and refund of Downpayment, neither party shall have any further rights or obligations to the other. It is represented that The Court and Seller is/are authorized to Transfer the property that is the subject of this Contract free of any and all Liens and or encumbrances and as otherwise provided for in this Contract. Seller knows of no reason this sale shall not be approved by Court.

- j. If Seller is in possession of a survey of the Premises, Seller will deliver a copy to Purchaser or Purchaser's attorney on or before execution of this Contract.
- k. If Seller is in possession of any environmental reports pertaining to the Premises, Seller will deliver a copy to Purchaser or Purchaser's attorney on or before execution of this Contract.
- l. Closing on Troy's Garden Nurseries simultaneously with the closing of title pursuant to Asset Purchase Agreement date July , 2017

16. **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. For purposes of clarification, Seller shall pay the NYS transfer tax and Purchaser shall pay the NYS mortgage tax.

**17. 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. N/A;
  - iv. N/A
- 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 date not more than 10 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.

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

19. **Use of Purchase Price to Remove Encumbrances.** If at Closing there are other liens or encumbrances which Seller is obligated to pay or discharge, Seller may use any portion of the cash balance of the purchase price to pay or discharge them, provided Seller shall simultaneously deliver to Purchaser at Closing instruments in recordable form and sufficient to satisfy such liens or encumbrances of record, together with the cost of recording or filing said instruments. As an alternative Seller may deposit sufficient monies with the title insurance company employed by Purchaser acceptable to and required by it to assure their discharge, but only if the title insurance company will insure Purchaser's title clear of the matters or insure against their enforcement out of the Premises and will insure Purchaser's Institutional Lender clear of such matters. Upon notice (by telephone or otherwise), given not less than 3 business days before Closing, Purchaser shall provide separate certified or official bank checks as requested to assist in clearing up these matters

20. **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. 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 in writing 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;

i. if Seller elects to take action to remove, remedy or comply with such Defects, Seller shall be entitled from time to time, upon Notice to Purchaser, to adjourn the date for Closing hereunder for a period or periods not exceeding 60 days in the aggregate, and the date for closing shall be adjourned to a date specified by Seller not beyond such period. If for any reason whatsoever, Seller shall not have succeeded in removing, remedying or complying with such Defects at the expiration of such adjournment(s), and if

Purchaser shall still be unwilling to waive the same and to close title without abatement of the purchase price, then either party may cancel this Contract by Notice to the other given within 10 days after such adjourned date and shall be entitled to the immediate return of the Downpayment in full;

- ii. notwithstanding the foregoing, the existing mortgage (unless this sale is subject to the same) and any matter created by Seller after the date hereof shall be released, discharged or otherwise cured by Seller at or prior to Closing.

- C. If this Contract is cancelled pursuant to its terms, other than as a result of Purchaser's default, this Contract shall terminate and come to an end, and neither party shall have any further rights, obligations or liabilities against or to the other hereunder or otherwise, except that: (i) Seller shall promptly refund or cause the Escrowee to refund the Downpayment to Purchaser and, unless cancelled as a result of Purchaser's default or pursuant to paragraph 8 (Mortgage Contingency), to reimburse Purchaser for the net cost of examination of title, including any appropriate additional charges related t hereto, and the net cost, is actually paid or incurred by Purchaser, for updating the existing survey of the Premises or of a new survey, and a Phase I Testing if done and (ii) the obligation under paragraph 26 shall survive the termination of this Contract.

21. **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 and/or any other affidavit as required by Purchaser's title company.

22. **Defaults and Remedies.**

- A. If Purchaser defaults hereunder by failing to close within thirty days of the scheduled Closing through no fault of Seller and Seller stands ready to perform, 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.

23. **Purchaser's Lien.** All money paid on account of this Contract, 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.

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

- A. sent by either of the parties hereto or by their respective attorneys who are hereby authorized to do so on their behalf or by the Escrowee, by registered or certified mail, postage prepaid, or
- B. delivered in person or by overnight courier, with receipt acknowledged, to the respective addresses given in this Contract for the party and the Escrowee, to whom the Notice is to be given, or to such other address as such party or Escrowee shall hereafter designate by Notice given to the other party or parties and the Escrowee pursuant to this paragraph. Each Notice mailed shall be deemed given on the third business day following the date of mailing the same, except that any notice to Escrowee shall be deemed given only upon

receipt by Escrowee and each Notice delivered in person or by overnight courier shall be deemed given when delivered.

25. **Assignment.** This Contract may be assigned by Purchaser without the prior written consent of Seller to an affiliated entity of Purchaser.
26. **Broker.** Seller and Purchaser each represents and warrants to the other that it has not dealt with any real estate broker in connection with this sale other than Gary Klein of Houlihan Lawrence Commercial Group and Greg Silver of Silver Properties LLC and Seller shall pay Broker any commission earned pursuant to a separate agreement between Seller and Broker. Seller and Purchaser shall indemnify and defend each other against any costs, claims and expenses, including reasonable 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.
27. **Miscellaneous.**
- A. All prior understandings, agreements, representation and warranties, oral or written, between Seller and Purchaser are merged in this Contract; it completely expresses their full agreement and has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this Contract.
  - B. Neither this Contract nor any provision thereof may be waived, changed or cancelled except in writing. This Contract shall also apply to and bind the heirs, distributees, legal representatives, successors and permitted assigns of the respective parties. The parties hereby authorize their respective attorneys to agree in writing to any changes in dates and time periods provided for in this Contract.
  - C. Any singular word or term herein shall also be read as in the plural and the neuter shall include the masculine and feminine gender, whenever the sense of this Contract may require it.
  - D. The captions in this Contract are for convenience of reference only and in no way define, limit or describe the scope of this Contract and shall not be considered in the interpretation of this Contract of 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 shall survive Closing.
  - G. Each party shall, at any time and from time to time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other in order to carry out the intent and purpose of this Contract. This subparagraph shall survive Closing.
  - H. This Contract is intended for the exclusive benefit of the parties hereto and, except as otherwise expressly provided herein, shall not be for the benefit of, and shall not create any rights in, or be enforceable by, any other person or entity.



28. **Tax Certiorari.** If an application has been made or a proceeding instituted by Seller for the Reduction or review of the assessed valuation of the Premises for the fiscal year in which the closing of title occurs, and if the assessed valuation is so reduced pursuant to such application or proceeding, whether by settlement or otherwise, it is understood that any tax savings or refund, less attorneys' fees and expenses, shall be apportioned, computed upon the basis of the apportionment of taxes as herein provided for. If any such application has been filed or shall be filed by Seller with respect to the next succeeding tax year, Purchaser shall bear any reduction granted or resulting from such application or proceeding, whether by means of settlement or otherwise. Any tax savings or refund for any fiscal years prior to the year in which the closing of title occurs shall be the sole and absolute property of Seller. The provisions of this Article shall survive the closing of title.
29. **Termite or other Wood Destroying Insect Infestation.** The Purchaser shall have the right to have the premises inspected for the purpose of determining the existence of termite or other wood destroying insect damage or infestation. The cost of said inspection shall be borne solely by the Purchaser. In the event such infestation or damage is found, the report indicating same shall be mailed to Seller's attorneys within twenty (20) days from the date hereof. Seller shall cure any such condition. If the infestation or damage is cured, Seller, at closing, shall deliver a one (1) year guaranty that such damage or infestation shall not reoccur.
30. This Contract may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
31. See Purchaser's Rider attached hereto and incorporated herein.

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

Seller:

M2J2 LLC

By: \_\_\_\_\_

Purchasers:

\_\_\_\_\_  
Benedetto Ceci

**Attorneys for Seller:**

Peter Spino, Jr. Esq .

Address: 7-11 South Broadway, Suite 308 White  
Plains,, NY 10601  
Tel: 914-984-5315  
Fax: 914-984-5319

Attorney for Purchaser:

Antoinette Violi, Esq.  
Law Offices of Antoinette Violi  
78 East Putnam Avenue  
Cos Cob, CT 06807  
Tel:(203) 485-9636  
Fax (203) 485-9639

Receipt of the Downpayment is acknowledged and the undersigned agree to act in accordance with the provision of paragraph 6 above

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Peter Spino Jr., Escrowee