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HEARING DATE: July 25, 2017  
HEARING TIME: 10:00 a.m.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

SECOND SOUTHERN BAPTIST  
CHURCH OF NEW YORK,

Chapter 11  
Case No. 15-12509(SHL)

Debtor.

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**DEBTOR’S MOTION PURSUANT TO BANKRUPTCY CODE  
SECTIONS 105 AND 363(b), (f) AND (m) AND 365 FOR ENTRY  
OF ORDERS: (A) (i) AUTHORIZING SALE OF REAL PROPERTY OF  
THE DEBTOR FREE AND CLEAR OF ALL LIENS, CLAIMS AND  
ENCUMBRANCES, SUBJECT TO HIGHER AND BETTER OFFERS,  
AND (ii) APPROVING THE TERMS AND CONDITIONS OF THE  
PURCHASE AGREEMENT, AND (B) ESTABLISHING BIDDING  
PROCEDURES AND APPROVING THE FORM AND MANNER OF NOTICE**

**TO THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE:**

Second Southern Baptist Church of New York, the debtor and debtor-in-possession herein (the “Debtor”), by and through its undersigned counsel, submits this motion (the “Motion”), pursuant to sections 105, 363(b), (f) and (m) and 365 of title 11 of the United States Code (the “Bankruptcy Code”), and Rules 2002(a)(2), 6004(a), (b), (c), (f), and (g), 9006(c) and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of an order substantially in the form attached hereto as Exhibit A (the “Sale Order”):

- (i) Authorizing the sale (the “Sale”) of certain real property of the Debtor, described in the Purchase Agreement (as defined below), to S6 Realty Corp. or the successful bidder (the “Purchaser”), free and clear of all liens, claims, and encumbrances, subject to the terms of the Purchase Agreement and subject to higher and better offers; and
- (ii) Authorizing the Debtor to assume and assign the Leases referred to in, and annexed to, the Purchase Agreement; and
- (iii) Approving the terms and conditions of the Purchase Agreement between the Debtor and S6 Realty Corp. (the “Purchase Agreement”), and authorizing the Debtor to consummate such agreement; and
- (iv) An Order, substantially in the form attached hereto as Exhibit B (the “Bidding Procedures Order”), establishing bidding procedures, including approval of the form and manner of notice.

In support of this Motion<sup>1</sup> the Debtor respectfully represents as follows:

#### **Jurisdiction**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief sought herein is Bankruptcy Code Sections 105, 363 and 365 and Fed R. Bankr.P. 202, 6004, 9006 and 9014.

#### **Background**

2. On September 9, 2015 (the “Petition Date”) the Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code.

3. The Debtor continues to manage its property and assets as a debtor-in-possession pursuant to Bankruptcy Code Sections 1107 and 1108. No trustee or examiner has been appointed in this case.

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Purchase Agreement. The Purchase Agreement shall be substantially in the form which is attached hereto as Exhibit D.

4. The Debtor is a New York religious corporation and owns certain real Property, located in Bronx County, New York, with street addresses of 1340 Edward L. Grant Highway, 59A West 170<sup>th</sup> Street, 53-59 West 170<sup>th</sup> Street, 53-59 West 170<sup>th</sup> Street, 1372A Jessup Avenue, Bronx, New York (the “Property”).

5. The filing of this Chapter 11 case was necessitated by the pendency of a scheduled sale in a municipal tax lien foreclosure proceeding entitled NYCTL 2012-A Trust (“Trust”) vs. Second Southern Baptist Church of New York, et al., Case No. 260741-2013 which is pending in the Bronx County Supreme Court. The automatic stay prevented the loss of the Property and has allowed the Debtor to proceed with its efforts in this case which led to the arms-length sale of the Property proposed herein.

6. In an attempt to reorganize its financial affairs the Debtor undertook extensive efforts to obtain mortgage financing for the Property to satisfy the Trusts’ and other liens against the Property, aggregating approximately \$750,000.00.<sup>2</sup> Unfortunately, those attempts failed for several reasons. First, the Debtor’s status as a religious corporation was problematical for those entities approached for financing. Second, the terms sought by any proposed lenders involved in church real property financing were very onerous as to interest rates, loan-to-value ratios and maturity dates.

7. Once it became apparent to the Debtor that it was not feasible to obtain mortgage financing on reasonable terms, rather than lose the Property at a forced sale by the Trust, it

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<sup>2</sup> A review of a title report recently obtained by the Purchaser’s attorney reflects a judgment for \$5,208,532.62 docketed by Larry May against the Debtor in Bronx County on March 1, 2017. Debtor’s counsel therefore contacted the attorneys who obtained the judgment for further information. They indicated that the judgment was taken on default in a personal injury action in which the claim was alleged to have occurred at the Property on July 12, 2008. The attorneys were advised that since this Chapter 11 case was filed on September 9, 2015, and the judgment was not docketed until March 1, 2017, the docketing of the judgment was in violation of the automatic stay the Debtor obtained upon the filing of its Chapter 11 case. The attorneys were, therefore, requested to vacate the judgment so that it would not be necessary for the Debtor to move in this Court to have the judgment vacated as a lien against the Property. If the matter cannot be resolved by consent, it is the intention of the Debtor to make such a motion.

determined that it was appropriate to proceed with efforts to sell the Property and dissolve the Church pursuant to the provisions of the New York Religious Corporations Law which are outlined hereinafter in detail. To that end the Debtor decided to retain the services of a real estate broker to assist in the sale effort. On December 7, 2016 the Court granted the Debtor's motion to retain MK Property Group NYC Corp. ("MK") as its real estate broker. Attached hereto as Exhibit C is a memorandum by MK explaining the listing processes it used to solicit offers for the Property. Through those efforts several written offers were received, each in ascending amount. The highest offer was by the Purchaser, S6 Realty Corp., described below (the "S6 Offer") in the amount of \$1,350,000.00 (the "Purchase Price"). The S6 Offer resulted in the entry into the Purchase Agreement described below between the Debtor and S6 Realty Corp. which is the subject of this Motion.

#### **The Purchase Agreement**

8. The Purchase Agreement is explicitly subject to the prior approval of this Court and to any higher or better offer which may be made. Interested parties should review the proposed Purchase Agreement annexed as Exhibit D hereto for the specific terms and conditions thereof. **A REVIEW OF THE PURCHASE AGREEMENT AND OF THE PROPOSED ORDERS SUBMITTED HEREWITH IS ESSENTIAL TO AN UNDERSTANDING OF THE TRANSACTIONS FOR WHICH APPROVAL IS SOUGHT BY THIS MOTION.**

#### **Relief Requested**

9. The Debtor seeks authorization to sell the Property to the Purchaser or to the Successful Bidder pursuant to the terms and conditions of the Bidding Procedures Order and the Purchase Agreement. Specifically, the Debtor seeks, pursuant to Bankruptcy Code Sections 105, 363 and 365, and FED. R. BANK.PRO 2002, 4001, 6004 and 9006, entry of:

- A. the Bidding Procedures Order establishing bidding procedures, including approval of the form and manner of notice;
- B. The Sale Order which: (i) authorizes the sale of the Property to the Purchaser or to the Successful Bidder, free and clear of all liens, claims and encumbrances, with such liens, claims and encumbrances to attach to the sale proceeds to the extent, and with the same validity and priority that existed prior to the sale; (ii) authorizes the Debtor to assume and assign the Leases referred to in, and annexed to, the Purchase Agreement; and (iii) approves the terms and conditions of the Purchase Agreement and authorizes the Debtor to consummate such agreement.

**Authorities in Support of Authorization of the Property Sale**

10. Pursuant to Bankruptcy Code Section 363(b)(1), the debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. §363(b)(1). Additionally, Bankruptcy Code Section 105(a) authorizes bankruptcy courts to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” The Debtor submits that such relief is appropriate on the facts now before this Court and should be granted.

11. Controlling precedent in the Second Circuit provides that a debtor’s sale or use of property of the estate outside the ordinary course of business should be approved by the Court, provided that the debtor can demonstrate a sound business justification for the proposed transaction. See, *In re Chrysler LLC*, 576 F.3d 108, 117-18 (2d Cir. 2009); *Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 466-467 (2d Cir. 2007) (“In this Circuit, the sale of an asset of the estate under § 363(b) is permissible if the judge determining the § 363(b) application expressly finds from the evidence presented

before him or her at the hearing that there is a good business reason to grant such an application”); citing *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); see also, *In re General Motors Corp.*, 407 B.R. 463, 494-5 (Bankr. S.D.N.Y. 2009) (noting that sales under §363(b) are “commonly” approved subject to the “business judgment rule”).

12. In *Lionel* the Court listed a number of factors that a judge might consider when determining whether there is a "business justification" for the asset sale, which include, but are not limited to: (i) the value of the asset(s) in proportion to the estate as a whole; (ii) the amount of time since the filing; (iii) the likelihood of a proposed and confirmed plan of reorganization in the near future; (iv) the proposed sales effect on future plans of reorganization; and (v) whether the asset is increasing or decreasing in value. *Lionel*, 722 F.2d at 1071.

13. *In re Lehman Brothers Holdings, Inc.*, 445 B.R. 143, 180 (Bankr. S.D.N.Y. 2011) (“[A] sale should be approved when the court is faced with the situation of a so-called "melting ice cube," a sale that would prevent further, unnecessary losses, the failure of other potential buyers to appear despite well-publicized efforts, and where the only alternative is an immediate liquidation that would yield far less for the estate and creditors.”); see also *In re Boston Generating, LLC*, 440 B.R. 302, 329 (Bankr. S.D.N.Y. 2010) (“[I]f the Debtors were to abandon the Sale Transaction...there is a material risk that, although the Debtors may not 'die,' their condition would significantly deteriorate”).

14. The Debtor submits that its decision to sell the Property is an exercise of reasonable business judgment. The Debtor has determined that the approval of the Purchase Agreement and consummation of the Sale to the Purchaser at this time, subject to higher and better offers for the Property, is in the best interests of the Debtor, its bankruptcy estate and its

creditors. The Debtor, in the exercise of its sound business judgment, has concluded that a prompt sale of the Property to the Purchaser pursuant to Bankruptcy Code Section 363(b), and outside of a plan, will return a greater benefit to the estate than any other alternative, including a forced sale. The Debtor seeks to establish procedures for the submission of competing, higher or better offers from other interested potential bidders. The Debtor believes that, following any auction generated under those procedures, it will be in a position to present to the Court and its creditors the best price and terms available for the Property.

### **The Sale Was Negotiated in Good Faith**

15. Bankruptcy Code Section 363(m) provides in part that “the reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith.” See 11 U.S.C. § 363(m).

16. The Purchase Agreement is the product of good faith, arm’s-length negotiations between the Debtor and the Purchaser represents the highest and best offer received by the Debtor for the Property to date. Moreover, the Purchaser is a third party unrelated to the Debtor, is not an “insider” of the Debtor within the meaning of Bankruptcy Code Section 101(31) and is not controlled by, or acting on behalf of, any insider of the Debtor. Finally, pursuant to the Bidding Procedures Order, the Debtor proposes to invite other interested parties to submit higher and better offers for the Property. See, e.g., In re After Six, Inc., 154 B.R. 876, 883 (Bankr. E.D. Pa. 1993) (finding “good faith” where sale is not to an insider).

17. Accordingly, the Debtor requests a finding by this Court that the Purchaser has acted in good faith and thus is entitled to the protections of a “good faith” purchaser under Bankruptcy Code Section 363(m).

**The Proposed Sale Satisfies the Requirements  
of Section 363(f) of the Bankruptcy Code**

18. Pursuant to Section 363(f) of the Bankruptcy Code, a debtor may sell property under Section 363(b) free and clear of liens, claims and encumbrances if one of the following conditions is satisfied: (i) applicable non-bankruptcy law permits sale of such property free and clear of such interest; (ii) the entity holding the lien, claim or encumbrance consents to the sale; (iii) the interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on the property; (iv) the interest is in bona fide dispute; or (v) the entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f); see *Smart World Techs., LLC v. Juno Online Servs. (In re. Smart World Tech., LLC)*, 423 F.3d 166, 169 n.3 (2d Cir. 2005) (“Section 363 permits sales of assets free and clear of claims and interests...It thus allows purchasers to acquire assets without any accompanying liabilities.”); *In re: Dundee Equity Corp.*, 1992 Bankr. LEXIS 436, at \*12 (Bankr. S.D.N.Y.) (“Section 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met”). Here, the interest of the Trusts’ and other liens is approximately \$750,000.00 (plus applicable interest and penalties). The Purchase Price under the Purchase Agreement is \$1,350,000.00 (subject to any higher and better offer which may arise from the Bidding Procedures). Therefore, the condition of Section 363(f)(iii) cited above will be met.

**This Court Has the Jurisdiction  
to Approve the Sale Without  
New York State Court Approval**

19. New York Religious Corporation Law § 12(1) provides, as relevant here:

“A religious corporation may not sell...any of its real property without applying for and obtaining leave of the court or the attorney general therefor



pursuant to section five hundred eleven—a of the not for profit corporation law...”

20. However, in a recent case involving the applicability of a similar New York statute, § 511 of the New York Not for Profit Corporation Law (which is referred to in New York Religious Corporation Law § 12(1), Judge Wiles found that: (a) pursuant to § 1221(e) of BAPCPA the requirement of New York State Court approval was not necessary in the Chapter 11 case before him seeking the sale of property by a New York Not for Profit Corporation; and (b) the Bankruptcy Court had exclusive jurisdiction over the not for profit corporation’s estate and the disposition of its assets. See, In re HHH Choices Health Plan, LLC, 554 BR 697 (Bankr. SDNY 2016).

21. The same reasoning should apply to the case at hand and it is respectfully submitted that this Court should exercise exclusive jurisdiction over the estate and assets of the Debtor, a New York Religious Corporation, and approve the sale proposed herein.

**Ultimate Dissolution of the Debtor Under  
the New York Religious Corporation Law**

23. Section 18 of the New York Religious Corporations Law (“Sec. 18”), as relevant here, provides as follows:

Whenever any religious corporation shall cease to act in its corporate capacity and keep up the religious services; it shall be lawful for the supreme court of this state, upon the application of a majority of the trustees thereof, in case said court shall deem it proper so to do, to order and decree a dissolution of such religious corporation, and for the purpose to order and direct a sale and conveyance of any and all property belonging to such corporation, and after providing for the ascertaining and payment of the debts of such corporation, and the necessary costs and expenses of such sale and proceedings for dissolution, so far as the proceeds of such sale shall be sufficient to pay the same; such court may order and direct any surplus of such proceeds remaining after paying such debts, costs and expenses, to be devoted and applied to any such religious, benevolent, or charitable objects or purposes as the said trustees may indicate by their petition and the said court may approve.

Such application to said court shall be made by petition, duly verified by said trustees, which petition shall state the particular reason or cause why such sale and dissolution are sought; the situation, condition and estimated value of the property of said corporation, and the particular object or purpose to which it is proposed to devote any surplus of the proceeds of such property...

24. Once the sale of the Property contemplated by the Motion is authorized by this Court and a closing of title with the Purchaser takes place, the Debtor intends to file a Chapter 11 plan of liquidation (“Plan”) and an accompanying disclosure statement.

25. When the Plan is confirmed by this Court, all assets other than the net proceeds of the Property are marshalled and reduced to cash proceeds, and all of the Debtor’s debts and claims are satisfied, it is the intention of the Debtor to apply under Sec.18 for the dissolution of the Church and the distribution of the surplus funds in accordance with the requirements of Sec.18.

26. It is assumed that this Court will take jurisdiction of the sale process as requested hereinabove and that compliance with the portions of Sec.18 which deal with requesting the New York Supreme Court to order and direct a sale and provide for the ascertaining and payment of debts will not have to be the subject of a State Court petition. In other words, the Debtor’s intention is that the Sec.18 petition will need to deal only with the disposition of the surplus proceeds of the sale.

#### **Approval of Assumption and Assignment of Leases**

27. The Debtor seeks authority to assume, assign, and/or transfer the Leases referred to in, and annexed to, the Purchase Agreement. Section 365 of the Bankruptcy Code authorizes a debtor to assume, assign and/or transfer executory contracts and unexpired leases subject to the approval of the Court, if the debtor cures any defaults under such contracts and leases and provides adequate assurance of future performance.

28. A debtor's decision to assume or reject an executory contract or unexpired lease must only satisfy the "business judgment test and...the debtor's business judgment should not be interfered with, absent a showing of bad faith or abuse of business discretion. *In re Chipwich, Inc.*, 54 B.R. 427, 430-431 (Bankr. S.D.N.Y. 1985) (citing *Control Data Corp. v. Zelman (In re Minges)*, 602 F.2d 38, 43 (2d Cir. 1979) ("It is enough, if, as a matter of business judgment, rejection of the burdensome contract may benefit the estate."); see also *In re Penn Traffic Co.*, 524 F.3d 373, 378 (2d Cir. 2008).

29. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but one option is a demonstration of the assignee's financial health and experience in managing the type of enterprise or property assigned. *In re Bygaph, Inc.*, 56 B.R. 596, 605-606 (Bankr. S.D.N.Y. 1986).

30. Under the Purchase Agreement the Purchaser is taking an assignment of the Leases. The Debtor submits that all requirements for the assumption and assignment of the Leases are satisfied.

31. Per the above, the requirements of Section 363(f)(iii) of the Bankruptcy Code are satisfied with respect to the proposed sale of Property and the assumption and assignment of the Leases. Therefore, subject to the limitations described herein the Debtor seeks authority to sell the Property and to assign the Leases free and clear of all liens, claims, interests and encumbrances with such liens, claims, interests and encumbrances, if any, to attach to the proceeds of sale subject to any rights and defenses that the Debtor may have with respect thereto.

#### **Proposed Bidding Procedures Governing Higher and Better Offers**

32. Bankruptcy courts approve bidding procedures under the "business judgment rule." See *The Official Committee of Subordinated Bondholders v. Integrated Resources, Inc.*,

147 B.R. 650, 658 (S.D.N.Y. 1992) (stating that a court should “assess the merits or fairness of business decisions only when a transaction is one involving a predominantly interested board with financial interests in the transaction adverse to the corporation”) (citing *AC Acquisitions Corp. v. Anderson, Clayton & Co.*, 519 A.2d 103, 111 (Del. Ch. 1986)). The proposed Bidding Procedures Order provides that the Sale is subject to higher and better offers. Accordingly, the Bidding Procedures Order includes provisions regarding buyer protections and other specific bidding procedures typical for transactions of this nature. In order to enhance the bidding, the Debtor seeks approval of the following procedures:

Qualified Bids: The Debtor will consider higher and better offers only if they constitute qualified bids (a “Qualified Bid”). A Qualified Bid is one that:

- (i) contains the identity of such potential bidder with an irrevocable offer to purchase the Property under the same terms as set forth in the Agreement,
- (ii) proposes a purchase price in an amount totaling at least \$1,400,000.00 (the “Minimum Overbid”) payable in cash at the Closing,
- (iii) is accompanied by delivery of a certified check payable to Second Southern Baptist Church of New York in the amount of \$140,000.00 (the “Competing Bid Deposit”) (the requirement for a cash Competing Bid Deposit will apply to any and all bidders including without limitation any bidder that intends to proceed by way of “credit bidding” its indebtedness), and
- (iv) provides proof satisfactory to the Debtor of the Competing Bidder’s financial ability to complete the transaction contemplated by such offer.

33. The Auction: If the Debtor does not receive any Qualified Bids, the Debtor will report to the Court and will proceed with a sale of the Property to Purchaser under the terms of

the Purchase Agreement. If the Debtor receives a Qualified Bid other than the bid of the Purchaser, the Debtor will conduct an auction (the “Auction”) on a date to be fixed by the Court.

34. The proposed Bidding Procedures Order also includes a requirement that the purchase price of any competing bid exceed the Purchase Price by at least \$50,000.00. The purpose of these bidding increments is to protect Purchaser from having its offer topped in a *de minimis* amount. The proposed increments will also cover some of the costs incurred by the Debtor and enhances the value of competing bids for the benefit of the bankruptcy estate and its creditors.

35. The Debtor submits that the bidding procedures, terms for competing offers, and related provisions in the Bidding Procedures Order are in the exercise of the Debtor’s business judgment, appropriate, in the best interests of the Debtor’s estate, and reasonable under the circumstances.

### **Sale Hearing**

36. The Debtor requests that, pursuant to Bankruptcy Code Section 102 and Bankruptcy Rule 2002, the notice for a hearing on the Motion (the “Sale Hearing”) be set for the earliest convenient date available on the Court’s calendar. Additionally, a proposed Notice, providing for an objection deadline and scheduling a hearing, is attached to the Bidding Procedures Order, which is annexed hereto as Exhibit E. At the Sale Hearing, the Debtor will request that the Court enter the Sale Order either authorizing the Debtor to consummate the Purchase Agreement, or, if higher bids are submitted, confirming the result and approving the Sale to the Successful Bidder, and granting related relief. At the Sale Hearing, the Successful Bidder will be required to use its best efforts to demonstrate to the satisfaction of the Debtor and

the Court its ability to satisfy the requirements of the Purchase Agreement for the purchase of the Property, and prove its status as a good faith purchaser under Bankruptcy Code Section 363(m).

37. Notice of the Sale Hearing, substantially in the form annexed to the Bidding Procedures Order submitted herewith, will be mailed by first class mail to the following: (a) the United States Trustee; (b) all known creditors; (c) all persons filing a notice of appearance and requesting notice under Bankruptcy Rule 2002; (d) all secured creditors, e) all parties to executory contracts and leases; (g) all governmental agencies and taxing authorities having an interest; and (h) to all other parties in interest required to be served by the Bankruptcy Rules within 5 business days after receipt by counsel of the Bidding Procedures Order approving the notice.

38. The Debtor submits that the foregoing procedures are reasonable under the circumstances and will offer interested parties notice of the Sale Motion and the opportunity to be heard thereon. The Debtor further submits that no party in interest will be prejudiced by the relief requested herein.

#### **Notice**

39. The Debtor has given notice of this Motion to the U.S. Trustee, the U.S. Internal Revenue Service, New York State Department of Taxation and Finance, the Attorney General of the State of New York, the New York City Department of Finance, the New York Environmental Control Board, New York City Water Department, New York City Fire Department, New York City Building Department, New York City Department of Rent and Housing Maintenance Emergency Services and New York City Department of Health, all parties which have filed notices of appearance or requests for notices in this case, and all persons and entities which the Debtor believes might conceivably have an interest in purchasing the Property.

40. No prior motion seeking the relief requested herein has been made by the Debtor to this or any other Court.

41. Finally, this Motion has been timely filed in accordance with the Conditional Order of the Court, dated May 19, 2017, a copy of which is annexed as Exhibit F.

**Conclusion**

WHEREFORE, the Debtor respectfully requests that this Court enter orders substantially in the form annexed hereto as Exhibits A and B and grant the Debtor such additional relief as the Court deems just and proper.

Dated: White Plains, New York  
June 20,2017

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Second Southern Baptist Church  
of New York

By: /s/Lawrence R. Reich  
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**Exhibit B**



**REICH REICH & REICH, P.C.**  
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**(914) 949-2126**  
**By: Lawrence R. Reich**  
**lreich@reichpc.com**

**UNITED STATES BANKRUPTCY COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

-----X

**In re:**

**SECOND SOUTHERN BAPTIST**  
**CHURCH OF NEW YORK,**

**Chapter 11**  
**Case No.**  
**15-12509(SHL)**

**Debtor.**

-----X

**ORDER: (A) APPROVING BIDDING PROCEDURES; AND**  
**(B) FIXING A HEARING DATE ON THE DEBTOR'S PROPOSED**  
**SALE OF ASSETS AND PROPOSED ASSUMPTION AND**  
**ASSIGNMENT OF LEASES PURSUANT TO 11 U.S.C. §§363 AND 365**

This matter coming before the Court on the Motion of the Debtor and Debtor-in-Possession, Second Southern Baptist Church of New York (the "Debtor") pursuant to 11 U.S.C. §§105(a), 363(b), 363(f), 363(m) and 365 for an Order (i) Conditionally Authorizing Sale of Certain Assets of the Debtor Subject to Competing Bids, Free and Clear of Liens, Claims and Encumbrances, and the Assumption and Assignment of Leases; and (ii) Approving Bidding Procedures ("the Motion"); and the Court having reviewed the Motion; and after a hearing before the Court on \_\_\_\_\_ (the "Hearing"), the Court FINDS that:

- (a) The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334.

(b) This is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

(c) Notice of the Motion (and service of this proposed Order) was sufficient under the circumstances.

(d) In the Motion, the Debtor proposes to sell real property owned by it located at located in Bronx County, New York, with street addresses of 1340 Edward L. Grant Highway, 59A West 170<sup>th</sup> Street, 53-59 West 170<sup>th</sup> Street, 53-59 West 170<sup>th</sup> Street, 1372A Jessup Avenue, Bronx, New York (the "Property") to S6 Realty Corp. (the "Purchaser") pursuant to the terms of a certain Purchase Agreement (the "Purchase Agreement"), and seeks authority to assume and assign certain leases referred to in, and attached to, the Purchase Agreement, for a total purchase price of \$1,350,000.00, including a good faith deposit of \$135,000.00.

The Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief herein granted;

IT IS HEREBY ORDERED THAT:

1. That portion of the Motion requesting the approval of Bidding Procedures is GRANTED.

2. Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

3. Within five (5) days after the entry of this Order, the Debtor shall serve, by first class mail, a copy of the Sale Notice attached to the Motion on all of the Debtor's creditors, counterparties to executory contracts and leases, the taxing authorities, equity holders, and entities which, in the past, have expressed some direct interest in acquiring the Debtor's Property, if any, all parties-in-interest, and all parties which have filed

notices of appearance and the United States Trustee. The Debtor shall provide a copy of the Purchase Agreement to any person who so requesting a copy.

4. Any party desiring to participate in the sale process (hereinafter a “Competing Bidder”) shall submit a bid (hereinafter a “Competing Bid”) by facsimile to Debtor’s Counsel:

Lawrence R. Reich, Esq.  
Reich Reich & Reich, P.C.  
235 Main Street, Suite 450  
White Plains, NY 10601  
Telephone: (914) 949-2126  
Facsimile: (914) 949-1604  
Email: [lreich@reichpc.com](mailto:lreich@reichpc.com)

Any such Competing Bids must be received by Debtor’s Counsel on or before \_\_\_\_\_ p.m. on \_\_\_\_\_, 2017. Any such Competing Bid shall (a) contain the identity of such potential bidder with an irrevocable offer to purchase the Property under the same terms as set forth in the Purchase Agreement, including without limitation that, notwithstanding any of the other terms and conditions of such offer, such offer shall be required to close in full not later than \_\_\_\_\_, 2017 (the “Closing”), (b) propose a purchase price in an amount totaling at least \$1,400,000.00 (the “Minimum Overbid”) payable in cash at the Closing, (c) be accompanied by delivery of a certified check payable to Second Southern Baptist Church of New York in the amount of \$140,000.00 (the “Competing Bid Deposit”) (the requirement for a cash Competing Bid Deposit will apply to any and all bidders including without limitation any bidder that intends to proceed by way of “credit bidding” its indebtedness), and (d) proof of satisfactory to the Debtor of the Competing Bidder’s financial ability to complete the transaction contemplated by such offer. All parties meeting the requirements set forth in this

paragraph, as well as the Purchaser, are referred to collectively in this Order as “Qualified Bidders.” The Debtor’s Counsel shall make the Competing Bids of all Competing Bidders available for Inspection and copying only upon request. Notwithstanding anything to the contrary in the foregoing, the Purchaser shall be deemed a Qualified Bidder.

5. Upon request of the parties and upon good cause shown, pursuant to Bankruptcy Rule 9006(c), the Court has fixed the time for the hearing on the proposed sale of assets, and hereby directs that the Purchaser and any Competing Bidders shall appear at \_\_\_\_\_ a.m. at a hearing to take place on \_\_\_\_\_, 2017 before the Honorable Sean H. Lane at the U.S. Bankruptcy Court, One Bowling Green, New York, New York 10004 (the “Sale Hearing”). At the Sale Hearing, the Court will resolve any disputes about whether a Competing Bidder is a Qualified Bidder.

6. At the Sale Hearing, the Court will hold an open auction among the Qualified Bidders. Overbids shall be in increments of at least \$50,000.00. At the close of the auction, the Court will determine the successful bidder (the “Successful Bidder”). If, for any reason, the Successful Bidder does not timely close, the second highest bidder shall have the option to acquire the Purchased Assets for the amount of its highest bid.

7. The Bid Deposit of the Successful Bidder shall be retained by counsel for the Debtor in an interest-bearing account. The Bid Deposits received from any other Qualified Bidders shall be returned to such bidders within five (5) days after conclusion of the Sale Hearing. If the Successful Bidder consummates the purchase contemplated by the Successful Bid, the Bid Deposit of the Successful Bidder shall be applied to the

Purchase Price. If the Successful Bidder fails to consummate the purchase contemplated by the Successful Bid, the Bid Deposit shall be forfeited to the Debtor.

8. If the Successful Bidder fails to consummate the purchase contemplated by the Successful Bid, the second highest bidder shall have the option to acquire the Property for the amount of its highest bid without further notice, hearing or other of the Court. The provisions of paragraph 8 shall apply to any sale to the second highest bidder.

9. In the event that no Competing Bids are received by the Debtor as set forth in paragraph 4 above, the Sale Hearing will take place in order for the Debtor to seek final approval of the sale of the Property pursuant to the terms of the Purchase Agreement and the Sale Order attached to the Motion.

10. The ultimate purchaser of the Property pursuant to the Sale and Assignment Order (the "Ultimate Purchaser") shall be entitled to the protections afforded by §363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of this Order will not affect the validity of the transfer of the Property to the Ultimate Purchaser.

11. This Order shall be effective immediately upon entry pursuant to Bankruptcy Rules 7062 and 9014, and no automatic stay of execution, pursuant to Rule 62(a) of the Federal Rules of Civil Procedure, applies with respect to this Order or any other Order entered in connection herewith. Bankruptcy Rule 6004(g) shall not apply to this Order.

Dated: New York, New York  
, 2017

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HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

## **Exhibit D**

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("**Contract**") is made as of June 9, 2017, by and between SECOND SOUTHERN BAPTIST CHURCH OF NEW YORK, a New York Religious Corporation, having its principal office at 1340 Edward L. Grant Highway, Bronx, New York ("**Seller**"), and S6 REALTY CORP. ("**Buyer**"), a New York corporation, having its principal office at 9 East 167<sup>th</sup> Street, Bronx, New York 10452.

### WITNESSETH

A. Seller is a debtor-in-possession in a Chapter 11 case pending in the United States Bankruptcy Court, Southern District of New York ("**Bankruptcy Court**"), Case No.15-12509-SHL, and the estate of the debtor is the owner of certain improved real property located at 1340 Edward L. Grant Highway, also known as 59A West 170<sup>th</sup> Street, also known as 53-59 West 170<sup>th</sup> Street, also known as 53-59 West 170<sup>th</sup> Street, and also known as 1372A Jessup Avenue, Bronx, New York ("**Property**").

B. Subject to the terms and conditions herein, Buyer desires to purchase the Property on the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Seller and Buyer agree as follows:

**Section 1. Agreement to Purchase and Sell** - Buyer agrees to purchase from Seller and Seller agrees to sell to Buyer, on the terms and conditions stated in this Contract, the Property which consists of commercial property and building further described on Schedule A, which is attached hereto and made a part hereof.

(a) **Purchase Price:** The Purchase Price is \$1,350,000.00 (One Million Three Hundred Fifty Thousand Dollars) (the "**purchase price**" or the "**Purchase Price**").

(b) **Closing.** The Buyer shall pay the Purchase Price within 30 days after the date this Contract is approved by final order of the Bankruptcy Court.

**Section 2. Deposit** - Upon Seller's execution of this Contract, Buyer shall deliver to Seller the sum of \$135,000.00 (One Hundred Thirty-Five Thousand Dollars) as a deposit ("**Deposit**") which shall include any interest that may accrue thereon, which amount shall be held by counsel for Seller, Reich Reich & Reich, P.C., in a separate interest-bearing account in the name of Reich Reich & Reich, P.C. as attorneys for of Seller. At closing, the Deposit shall be applied against the purchase price. If Buyer fails or refuses to perform its obligations hereunder for any reason other than the default of Seller in performance of Seller's obligations hereunder or a failure of the Bankruptcy Court to approve the transactions set forth in and contemplated by this Contract or to issue the Sale Order as set forth and defined in Section 5(a) below, then Seller may retain the Deposit as more particularly set forth in Section 9 hereof.

**Section 3. Title** - Title to the Property shall be delivered to Buyer and Buyer agrees to accept such title subject to all of the following (“**Permitted Exceptions**”):

(a) Rights of any utility company to construct, maintain and operate lines, wires, poles, cables, distribution boxes and appurtenances thereto, on, under or across the Property.

(b) Violations of laws, regulations, ordinances, orders or requirements, if any, noted in or issued by any governmental or municipal department or authority having jurisdiction over the Property and any conditions constituting such violations although not so noted or issued. Buyer acknowledges that Buyer shall accept the Premises at closing and shall close title subject to any and all governmental or quasi-governmental violations which may affect the Property as of the date of closing, with no diminution in the purchase price, and with no liability or responsibility of Seller to in any fashion correct any such violations, provided, however, that Seller shall pay any fines & penalties for such violations to the extent that funds are available from the proceeds of the sale. The provisions of this paragraph shall survive the delivery of the deed.

(c) Variations between the lines of record title and fences, hedges and the like and variations between record legal description and tax map description;

(d) Rights contained in instruments of record, if any, so far as the same may be of present force or effect, in favor of any public or quasi-public utility;

(e) Building, zoning and land use restrictions, ordinances and regulations affecting the Property heretofore or hereafter adopted by the State of New York, County of Bronx, City of New York, or by any other governmental authority having jurisdiction thereof, and all amendments or additions thereto now in effect or which are in force and effect on the date of closing hereunder;

(f) Any state of facts which an accurate survey or personal inspection of the Property would show; and

(g) Any and all other covenants, restrictions, agreements, reversions, easements and matters of record.

**Section 4. Closing** - (a) Closing (“**Closing**”) shall take place on a mutually agreed day and time at the office of Reich Reich & Reich, P.C., Seller’s attorneys, 235 Main Street, 4<sup>th</sup> Floor, White Plains, New York 10601.

(b) At the Closing, Seller shall deliver to Buyer the following: (i) a quitclaim deed (“**Deed**”) in proper form for recording which shall convey all of Seller’s right, title and interest in and to the Property to Buyer, subject only to the Permitted Exceptions; (ii) certificate of non-foreign status pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended; (iii) transfer tax declarations or returns; and (iv) such other documents as may be reasonably necessary and appropriate to consummate the Closing.

(c) At the Closing, Buyer shall pay the Purchase Price (less the Deposit and interest earned thereon).



(d) At the Closing, Buyer shall deliver to Seller the following: (i) transfer tax declarations or returns; and (ii) such other documents as may be reasonably necessary and appropriate to consummate the Closing.

(e) At the Closing, the Seller shall assign to the Buyer all of the Seller's right, title and interest in and to the leases attached hereto and made a part hereof as Exhibit B. Buyer shall assume all liabilities of Seller arising after the date of closing pursuant to the Leases.

(f) Buyer shall pay for (i) recording fees, or other similar fees or assessments; (ii) all costs incurred by Buyer in performing any feasibility studies and related tests and investigations (including any environmental assessments, audits or reports); and (iii) the charges and premium for its title insurance policy and the cost of the survey, if Buyer elects to obtain same. Each party shall pay its own attorneys' fees.

(g) Seller shall pay capital gains taxes, if any, and for documentary stamp taxes and real estate transfer taxes, if any.

(h) If at the time of the delivery of the deed the Property shall be affected by an assessment payable in installments, such assessment and installments, due and payable after the delivery of the Deed, shall not be deemed a lien upon the premises affected thereby, and such subsequent installments shall be payable by the Buyer. The annual installment for the year in which title closes shall be apportioned at Closing in the same manner as property taxes.

(i) Apportionments at Closing: all adjustments of rents, security deposits, taxes (including, but not limited to real estate taxes and BID charges) and water/sewer charges shall be made as of the day immediately preceding the day which title is closing and shall be computed by the calendar year and day method (365 or 366 days).

**Section 5. Closing Conditions** - (a) The obligation of Seller and Purchaser to comply with and perform under this contract is expressly conditioned upon the issuance of an order by the United States Bankruptcy Court for the Southern District of New York (a) approving the compliance and performance by Seller under this contract, (b) barring forever any Entity (as defined in United States Bankruptcy Code Section 101(15) (an "Entity") from asserting against the Purchaser, its successors and assigns, or against the Property, any mortgages, liens, interests, Claim (as defined in United States Bankruptcy Code Section 101(5)) or monetary encumbrances (including judgment liens) held by such Entity against the Debtor or the Property (collectively "Liens"), and (c) if so requested by Seller, allowing the Seller not to pay at closing any sums to remove, remedy or comply with Liens against the Debtor on the Property and instead such Liens are to attach to the proceeds of the sale (the "Sale Order").

(b) The obligation of Seller to sell and convey the Property under this Contract is subject to the satisfaction of the following conditions precedent or conditions concurrent (the satisfaction of which, except for (iii), may be waived only in writing by Seller): (i) delivery of all monies, and delivery and execution by Buyer of documents and other instruments required to be delivered by Buyer to Seller with respect to the Closing; (ii) there shall be no material uncured default by Buyer

of any of its obligations under this Contract; and (iii) all of the actions contemplated by this Contract shall have been approved, upon application of the Seller, by the Bankruptcy Court by final non-appealable order as set forth above. The Buyer understands and acknowledges that the application of the Seller for approval of the Contract will provide that the sale to the Buyer contemplated hereby is required by law to be subject to higher and better offers, if any, resulting from the bidding process which will be ordered by the Court. Should the Seller enter into a contract with a higher and better offer and close title under that contract, then in such event, this contract shall be deemed terminated and the Seller shall immediately return to the Buyer the Deposit and all documents deposited by the Buyer with the Seller.

(c) The obligation of Buyer to acquire the Property under this Contract is subject to the satisfaction of the following conditions precedent or conditions concurrent (the satisfaction of which, except for (iii), may be waived only in writing by Buyer): (i) there shall be no material uncured default by Seller of any of its obligations under this Contract; (ii) delivery and execution by Seller of all items and other instruments required to be delivered by Seller to Buyer with respect to the Closing; (iii) all of the actions contemplated by this Contract shall have been approved by the Bankruptcy Court by final non-appealable order; and (iv) the space in the Property currently occupied by the Seller is vacant five (5) days prior to the Closing and at the time of the Closing.

(d) In the event of a failure of any condition contained in Section 5(b) (i) or hereof, and if Seller has not failed to satisfy any of the conditions set forth in Sections 5(c)(i) or (ii), Seller may either: (i) terminate this Contract and retain the Deposit as more particularly set forth in Section 9 hereof, in which event all documents deposited by Buyer shall be immediately returned to Buyer, and all documents deposited by Seller shall be immediately returned to Seller; or (ii) close the transaction.

(d) In the event of a failure of any condition contained in Section 5(c) (i) or (ii) hereof, and if Buyer has not failed to satisfy any of the conditions set forth in Sections 5(b)(i) or (ii), Buyer may, in Buyer's sole discretion, either: (i) terminate this Contract, in which event the Deposit and all documents deposited by Buyer shall be immediately returned to Buyer and all documents deposited by Seller shall be immediately returned to Seller; or (ii) waive such condition and close the transaction without any reduction or offset to the Purchase Price.

(e) In the event of a failure of the condition contained in Sections 5(a), 5(b) (iii) and 5(c)(iii) hereof, this Contract shall automatically terminate, in which event the Deposit and all documents deposited by Buyer shall be immediately returned to Buyer and all documents deposited by Seller shall be immediately returned to Seller and thereupon this Contract shall be of no further force and effect.

**Section 6. Broker** - Buyer and Seller each warrant and represent to the other that neither has been involved with a real estate broker or agent in connection with the purchase of the Property, other than MK Property Group NYC. Corp. ("**Broker**") which was retained by Seller pursuant to order of the Bankruptcy Court. Seller shall be solely responsible for and shall pay any commission due to Broker pursuant to a separate agreement, such commission to be paid solely from the proceeds of sale directly payable to the Seller. No one shall have any right to any commission from Seller in connection with this transaction except pursuant to a written agreement signed by Seller

and approved by the Bankruptcy Court. The representations and warranties set forth in this Section 6 shall survive the Closing and not be merged therein.

**Section 7. Entry on Property** - Buyer will prevent its employees, agents, contractors and subcontractors, and the employees of any of them, from entering the Property prior to the Closing unless (i) prior notice thereof is given to Seller and (ii) Buyer agrees in writing in form and substance satisfactory to Seller, to indemnify and hold harmless Seller from any claims or liability of any kind or nature, including attorneys' fees and court costs, arising out of or related to any entry upon the Property by any such persons. Buyer will not be permitted to perform any work on the Property prior to the Closing unless otherwise agreed in writing.

**Section 8. Buyer Accepts Property "As Is"** - (a) Buyer acknowledges for itself and its successors and assigns, that Buyer (i) has been given a reasonable opportunity to inspect and investigate the Property and all aspects relating thereto, either independently or through agents and experts of Buyer's choosing; and (ii) is acquiring the Property based upon Buyer's own investigation and inspection thereof. SELLER AND BUYER AGREE THAT THE PROPERTY SHALL BE SOLD AND THAT BUYER SHALL ACCEPT POSSESSION OF THE PROPERTY ON THE CLOSING DATE "AS IS, WHERE IS, WITH ALL FAULTS" WITH NO RIGHT OF SET-OFF OR REDUCTION IN THE PURCHASE PRICE AND THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT, SUCH SALE SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF SELLER OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTY OF INCOME POTENTIAL OPERATING EXPENSES, USES, AND MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER DOES HEREBY DISCLAIM AND RENOUNCE ANY SUCH REPRESENTATION OR WARRANTY. BUYER SPECIFICALLY ACKNOWLEDGES THAT BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER OR ANY AGENTS OR BROKERS AS TO ANY MATTER CONCERNING THE PROPERTY.

(b) In addition to and not by way of limitation of the sale of the Property on an "AS IS" basis under this Contract, Buyer acknowledges that Seller makes no representations or warranties whatsoever regarding the presence or absence of any hazardous materials in, at, or under the Property. Seller shall have no obligation for the clean-up, removal or remediation of any hazardous materials. Under no circumstances whatsoever shall Buyer or its successors or assigns, or any person claiming any interest in the Property from, through or under Buyer, have any right or claim of any kind or nature whatsoever against Seller as the result of any matter related to such hazardous substances, all of which rights and claims are hereby released. Buyer has made such studies and investigations, conducted such tests and surveys, and engaged such specialists as Buyer has deemed appropriate to evaluate fairly the Property and its risks from an environmental and hazardous materials standpoint. Notwithstanding anything herein to the contrary, the acknowledgments of Buyer set forth in this Section 8(d) shall survive the Closing.

**Section 9. Performance** - If Buyer is unable or fails to perform any of its obligations under this Contract, Seller, with the consent of Lender, shall be entitled to terminate this Contract and retain the Deposit as liquidated damages. Buyer acknowledges that Seller's damages would be difficult to determine and that such sum is a reasonable estimate of Seller's damages. Buyer and

Seller further agree that this Section 9 is intended to, and does, liquidate the amount of damages due Seller, and shall be the exclusive remedy of Seller against Buyer, both at law and in equity arising from or related to a breach by Buyer of its obligation to consummate the transaction contemplated by this Contract.

**Section 10. Inability to Convey** - If Seller is unable to convey title in accordance with this Contract for any reason other than Buyer's default, the sole obligation of Seller shall be to refund the Deposit and all interest accrued thereon to Buyer, and upon such refund, this Contract shall be considered canceled, whereupon neither party shall have any liability to the other hereunder except as to Sections 6 and 8, which shall survive such cancellation.

**Section 11. Successors and Assigns** - This Contract shall bind Buyer and Seller and anyone succeeding to their interests in this Contract. Buyer shall have the right, by written notice to Seller not less than five (5) business days prior to Closing, to designate another entity to take title to all or any part of the Property. No such designation shall be valid unless and until Buyer has delivered to Seller an agreement whereby such designee shall assume the performance of and agree to be bound by all of the terms, covenants and conditions of this Contract. Notwithstanding such designation, the original named Buyer hereunder shall remain liable for all of the obligations of Buyer under this Contract and both the original named Buyer and such designee shall be deemed assumed the responsibility and liability described in Section 8(b). Except to the extent otherwise set forth herein, Buyer shall have no right to assign this Contract or its rights hereunder without the prior written consent of Seller. Nothing in this Section 11 shall be deemed to entitle Buyer to any extension of time under any provision of this Contract.

**Section 12. Amendment** - This Contract represents the parties' entire agreement. It supersedes all prior statements, negotiations and agreements, whether written or oral. This Contract may not be amended, altered or modified except by a written instrument executed by the party to be bound.

**Section 13. Notices** - During the term of this Contract, or until written notice of a change in address is delivered to the other parties, notices shall be sent in writing and delivered personally or sent by certified mail or by overnight delivery by a nationally recognized carrier to the following addresses:

To Seller:                   c/o Reich Reich & Reich, P.C.  
                                  235 Main Street, 4<sup>th</sup> Floor  
                                  White Plains, NY 10601

To Buyer:                   c/o Edward Shendell, Esq.  
                                  One James Avenue  
                                  Port Washington, NY 11050

All such notices shall be deemed to have been given on the date they are delivered personally, on the business day after the date on which they were sent by overnight delivery, or four days after the date they were sent by certified mail.

**Section 14. Choice of Law** - This Contract shall be governed by and construed in accordance with the laws of the State of New York.

**Section 15. Recording** - Neither this Contract nor any evidence of it shall be recorded.

**Section 16. Severability** - The invalidity or unenforceability of any provision of this Contract shall, at the option of either party, invalidate the entire Contract. Otherwise, the remainder of this Contract shall remain in full force and effect.

**Section 17. Attorneys' Fees** - If litigation arises out of or in connection with enforcement of this Contract, the prevailing party shall be entitled to recover its reasonable litigation costs, including expert witness fees and attorneys' fees.

**Section 18. Buyers Representations** - Buyer represents, warrants, and covenants to Seller that:

(a) Buyer (i) is a corporation, partnership, limited liability company, trust, association, municipal corporation or other applicable entity, as set forth in the introductory paragraph hereof, duly organized, validly existing and in good standing under the laws of the state of its organization as specified in such introductory paragraph, and if not organized in New York is duly qualified to do business in the State of New York, (ii) has the full power and authority to purchase the Property and to execute this Contract and all documents contemplated hereby, and (iii) has taken all actions and obtained all consents and approvals required for the consummation of the transactions contemplated by this Contract.

(b) This Contract constitutes valid and binding obligations of Buyer and is enforceable against Buyer in accordance with its terms. The execution of this Contract, delivery of the Deposit and the balance of the Purchase Price and all required documents, Buyer's performance of this Contract and the transaction contemplated hereby have been duly authorized by the requisite action on the part of Buyer.

(c) Neither the execution and delivery of, nor the performance under, this Contract or any other document executed and delivered by Buyer or any assignee or designee of Buyer (either contemporaneously herewith or at the Closing) in connection with this transaction is precluded by, will conflict with, result in a breach of or violate, any provision of (i) any existing Federal, state, local or other governmental or quasi-governmental law, statute, ordinance, restriction, rule or regulation, or (ii) any judgment, order decree, writ or injunction of any court or governmental department, commission, board, bureau, agency or instrumentality applicable to Buyer or such assignee or designee.

**Section 19. Seller's Representations** - Seller represents, warrants, and covenants to Buyer that:

(a) Seller is the debtor-in-possession in a Chapter 11 case pending in the United States Bankruptcy Court, Southern District of New York (Case No.15-12509-SHL).

(b) The submission of this agreement shall not constitute an offer by Seller to execute and exchange the same with Buyer, and is made subject to Seller's acceptance and execution thereof, and Seller is in no way bound under this Contract until it has been executed by the Seller.

(c) Neither the execution and delivery of, nor the performance under, this Contract or any other document executed and delivered by Seller (either contemporaneously herewith or at the Closing) in connection with this transaction is precluded by, will conflict with, result in a breach of or violate, any provision of (i) any existing Federal, state, local or other governmental or quasi-governmental law, statute, ordinance, restriction, rule or regulation, or (ii) any judgment, order decree, writ or injunction of any court or governmental department, commission, board, bureau, agency or instrumentality applicable to Seller.

(d) If any part or provision of this contract shall be finally determined to be void, illegal or legally unenforceable by any Court of competent jurisdiction, such determination shall not effect the validity of any other part or provisions of this contract, all of which shall remain in full force and effect as between Seller and Purchaser.

(e) No failure on the part of the Seller to exercise and no delay in exercising any right or remedy hereunder shall act as a waiver thereof, nor shall any single or partial exercise by the Seller of any right or remedy hereunder preclude any other or further exercise thereof. In the event that the Seller waives any default of the Buyer hereunder, such waiver shall not be construed as a waiver of any other default. No prior course of dealing between the parties or the respective attorneys or custom within the real estate industry shall in any way, manner or form modify or supplement the terms and conditions of this agreement.

(f) There are no other leases, licenses, occupants or tenancies at or for the Property except as set forth on Exhibit B and that no other person or entity have any other rights of tenancy or occupancy in or to the Property.

*- Signature Page Follows -*

**Section 20. Acceptance of Deed** - The acceptance of the Deed by Buyer shall be deemed to be a full performance of and discharge of any and all agreements and obligations on the part of Seller to be performed pursuant to the provisions of this Contract, except for such provisions of this Contract as are expressly stated to survive the delivery of the Deed.

**Seller - Second Southern Baptist Church of New York**

By: 

Name: 

Title: 

**Buyer - S6 REALTY CORP.**

By: 

Shalev Shoshani, Vice President

## **Exhibit A**



SCHEDULE A

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Bronx, City and State of New York, bounded and described as follows:

BEGINNING at the intersection of the northerly side of West 170<sup>th</sup> Street and the easterly side of Jessup Avenue, as said street and avenue are now legally opened; running thence northerly along the easterly side of Jessup Avenue 105.86 feet; thence easterly at right angles to Jessup Avenue, 78.89 feet to the westerly side of West 170<sup>th</sup> Street; thence southwesterly along the westerly side of West 170<sup>th</sup> Street, 119.30 feet to the intersection of the westerly side of West 170<sup>th</sup> Street and the northerly side of West 170<sup>th</sup> Street; and thence westerly along the northerly side of West 170<sup>th</sup> Street, 23.89 feet to the point or place of BEGINNING.

Being the same premises as was conveyed to the Second Southern Baptist Church of New York by Deed from Popham Realty Corp. dated December 24, 1976 which was recorded in Bronx County Registrar's Office on December 28, 1976.

**Exhibit B**



November 1, 2016 (FD) (FD)  
[End Date]. Landlord shall use its best efforts to give Tenant possession as nearly as possible at the beginning of the Lease term. If Landlord is unable to timely provide the Leased Premises, rent shall abate for the period of delay. Tenant shall make no other claim against Landlord for any such delay.

B. Tenant may renew the Lease for one extended term of 5 year (Renewal Term). Tenant shall exercise such renewal option, if at all, by giving written notice to Landlord not less than ninety (90) days prior to the expiration of the initial term. The renewal term shall be at the rental set forth below and otherwise upon the same covenants, conditions and provisions as provided in this Lease.

**2. Rental.**

A. Tenant shall pay to Landlord during the Initial Term rental of \$21,600.00 [Annual Rent] per year, payable in installments of \$1,800.00 [Monthly Rental Amount] per month. Each installment payment shall be due in advance on the first day of each calendar month during the lease term to Landlord at (Property Manager will pick rent) [Landlord's Designated Payment Address] or at such other place designated by written notice from Landlord or Tenant. The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis. Tenant shall also pay to Landlord a "Security Deposit" in the amount of \_\_\_\_\_ [Security Deposit].

B. The rental for any renewal lease term, if created as permitted under this Lease, shall be 21,600.00 [Annual Rent in Renewal Term] per year payable in installments of 1,800 [Monthly Rental Amount] per month.

**3. Use**

Notwithstanding the foregoing, Tenant shall not use the Leased Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device.

**4. Sublease and Assignment.**

Tenant shall have the right without Landlord's consent to assign this Lease to a corporation with which Tenant may merge or consolidate, to any subsidiary of Tenant, to any corporation under common control with Tenant, or to a purchaser of substantially all of Tenant's assets. Except as set forth above, Tenant shall not sublease all or any part of the Leased Premises, or assign this Lease in whole or in part without Landlord's consent, such consent not to be unreasonably withheld or delayed.

**5. Repairs.**

During the Lease term, Tenant shall make, at Tenant's expense, all necessary repairs to the Leased Premises. Repairs shall include such items as routine repairs of floors, walls, ceilings, and other parts of the Leased Premises damaged or worn through normal occupancy, except for major mechanical systems or the roof, subject to the obligations of the parties otherwise set forth in this Lease.

**6. Alterations and Improvements.**

Tenant, at Tenant's expense, shall have the right following Landlord's consent to remodel, redecorate, and make additions, improvements and replacements of and to all or any part of the Leased Premises from time to time as Tenant may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials. Tenant shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Leased Premises, and fasten the same to the premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on the Leased Premises by Tenant thereafter, shall remain Tenant's property free and clear of any claim by Landlord. Tenant shall have the right to remove the same at any time during the term of this Lease provided that all damage to the Leased Premises caused by such removal shall be repaired by Tenant at Tenant's expense.

**7. Property Taxes.**

Landlord shall pay, prior to delinquency, all general real estate taxes and installments of special assessments coming due during the Lease term on the Leased Premises, and all personal property taxes with respect to Landlord's personal property, if any, on the Leased Premises.

**B. Insurance:**

A. If the Leased Premises or any other part of the Building is damaged by fire or other casualty resulting from any act or negligence of Tenant or any of Tenant's agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and Tenant shall be responsible for the costs of repair not covered by insurance.

B. Landlord shall maintain fire and extended coverage insurance on the Building and the Leased Premises in such amounts as Landlord shall deem appropriate. Tenant shall be responsible, at its expense, for fire and extended coverage insurance on all of its personal property, including removable trade fixtures, located in the Leased Premises.

C. Tenant and Landlord shall, each at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the respective activities of each in the Building with the premiums thereon fully paid on or before due date, issued by and binding upon some insurance company approved by Landlord, such insurance to afford minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. Landlord shall be listed as an additional insured on Tenant's policy or policies of comprehensive general liability insurance, and Tenant shall provide Landlord with current Certificates of Insurance evidencing Tenant's compliance with this Paragraph. Tenant shall obtain the agreement of Tenant's insurers to notify Landlord that a policy is due to expire at least (10) days prior to such expiration. Landlord shall not be required to maintain insurance against thefts within the Leased Premises or the Building.

**9. Utilities.**

Tenant shall pay all charges for water, sewer, gas, electricity, telephone and other services and utilities used by Tenant on the Leased Premises during the term of this Lease unless otherwise expressly agreed in writing by Landlord. In the event that any utility or service provided to the Leased Premises is not separately metered, Landlord shall pay the amount due and separately invoice Tenant for Tenant's pro rata share of the charges. Tenant shall pay such amounts within fifteen (15) days of invoice. Tenant acknowledges that the Leased Premises are designed to provide standard office use electrical facilities and standard office lighting. Tenant shall not use any equipment or devices that utilize excessive electrical energy or which may, in Landlord's reasonable opinion, overload the wiring or interfere with electrical services to other tenants.

**10. Signs.**

Following Landlord's consent, Tenant shall have the right to place on the Leased Premises, at locations selected by Tenant, any signs which are permitted by applicable zoning ordinances and private restrictions. Landlord may refuse consent to any proposed signage that is in Landlord's opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Leased Premises or use of any other tenant. Landlord shall assist and cooperate with Tenant in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for Tenant to place or construct the foregoing signs. Tenant shall repair all damage to the Leased Premises resulting from the removal of signs installed by Tenant.

**11. Entry.**

Landlord shall have the right to enter upon the Leased Premises at reasonable hours to inspect the same, provided Landlord shall not thereby unreasonably interfere with Tenant's business on the Leased Premises.

**12. Parking.**

During the term of this Lease, Tenant shall have the non-exclusive use in common with Landlord, other tenants of the Building, their guests and invitees, of the non-reserved common automobile parking areas, driveways, and footways, subject to rules and regulations for the use thereof as prescribed from time to time by Landlord. Landlord reserves the right to designate parking areas within the Building or in reasonable proximity thereto, for Tenant and Tenant's agents and employees. Tenant shall provide Landlord with a list of all license numbers for the cars owned by Tenant, its agents and employees. Separated structured parking, if any, located about the Building is reserved for tenants of the Building who rent such parking spaces. Tenant hereby leases from Landlord \_\_\_\_\_ [Number of Parking Spaces] spaces in such structural parking area, such spaces to be on a first come first served basis. In consideration of the leasing to Tenant of such spaces, Tenant shall pay a monthly rental of \_\_\_\_\_ [Parking Space Rental] per space throughout the term of the Lease. Such rental shall be due and payable each month without demand at the time herein set for the payment of other monthly rentals, in addition to such other rentals.

### 13. Building Rules.

Tenant will comply with the rules of the Building adopted and altered by Landlord from time to time and will cause all of its agents, employees, invitees and visitors to do so; all changes to such rules will be sent by Landlord to Tenant in writing. The initial rules for the Building are attached hereto as Exhibit "A" and incorporated herein for all purposes.

### 14. Damage and Destruction.

Subject to Section 8 A. above, if the Leased Premises or any part thereof or any appurtenance thereto is so damaged by fire, casualty or structural defects that the same cannot be used for Tenant's purposes, then Tenant shall have the right within ninety (90) days following damage to elect by notice to Landlord to terminate this Lease as of the date of such damage. In the event of minor damage to any part of the Leased Premises, and if such damage does not render the Leased Premises unusable for Tenant's purposes, Landlord shall promptly repair such damage at the cost of the Landlord. In making the repairs called for in this paragraph, Landlord shall not be liable for any delays resulting from strikes, governmental restrictions, inability to obtain



necessary materials or labor or other matters which are beyond the reasonable control of Landlord, Tenant shall be relieved from paying rent and other charges during any portion of the Lease term that the Leased Premises are inoperable or unfit for occupancy, or use, in whole or in part, for Tenant's purposes. Rentals and other charges paid in advance for any such periods shall be credited on the next ensuing payments, if any, but if no further payments are to be made, any such advance payments shall be refunded to Tenant. The provisions of this paragraph extend not only to the matters aforesaid, but also to any occurrence which is beyond Tenant's reasonable control and which renders the Leased Premises, or any appurtenances thereto, inoperable or unfit for occupancy or use, in whole or in part, for Tenant's purposes.

#### **15. Default.**

If default shall at any time be made by Tenant in the payment of rent when due to Landlord as herein provided, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to Tenant by Landlord, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by Tenant, and such default shall continue for thirty (30) days after notice thereof in writing to Tenant by Landlord without correction thereof then having been commenced and thereafter diligently prosecuted, Landlord may declare the term of this Lease ended and terminated by giving Tenant written notice of such intention, and if possession of the Leased Premises is not surrendered, Landlord may reenter said premises. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity. Landlord shall use reasonable efforts to mitigate its damages.

#### **16. Quiet Possession.**

Landlord covenants and warrants that upon performance by Tenant of its obligations hereunder, Landlord will keep and maintain Tenant in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Leased Premises during the term of this Lease.

#### **17. Condemnation.**

If any legally constituted authority condemns the Building or such part thereof which shall make the Leased Premises unsuitable for leasing, this Lease shall cease when the public authority takes possession, and Landlord and Tenant shall account for rental as of that date. Such termination shall be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by the condemnation. Neither party shall have any rights in or to any award made to the other by the condemning authority.

**18. Subordination.**

Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the Leased Premises, or upon the Building and to any renewals, refinancing and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or other lien now existing or hereafter placed upon the Leased Premises of the Building, and Tenant agrees upon demand to execute such further instruments subordinating this Lease or attorning to the holder of any such liens as Landlord may request. In the event that Tenant should fail to execute any instrument of subordination herein required to be executed by Tenant promptly as requested, Tenant hereby irrevocably constitutes Landlord as its attorney-in-fact to execute such instrument in Tenant's name, place and stead, it being agreed that such power is one coupled with an interest. Tenant agrees that it will from time to time upon request by Landlord execute and deliver to such persons as Landlord shall request a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have been paid, stating that Landlord is not in default hereunder (or if Tenant alleges a default stating the nature of such alleged default) and further stating such other matters as Landlord shall reasonably require.

**19. Security Deposit.**

**21. Brokers.**

Tenant represents that Tenant was not shown the Premises by any real estate broker or agent and that Tenant has not otherwise engaged in, any activity which could form the basis for a claim for real estate commission, brokerage fee, finder's fee or other similar charge, in connection with this Lease.

**22. Waiver.**

No waiver of any default of Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

**23. Memorandum of Lease.**

The parties hereto contemplate that this Lease should not and shall not be filed for record, but in lieu thereof, at the request of either party, Landlord and Tenant shall execute a Memorandum of Lease to be recorded for the purpose of giving record notice of the appropriate provisions of this Lease.

**24. Headings.**

The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease.

**25. Successors.**

The provisions of this Lease shall extend to and be binding upon Landlord and Tenant and their respective legal representatives, successors and assigns.

**26. Consent.**

Landlord shall not unreasonably withhold or delay its consent with respect to any matter for which Landlord's consent is required or desirable under this Lease.

**27. Performance.**

If there is a default with respect to any of Landlord's covenants, warranties or representations under this Lease, and if the default continues more than fifteen (15) days after notice in writing from Tenant to Landlord specifying the default, Tenant may, at its option and without affecting any other remedy hereunder, cure such default and deduct the cost thereof from the next accruing installment or installments of rent payable hereunder until Tenant shall have been fully reimbursed for such expenditures, together with interest thereon at a rate equal to the lesser of twelve percent (12%) per annum or the then highest lawful rate. If this Lease terminates prior to Tenant's receiving full reimbursement, Landlord shall pay the unreimbursed balance plus accrued interest to Tenant on demand.

**28. Compliance with Law.**

Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Leased Premises. Landlord shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.

**29. Final Agreement.**

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

**30. Governing Law**

This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of New York.

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



[Landlord Signature] Manish DeBour



[Tenant Signature] PRADDEEP MUKERJEE







Part II

1. The Tenant shall not be liable for the cost of any repairs or maintenance of the building or its contents...

2. The Tenant shall not be liable for the cost of any repairs or maintenance of the building or its contents...

3. The Tenant shall not be liable for the cost of any repairs or maintenance of the building or its contents...

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13. The Tenant shall not be liable for the cost of any repairs or maintenance of the building or its contents...

14. The Tenant shall not be liable for the cost of any repairs or maintenance of the building or its contents...

15. The Tenant shall not be liable for the cost of any repairs or maintenance of the building or its contents...



to make the demised premises ready for occupancy, or because of the fact that a certificate of occupancy has not been obtained, or for any other reason, Owner shall not be liable for any disability or failure to give possession on said date and the validity of the lease shall not be affected under such circumstances. The date of commencement of the term of this lease shall be the date of the certificate of occupancy for the premises, or if no such certificate is obtained, the date of the commencement of the term of this lease shall be the date of the commencement of the term of this lease as determined by the local government authority having jurisdiction over the premises. The date of commencement of the term of this lease shall be the date of the commencement of the term of this lease as determined by the local government authority having jurisdiction over the premises.

**No Warranty.** 24. The failure of Owner to seek redress for violation of the conditions of this lease on the part of any of the tenants or other persons residing in the premises shall not constitute a breach of this lease. The failure of Owner to seek redress for violation of the conditions of this lease on the part of any of the tenants or other persons residing in the premises shall not constitute a breach of this lease. The failure of Owner to seek redress for violation of the conditions of this lease on the part of any of the tenants or other persons residing in the premises shall not constitute a breach of this lease.

**Warranty.** 25. It is mutually agreed by and between Owner and Tenant that the respective parties herein shall not be held liable for any damage to the premises or contents thereof caused by fire, theft, or other causes, unless such damage is caused by the negligence of the party herein liable therefor. The failure of Owner to seek redress for violation of the conditions of this lease on the part of any of the tenants or other persons residing in the premises shall not constitute a breach of this lease.

**Liability of Tenant.** 26. This lease and the obligation of Tenant to pay rent hereunder shall be performed by Tenant and shall not be performed by any other person. The failure of Owner to seek redress for violation of the conditions of this lease on the part of any of the tenants or other persons residing in the premises shall not constitute a breach of this lease.

**Notice.** 27. Any notice required by this lease shall be given to the other party to this lease at the address specified in this lease. The failure of Owner to seek redress for violation of the conditions of this lease on the part of any of the tenants or other persons residing in the premises shall not constitute a breach of this lease.

**Water Charges.** 28. If Tenant requires, he shall be responsible for any charges for water or gas or other utility services. The failure of Owner to seek redress for violation of the conditions of this lease on the part of any of the tenants or other persons residing in the premises shall not constitute a breach of this lease.

shall be payable by Tenant as additional rent. If the building or the demised premises or any part thereof be supplied with water through a meter, the cost of such water shall be paid by Tenant. The failure of Owner to seek redress for violation of the conditions of this lease on the part of any of the tenants or other persons residing in the premises shall not constitute a breach of this lease.

**Repairs.** 29. Anything else done in this lease by the Tenant, or by any person acting for the Tenant, shall be at the expense of the Tenant. The failure of Owner to seek redress for violation of the conditions of this lease on the part of any of the tenants or other persons residing in the premises shall not constitute a breach of this lease.

**Repairs.** 30. As long as Tenant is not in default under any of the provisions of this lease beyond the applicable grace period provided in this lease, the Tenant shall be responsible for the cost of repairs to the premises. The failure of Owner to seek redress for violation of the conditions of this lease on the part of any of the tenants or other persons residing in the premises shall not constitute a breach of this lease.

**Security.** 31. Tenant has deposited with Owner the sum of \$2000 as security for the faithful performance of the terms of this lease. The failure of Owner to seek redress for violation of the conditions of this lease on the part of any of the tenants or other persons residing in the premises shall not constitute a breach of this lease.

**Capitulation.** 32. The Capitions are inserted only as a matter of convenience and for reference and in no way define the intent or effect of the provisions of any provision hereof.

**Definition.** 33. The term "Owner" as used in this lease means the person or persons who own the premises. The failure of Owner to seek redress for violation of the conditions of this lease on the part of any of the tenants or other persons residing in the premises shall not constitute a breach of this lease.

*Handwritten notes:*  
D.A.A. A.  
\$2000  
Deposit  
[Signature]  
[Initials]

Tenant's proportionate share as determined by landlord.

...shall be deemed to have been accepted by the Tenant...

24. If an alteration shall be made... the Tenant shall be responsible for the cost of such alteration...

25. Tenant and Tenant's agents, employees, agents, visitors and licensees shall observe the Rules and Regulations... and shall be held liable for any damage or injury...

26. Owner shall replace at the expense of Tenant, any and all glass and other glassware... broken from any cause whatsoever...

27. Tenant shall pay all its own utilities for the demised premises.

28. Monthly rent payments received after the 15th of the month shall include a late payment fee of \$150.00.

29. This lease shall be deemed to have been signed and sealed this day and year first above written.

Witness for Owner:
Witness for Tenant:

27. Tenant agrees that the value of the demised premises and the reputation of the Owner will be seriously injured if the demised premises are used for any business or mercantile purposes... Tenant hereby warrants that it will not use the demised premises for any such business or mercantile purposes...

28. Tenant, at any time, and from time to time, upon at least 10 days prior notice to Owner, shall be permitted to enter the demised premises for the purpose of inspecting and repairing the same...

29. The covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of Owner and Tenant and their respective heirs, assigns, executors, administrators, successors and assigns...

SECOND SOUTHERN BAPTIST CHURCH OF NEW YORK
[Signature]
[Signature]























to make the premises ready for occupancy... shall be payable by Tenant as additional rent...

shall be payable by Tenant as additional rent... If the facilities of the building are not ready for occupancy...

24. The failure of Owner to seek redress for violation of any law... shall be payable by Tenant as additional rent...

25. Anything else done in this lease in the contrary notwithstanding... shall be payable by Tenant as additional rent...

26. This lease and the obligation of Tenant to pay rent hereunder... shall be payable by Tenant as additional rent...

27. Except as otherwise provided in this lease... shall be payable by Tenant as additional rent...

28. If Tenant requires use of additional water for any purpose... shall be payable by Tenant as additional rent...

29. The conditions are inserted only as a matter of convenience... shall be payable by Tenant as additional rent...

30. This lease and the obligation of Tenant to pay rent hereunder... shall be payable by Tenant as additional rent...

31. The term "Owner" as used in this lease means only the Owner... shall be payable by Tenant as additional rent...

32. If Tenant requires use of additional water for any purpose... shall be payable by Tenant as additional rent...

33. The conditions are inserted only as a matter of convenience... shall be payable by Tenant as additional rent...

Tenant's proportionate share as determined by landlord.









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34. If an amendment shall be made with respect to the terms of this lease, it shall be made in writing and signed by both parties to the lease. Any oral agreement shall be unenforceable.

35. If an amendment shall be made with respect to the terms of this lease, it shall be made in writing and signed by both parties to the lease. Any oral agreement shall be unenforceable.

36. Tenant and Tenant's servants, employees, agents, licensees and invitees shall comply with all laws, ordinances, rules and regulations of the City and County of New York and any other applicable laws, ordinances, rules and regulations of any other governmental authority. Tenant shall be responsible for obtaining all necessary permits, licenses and approvals from the appropriate governmental authority for the use of the premises. Tenant shall be responsible for obtaining all necessary permits, licenses and approvals from the appropriate governmental authority for the use of the premises.

37. Tenant shall pay all taxes and assessments levied on the premises, including but not limited to property taxes, sales taxes, and other taxes and assessments. Tenant shall be responsible for obtaining all necessary permits, licenses and approvals from the appropriate governmental authority for the use of the premises.

38. Tenant shall pay all its own utilities for the demised premises.

39. Tenant, Owner and Tenant have respectively signed and sealed this lease as of the day and year first above written.

Witness for Owner:

Witness for Tenant:

37. Tenant agrees that the value of the demised premises and the reputation of the Owner will be seriously injured if the demised premises are used for any obscene or pornographic purposes or any other purpose prohibited by the laws, ordinances, rules and regulations of the City and County of New York. Tenant agrees that the Owner will not permit any of these uses on the premises, and that the Owner shall have the right to terminate this lease if the demised premises are used for any such purpose. Tenant agrees that the Owner will not permit any of these uses on the premises, and that the Owner shall have the right to terminate this lease if the demised premises are used for any such purpose.

38. Tenant, at any time and from time to time, upon at least 10 days' notice to the Owner, shall execute and deliver to the Owner, and shall cause to be executed and delivered to the Owner, a certificate of assignment of this lease to the Owner, if assignment of this lease is permitted and in all cases and effect of this lease shall be modified so that the same shall cover and bear the same obligations and liabilities as the original lease, and the original lease shall be deemed to have been assigned to the Owner, and the Owner shall be deemed to have accepted such assignment.

39. The covenants, conditions and agreements contained in this lease shall bind and apply to the heirs, assigns, executors, administrators, successors and assigns of the Owner and Tenant and their respective heirs, assigns, executors, administrators, successors and assigns. Tenant shall look only to the Owner for the collection of any moneys due or payable by the Owner to the Tenant, and to the property assets of the Owner, and to the property assets of the Owner (or any partner, partner, officer or director thereof, disclosed or undisclosed), shall be subject to levy, execution or other enforcement procedure in the satisfaction of the Owner's and Tenant's obligations under or with respect to this lease, the relationship of the Owner and Tenant hereunder, or Tenant's use and occupancy of the demised premises.

SECOND SOUTHERN BAPTIST CHURCH OF NEW YORK

By: [Signature]  
David Debraun

Sea Fruits, Inc.  
By: [Signature]  
Victor Alvarez



COMMERCIAL Double Net LEASE AGREEMENT

Pg 48 of 65

This Commercial Lease Agreement ("Lease") is made and effective October 1<sup>st</sup>, 2010 [Date], by and between Mario Delbrun (property manager) Mario Delbrun [Landlord] ("Landlord") and Jesus Jimenez [Tenant] ("Tenant").

Landlord is the owner of land and improvements commonly known and numbered as 1340<sup>A</sup> Edward L. Grant Hwy [Address of Building]

and legally described as follows (the "Building"): MD jewelry and wireless [Legal Description of Building]

Landlord makes available for lease a portion of the Building designated as 1340<sup>A</sup> Edward L. Grant Hwy [Suite or Other Number of Leased Building] (the "Leased Premises").

Landlord desires to lease the Leased Premises to Tenant, and Tenant desires to lease the Leased Premises from Landlord for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

THEREFORE, in consideration of the mutual promises herein, contained and other good and valuable consideration, it is agreed:

1. Term.

A. Landlord hereby leases the Leased Premises to Tenant, and Tenant hereby leases the same from Landlord, for an "Initial Term" beginning October 1<sup>st</sup>, 2010 [Start Date] and ending April 1<sup>st</sup>, 2013 → MD

B. Tenant may renew the Lease for one extended term of \_\_\_\_\_ [Renewal Term]. Tenant shall exercise such renewal option, if at all, by giving written notice to Landlord not less than ninety (90) days prior to the expiration of the Initial Term. The renewal term shall be at the rental set forth below and otherwise upon the same covenants, conditions and provisions as provided in this Lease.

**2. Rental.**

A. Tenant shall pay to Landlord during the Initial Term rental of \$15,120.00 MD [Annual Rent] per year, payable in installments of \$1,260.00 MD [Monthly Rental Amount] per month. Each installment payment shall be due in advance on the first day of each calendar month during the lease term to Landlord at (Property Manager will pick rent), \_\_\_\_\_ [Landlord's Designated Payment Address] or at such other place designated by written notice from Landlord or Tenant. The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis. Tenant shall also pay to Landlord a "Security Deposit" in the amount of \_\_\_\_\_ [Security Deposit].

B. The rental for any renewal lease term, if created as permitted under this Lease, shall be \_\_\_\_\_ [Annual Rent in Renewal Term] per year payable in installments of \_\_\_\_\_ [Monthly Rental Amount] per month.

**3. Use**

Notwithstanding the forgoing, Tenant shall not use the Leased Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device.

Tenant shall have the right without Landlord's consent, to assign this Lease to a corporation with which Tenant may merge or consolidate, to any subsidiary of Tenant, to any corporation under common control with Tenant, or to a purchaser of substantially all of Tenant's assets. Except as set forth above, Tenant shall not sublease all or any part of the Leased Premises, or assign this Lease in whole or in part without Landlord's consent, such consent not to be unreasonably withheld or delayed.

**5. Repairs.**

During the Lease term, Tenant shall make, at Tenant's expense, all necessary repairs to the Leased Premises. Repairs shall include such items as routine repairs of floors, walls, ceilings, and other parts of the Leased Premises damaged or worn through normal occupancy, except for major mechanical systems or the roof, subject to the obligations of the parties otherwise set forth in this Lease.

**6. Alterations and Improvements.**

Tenant, at Tenant's expense, shall have the right following Landlord's consent to remodel, redecorate, and make additions, improvements and replacements of and to all or any part of the Leased Premises from time to time as Tenant may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials. Tenant shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Leased Premises, and fasten the same to the premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on the Leased Premises by Tenant thereafter, shall remain Tenant's property free and clear of any claim by Landlord. Tenant shall have the right to remove the same at any time during the term of this Lease provided that all damage to the Leased Premises caused by such removal shall be repaired by Tenant at Tenant's expense.

**7. Property Taxes.**



Landlord shall pay, prior to delinquency, all general real estate taxes and installments of special assessments coming due during the Lease term on the Leased Premises, and all personal property taxes with respect to Landlord's personal property, if any, on the Leased Premises.

**8. Insurance.**

A. If the Leased Premises or any other part of the Building is damaged by fire or other casualty resulting from any act or negligence of Tenant or any of Tenant's agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and Tenant shall be responsible for the costs of repair not covered by insurance.

B. Landlord shall maintain fire and extended coverage insurance on the Building and the Leased Premises in such amounts as Landlord shall deem appropriate. Tenant shall be responsible, at its expense, for fire and extended coverage insurance on all of its personal property, including removable trade fixtures, located in the Leased Premises.

C. Tenant and Landlord shall, each at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the respective activities of each in the Building with the premiums thereon fully paid on or before due date, issued by and binding upon some insurance company approved by Landlord, such insurance to afford minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. Landlord shall be listed as an additional insured on Tenant's policy or policies of comprehensive general liability insurance, and Tenant shall provide Landlord with current Certificates of Insurance evidencing Tenant's compliance with this Paragraph. Tenant shall obtain the agreement of Tenant's insurers to notify Landlord that a policy is due to expire at least (10) days prior to such expiration. Landlord shall not be required to maintain insurance against thefts within the Leased Premises or the Building.



**9. Utilities.**

Tenant shall pay all charges for water, sewer, gas, electricity, telephone and other services and utilities used by Tenant on the Leased Premises during the term of this Lease unless otherwise expressly agreed in writing by Landlord. In the event that any utility or service provided to the Leased Premises is not separately metered, Landlord shall pay the amount due and separately invoice Tenant for Tenant's pro rata share of the charges. Tenant shall pay such amounts within fifteen (15) days of invoice. Tenant acknowledges that the Leased Premises are designed to provide standard office use electrical facilities and standard office lighting. Tenant shall not use any equipment or devices that utilize excessive electrical energy or which may, in Landlord's reasonable opinion, overload the wiring or interfere with electrical services to other tenants.

**10. Signs.**

Following Landlord's consent, Tenant shall have the right to place on the Leased Premises, at locations selected by Tenant, any signs which are permitted by applicable zoning ordinances and private restrictions. Landlord may refuse consent to any proposed signage that is in Landlord's opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Leased Premises or use of any other tenant. Landlord shall assist and cooperate with Tenant in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for Tenant to place or construct the foregoing signs. Tenant shall repair all damage to the Leased Premises resulting from the removal of signs installed by Tenant.

**11. Entry.**

Landlord shall have the right to enter upon the Leased Premises at reasonable hours to inspect the same, provided Landlord shall not thereby unreasonably interfere with Tenant's business on the Leased Premises.

**12. Parking.**



necessary materials or labor or other matters which are beyond the reasonable control of Landlord. Tenant shall be relieved from paying rent and other charges during any portion of the Lease term that the Leased Premises are inoperable or unfit for occupancy, or use, in whole or in part, for Tenant's purposes. Rentals and other charges paid in advance for any such periods shall be credited on the next ensuing payments, if any, but if no further payments are to be made, any such advance payments shall be refunded to Tenant. The provisions of this paragraph extend not only to the matters aforesaid, but also to any occurrence which is beyond Tenant's reasonable control and which renders the Leased Premises, or any appurtenance thereto, inoperable or unfit for occupancy or use, in whole or in part, for Tenant's purposes.

**15. Default.**

If default shall at any time be made by Tenant in the payment of rent when due to Landlord as herein provided, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to Tenant by Landlord, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by Tenant, and such default shall continue for thirty (30) days after notice thereof in writing to Tenant by Landlord without correction thereof then having been commenced and thereafter diligently prosecuted, Landlord may declare the term of this Lease ended and terminated by giving Tenant written notice of such intention, and if possession of the Leased Premises is not surrendered, Landlord may reenter said premises. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity. Landlord shall use reasonable efforts to mitigate its damages.

**16. Quiet Possession.**

Landlord covenants and warrants that upon performance by Tenant of its obligations hereunder, Landlord will keep and maintain Tenant in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Leased Premises during the term of this Lease.

**17. Condemnation.**

If any legally constituted authority condemns the Building or such part thereof which shall make the Leased Premises unsuitable for leasing, this Lease shall cease when the public authority takes possession, and Landlord and Tenant shall account for rental as of that date. Such termination shall be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by the condemnation. Neither party shall have any rights in or to any award made to the other by the condemning authority.

**18. Subordination.**

Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the Leased Premises, or upon the Building and to any renewals, refinancing and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or other lien now existing or hereafter placed upon the Leased Premises of the Building, and Tenant agrees upon demand to execute such further instruments subordinating this Lease or attorning to the holder of any such liens as Landlord may request. In the event that Tenant should fail to execute any instrument of subordination herein required to be executed by Tenant promptly as requested, Tenant hereby irrevocably constitutes Landlord as its attorney-in-fact to execute such instrument in Tenant's name, place and stead, it being agreed that such power is one coupled with an interest. Tenant agrees that it will from time to time upon request by Landlord execute and deliver to such persons as Landlord shall request a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have been paid, stating that Landlord is not in default hereunder (or if Tenant alleges a default stating the nature of such alleged default) and further stating such other matters as Landlord shall reasonably require.

**19. Security Deposit.**

The Security Deposit shall be held by Landlord without liability for interest and as security for the performance by Tenant of Tenant's covenants and obligations under this Lease, it being expressly understood that the Security Deposit shall not be considered an advance payment of rental or a measure of Landlord's damages in case of default by Tenant. Unless otherwise provided by mandatory non-waivable law or regulation, Landlord may commingle the Security Deposit with Landlord's other funds. Landlord may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrearages of rent or to satisfy any other covenant or obligation of Tenant hereunder. Following any such application of the Security Deposit, Tenant shall pay to Landlord on demand the amount so applied in order to restore the Security Deposit to its original amount. If Tenant is not in default at the termination of this Lease, the balance of the Security Deposit remaining after any such application shall be returned by Landlord to Tenant. If Landlord transfers its interest in the Premises during the term of this Lease, Landlord may assign the Security Deposit to the transferee and thereafter shall have no further liability for the return of such Security Deposit.

**20. Notice.**

Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

If to Landlord to:

*second southern Baptist church*

*[Signature]*  
\_\_\_\_\_  
(Landlord)

\_\_\_\_\_  
\_\_\_\_\_  
[Landlord's Address]

If to Tenant to:

*[Signature]*  
\_\_\_\_\_  
(Tenant)

\_\_\_\_\_  
\_\_\_\_\_  
[Tenant's Address]

Landlord and Tenant shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

**21. Brokers.**

Tenant represents that Tenant was not shown the Premises by any real estate broker or agent and that Tenant has not otherwise engaged in, any activity which could form the basis for a claim for real estate commission, brokerage fee, finder's fee or other similar charge, in connection with this Lease.

**22. Waiver.**

No waiver of any default of Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

**23. Memorandum of Lease.**

The parties hereto contemplate that this Lease should not and shall not be filed for record, but in lieu thereof, at the request of either party, Landlord and Tenant shall execute a Memorandum of Lease to be recorded for the purpose of giving record notice of the appropriate provisions of this Lease.

**24. Headings.**

The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease.

**25. Successors.**

The provisions of this Lease shall extend to and be binding upon Landlord and Tenant and their respective legal representatives, successors and assigns.

**26. Consent.**

Landlord shall not unreasonably withhold or delay its consent with respect to any matter for which Landlord's consent is required or desirable under this Lease.

**27. Performance.**

If there is a default with respect to any of Landlord's covenants, warranties or representations under this Lease, and if the default continues more than fifteen (15) days after notice in writing from Tenant to Landlord specifying the default, Tenant may, at its option and without affecting any other remedy hereunder, cure such default and deduct the cost thereof from the next accruing installment or installments of rent payable hereunder until Tenant shall have been fully reimbursed for such expenditures, together with interest thereon at a rate equal to the lesser of twelve percent (12%) per annum or the then highest lawful rate. If this Lease terminates prior to Tenant's receiving full reimbursement, Landlord shall pay the un reimbursed balance plus accrued interest to Tenant on demand.

**28. Compliance with Law.**

Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Leased Premises. Landlord shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.

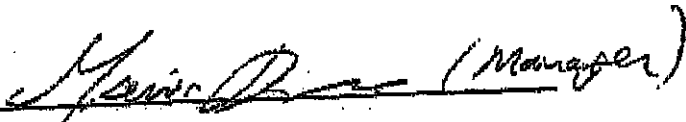
**29. Final Agreement.**

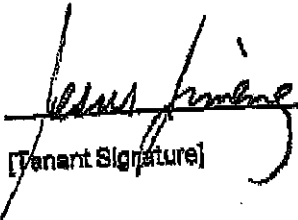
This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

**30. Governing Law.**

This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of New York.

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

  
\_\_\_\_\_  
[Landlord Signature]

  
\_\_\_\_\_  
[Tenant Signature]









of the building... shall be deemed to be... of the building... shall be deemed to be...

Owner shall... shall be deemed to be... of the building... shall be deemed to be...

25. (c) Any... shall be deemed to be... of the building... shall be deemed to be...

26. (a) In... shall be deemed to be... of the building... shall be deemed to be...

27. (1) If... shall be deemed to be... of the building... shall be deemed to be...

28. In case of any... shall be deemed to be... of the building... shall be deemed to be...

29. If... shall be deemed to be... of the building... shall be deemed to be...

30. Neither... shall be deemed to be... of the building... shall be deemed to be...

31. Upon... shall be deemed to be... of the building... shall be deemed to be...

32. Owner... shall be deemed to be... of the building... shall be deemed to be...

33. If... shall be deemed to be... of the building... shall be deemed to be...

34. If... shall be deemed to be... of the building... shall be deemed to be...





Indicates contact with respect to HVAC services, whenever it is necessary provided in this lease, the consent shall not be unreasonably withheld, such consent shall not be unreasonably delayed.

**Assignment**  
34. If an assignment shall be made, then and in addition to the terms herein, it shall be subject to the following: (a) The assignment shall be subject to the approval of the Owner, which approval shall be given or withheld at the discretion of the Owner. (b) The assignment shall be subject to the approval of the Tenant, which approval shall be given or withheld at the discretion of the Tenant. (c) The assignment shall be subject to the approval of the Board of Directors of the Corporation, which approval shall be given or withheld at the discretion of the Board of Directors of the Corporation.

**Rules and Regulations**  
35. Tenant and Tenant's servants, employees, agents, visitors and invitees shall be bound fully and completely with the rules and regulations and other rules and regulations of the Owner of the premises, which rules and regulations shall be posted in a conspicuous place on the premises. Tenant shall be deemed to have accepted the rules and regulations of the Owner of the premises, which rules and regulations shall be posted in a conspicuous place on the premises, and shall be deemed to have accepted the rules and regulations of the Owner of the premises, which rules and regulations shall be posted in a conspicuous place on the premises.

**Class**  
36. Owner shall replace, at the expense of Tenant, any and all glass and other glass damaged or broken from any cause whatsoever in and about the demised premises. Owner may insure and keep insured. Tenant's expense of glass and other glass in the demised premises for and in the name of Owner shall be the same as the expense of glass and other glass in the demised premises for and in the name of Tenant at such time as the glass and other glass shall be damaged or broken from any cause whatsoever in and about the demised premises.

40. Tenant shall pay all its own utilities for the demised premises.

Witness: This lease and the Owner and Tenant have respectively signed and sealed this lease as of this day and year first above written.

Witness for Owner:

SECOND SOUTHERN BAPTIST CHURCH OF NEW YORK

*[Signature]*  
Mario Bellizzi, Agent

*[Signature]*  
Florida A. Chohokar, Tenant

Witness for Tenant:

\_\_\_\_\_

ACKNOWLEDGEMENT

STATE OF NEW YORK,

SS:

COUNTY OF

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

NOTARY PUBLIC