

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IN THE MATTER OF:	)	Chapter 11
	)	
TRINITY 83 DEVELOPMENT, LLC,	)	16-24652
Debtor.	)	
	)	

**NOTICE**

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on the 24<sup>th</sup> day of October, 2017, at the hour of 9:30 a.m. or as soon thereafter as counsel may be heard, I shall appear before the Honorable DEBORAH L. THORNE, Bankruptcy Judge, in the Courtroom usually assigned to her, No. 613, United States District Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, or before any other Bankruptcy Judge who may be sitting in his place and stead and shall then and there present the attached Motion, at which time and place you may appear, if you so see fit.

/s/ Gina B. Krol  
GINA B. KROL  
105 W. Madison St., Suite 1100  
Chicago, IL 60602  
312/368-0300

GINA B. KROL, on oath, deposes and states that she served a copy of the foregoing Notice together with a copy of the Application attached hereto on the persons shown above by the means set forth herein, this 18<sup>th</sup> day of October, 2017.

/s/ Gina B. Krol

**SERVICE LIST**

US TRUSTEE  
c/o Ms. Gretchen Silver  
Via CM/ECF

Colfin Funding Midwest LLC  
c/o Ms. Lauren Newman  
Via CM/ECF

Mr. George Yukich  
c/o Mr. John Cooney  
Via CM/ECF

19100 Crescent Building LLC  
c/o Ms. Shiela Ramacci  
Via CM/ECF

**IN THE UNITED BANKRUPTCY COURT  
FOR THE NORTHERN ILLINOIS  
EASTERN DIVISION**

<b>IN THE MATTER OF:</b>	)	<b>Chapter 11</b>
	)	
<b>TRINITY 83 DEVELOPMENT LLC,</b>	)	<b>16-24652</b>
	)	
<b>DEBTOR.</b>	)	

**DEBTOR'S MOTION TO AUTHORIZE SALE OF ASSETS**  
**APPROVE THE SALE TERMS AND PROCEDURES**  
**AND SCHEDULE AN AUCTION AND HEARING TO APPROVE THE SALE**

TO THE HONORABLE DEBORAH L. THORNE  
BANKRUPTCY JUDGE

NOW COMES TRINITY 83 DEVELOPMENT LLC, Debtor in Possession herein ("Debtor"), by and through its Attorneys, Gina B. Krol and Cohen & Krol, and respectfully moves this Honorable Court for the entry of an order pursuant to 11 U.S.C. §§ 363(b) and (f) and Fed. R. Bankr. P. 2002, 6004, 6006, 9007, 9008, and 9014: (a) authorizing the sale of the certain Personal Property of the Debtor free and clear of any liens, claims or encumbrances (with any such liens, claims or encumbrances to attach to the proceeds of sale) to 19100 Crescent Building LLC(the "Purchaser"), pursuant to the terms herein; (b) authorizing the Debtor to offer the Real and Personal Property for sale at auction pursuant to the terms provided herein; (c) approving (i) certain bid protections and procedures (the "Bidding Procedures") and (ii) the form and manner of the sale notice (the "Notice Procedures"), as provided herein; (d) establishing procedures for the assumption and assignment of certain contracts; (e) scheduling an auction, if necessary; and (f) scheduling a hearing to approve the sale of said Real and Personal Property and assumption and assignment of certain contracts. In support of this motion, the Debtor states as follows:

### I. INTRODUCTION

1. On August 1, 2016 (the “Petition Date”), the Debtor filed its voluntary petition under Chapter 11 of the United States Bankruptcy Code. .
2. The Debtor is the owner of certain commercial real property which consists of a two tenant building that is located at 19100 S. Crescent Dr., Mokena, IL. In addition, the Debtor is also the owner of certain personal property in the nature of equipment, used in the operation of the commercial building. All assets subject to his motion shall hereinafter be referred to as the “Property.”
3. The Debtor has received an offer from 19100 Crescent Building LLC to purchase the afore-mentioned Property. In summary, the Purchaser has offered to purchase the Property, free and clear of liens, claims and encumbrances, for \$1,715,000.00 without any material contingencies other than the Auction described below and the entry of a final order approving the sale.
4. This Court has core jurisdiction to hear and resolve this motion pursuant to 28 USC §§157(b)(2)(A), (M), (N), and(O) and 1334.

### TERMS OF THE AGREEMENT

5. On or about October 17, 2017, the Debtor received a contract to purchase from the Purchaser for the sale of the Property, subject to Bankruptcy Court approval. The contract for purchase is attached hereto as Exhibit “A”. The Purchaser has offered to pay the Debtor \$1,715,000.00 for the Property (“Purchase Price”). Upon the execution of a sale agreement, the Purchaser will make an earnest money deposit (“Earnest Money Deposit”) in the amount of Ten Thousand Dollars (\$10,000.00).
6. The Agreement provides for the conveyance of the interest in the Property to Purchaser free and clear of all liens, claims or encumbrances.

### III. TERMS AND PROCEDURES OF THE AUCTION

#### **A. The Auction**

7. The Sale Agreement recognizes, and is expressly subject to, the right of the Debtor to offer the Property to other parties at an auction sale (the “Auction”). This motion contemplates that the Debtor will offer the Property for sale at the Auction, subject to the Bidding Procedures set for in this motion and as otherwise approved by this Court. As soon as practicable after the conclusion of the Auction, the Debtor (a) shall consult and review each Qualified Bid (as defined below) on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummation of the transaction, (b) shall determine, in her business judgment, which Qualified Bid is the highest or otherwise best offer (the “Winning Bidder”), and (c) reject at any time before entry of an Order, any bid that, in the Debtor’s reasonable discretion, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of sale, or (iii) contrary to the best interests of the Estate and its creditors (the “Bid Analysis”). In conducting its Bid Analysis, the Trustee may take into account the “break-up fee,” as defined herein.

#### **B. Bid Terms**

8. The Purchase has requested, and the Debtor proposes that the Bidding Procedures set forth immediately below should govern the Auction of the Property, and that this Court should enter an order to that effect (the “Procedures Order”) in the form attached hereto:

- (a) Any competitive bidding for the Property shall be conducted at an auction (the “Auction”) at the law offices of Debtor’s counsel, Cohen & Krol, after which the Court, after notice and hearing, shall enter an order, authorizing the Sale of the Property free and clear of liens and interests (the “Sale Order”). At the Auction, the Debtor shall conduct the sale by open bidding, except that nothing contained

in the Procedures Order or elsewhere shall prohibit the Debtor, at the Auction, from conducting separate or joint discussions with the Purchaser, any Qualified Bidder (as defined below) or any creditor or their representatives in private and not on the record of such proceeding. A court reporter shall make a record of the open bidding as it occurs.

- (b) Unless otherwise ordered by the Court for cause shown, for any person to participate in the Auction (each a “Potential Bidder”), such person must deliver to the Debtor such information as the Debtor shall request establishing a Potential Bidder’s ability to close the Sale of the Personal Property in a timely manner, including a demonstration of financial wherewithal to close such sale; a wire transfer or cashier’s or certified check made payable to the Debtor in an amount of \$50,000.00 as the Earnest Money Deposit; and an executed agreement for purchase of the Property in substantially the same form as the Agreement, are in form and substance acceptable to the Debtor. Any person qualifying under all of the above standards shall be entitled to bid to purchase the Property and will be hereinafter referred to as a “Qualified Bidder.” Any bid made by a Qualified Bidder shall be referred to as a “Qualified Bid.” Any party wishing to bid at Auction for the purchase of the Real and Personal Property must submit said bid and bidding requirements to the Trustee by no later than November 20, 2017.
- (c) A copy of the Bidding Procedures shall be served with the Notice of Auction Sale respecting the Auction (the “Auction Notice”) and served pursuant to the procedures described in this motion. The Auction Notice shall specify the Auction Date and the time and place of the Auction.
- (d) The Debtor will grant reasonable access to the Property to any person expressing an interest in viewing the same for the purpose of making a bid thereon and the Debtor will further agree to make financial and such other information concerning the Property available to prospective bidders.

- (e) The Debtor will offer the Property for sale at the Auction in conformity with these Terms and Procedures and the Procedures Order. At the conclusion of the Auction, the Trustee will undertake the Bid Analysis to determine which Qualified Bid is, in her best judgment, the Winning Bid. At the conclusion of the Bid Analysis, the Debtor shall ask the Court to enter an order authorizing the Trustee to consummate the transaction in accordance with the Winning Bid with the Winning Bidder and to execute such additional documentation as is reasonably necessary to close such Sale (as defined below).
- (f) The Procedures Order will include a requirement that any initial “topping” bid must be in the amount of not less than One Million Eight Hundred and Fifteen Dollars (\$1,815,000.00).
- (g) The Procedures Order will include a requirement that bidding increments be in an amount not less than Fifty Thousand Dollars (\$50,000.00) of the previous bid.
- (h) The offers of all Qualified Bidders shall be irrevocable until the earlier of (i) the Closing of the sale of the Property or (ii) the withdrawal of the Property for sale by the Debtor.
- (i) In the event that a Winning Bidder defaults in the performance of its obligation to purchase the Property pursuant to a Winning Bid, the Winning Bidder’s Earnest Money Deposit shall be forfeited and shall immediately be transferred to the Debtor. Notwithstanding the foregoing, such forfeiture shall not be in full satisfaction of any damages caused to any person by Winning Bidder’s default as described herein. Any person making an Earnest Money Deposit who does not become the Purchaser (as the Winning Bidder as specified in the Sale Order as entered by the Court) shall have its Earnest Money Deposit returned to it within two (2) business days after the conclusion of the hearing at which time the Winning Bid is confirmed.

- (j) In the event that a Winning Bidder defaults in the performance of its obligations to purchase the Property pursuant to a Winning Bid, then the next highest bidder for the Property shall be required to proceed as the Winning Bidder.  
Consequently, that person's bid (the "Back-Up Bid") will be treated as the Winning Bid, without further notice, hearing or entry of additional order by the Court.
- (k) Any sale of the Property pursuant to the Sale Order (the "Sale") shall be free and clear of all liens, claims, encumbrances, and interests (unless otherwise agreed to by such Winning Bidder), with such liens, claims, encumbrances, and interests attaching to the proceeds of the Sale (the "Sale Proceeds") in the same priority as those liens and interests enjoyed prior to the Auction and Sale. The Sale Order shall expressly so provide.
- (l) Except as may otherwise be specified in the Agreement, THE SALE OF THE PROPERTY SHALL BE ON AN "AS IS, WHERE IS" BASIS AND WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, NATURE OR DESCRIPTION BY THE DEBTOR, THE BANKRUPTCY ESTATE, OR ITS RESPECTIVE AGENTS. By submitting a bid, each Qualified Bidder shall be deemed to have acknowledged and represented that (i) it has had an opportunity to inspect and examine the Property and to conduct any and all due diligence regarding the Property prior to making its bid; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and the Property in making its bid; and (iii) it did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Property by any person whatsoever, or the completeness of any information provided in connection therewith or the Auction.

- (m) Notwithstanding anything to the contrary in this Motion or the Agreement, a Winning Bid shall have been accepted by the Debtor only upon entry of the Sale Order and the Debtor will not be obligated to take any action related to the sale of the Property unless and until the Court enters the Sale Order. The Debtor's presentation to the Court for the approval of a Winning Bid does not constitute the Debtor's acceptance thereof.
  - (n) Upon the Court's entry of the Sale Order, a Winning Bidder(s) (which may be the Purchaser) shall become the "Purchaser."
  - (o) If the Winning Bidder, other than the original Purchaser, 19100 Crescent Building LLC, shall acquire the Property under competitive bidding as described herein, then Millennium Garage Holdings LLC shall be entitled to a cash break-up fee of Seventy-Five Thousand Dollars (\$25,000.00) ("Break-Up Fee"), which amount will be paid by the Debtor from the proceeds of the Sale of the Property at the closing. However, if 19100 Crescent Building LLC acquires the Property, then 19100 Crescent Building LLC shall not be entitled to payment of the Break-Up Fee or any reduction of the Purchase Price or Winning Bid. If 19100 Crescent Building LLC acquires the Property, the price set forth in the Winning Bid shall thereafter be and constitute the Purchase Price pursuant to this Agreement.
9. To the extent that a Break-Up Fee is paid to the Purchaser in connection with the Bidding Procedures, such Break-Up Fee must and shall remain free and clear of any claim or lien of secured creditors. *See In re CXM, Inc.*, 307 B.R. 94 (Bankr. N.D. Ill. 2004).

#### IV. THE SALE HEARING

10. At the conclusion of the Auction, if any, and as soon as the Debtor has determined which person is or persons are the Winning Bidder, the Debtor shall present the Winning Bid to the Court and request the entry of the Sale Order containing all approvals and authorizations that, in the Debtor's judgment, are necessary to

effectuate and consummate the transactions set forth in the Winning Bid(s). The Debtor will seek a finding in the Sale Order that the Purchaser is a good faith purchaser.

11. Notwithstanding anything to the contrary, in this motion or the Agreement, a Winning Bid will have been accepted by the Debtor only upon entry of the Sale Order, and the Debtor will have no obligation to any entity, nor be obligated to take any action related to the sale of the Property, unless and until the Court enters a Sale Order satisfactory to the Debtor. The Debtor's presentation to the Court for the approval of the Winning Bid does not constitute the Debtor's acceptance thereof. Should no other "Qualified Bids, as such term is defined in the Agreement, be received, then the Debtor shall submit the Agreement to the Court for approval.

#### V. THE RELIEF REQUESTED

12. By this motion, the Debtor respectfully requests that the Court immediately enter the Procedures Order in the form attached to this motion, which provides essentially for the following relief:
  - A. Authorizes the Debtor to offer the Property for sale at the Auction;
  - B. Approves the Bidding Procedures for the sale of the Property;
  - C. Approves the provision for the Break-Up Fee and other Bid Protections in favor of Purchaser under the terms of the Agreement in the event that Purchaser is not the Winning Bidder for the Property;
  - D. Sets the time for the Auction as 11:00 a.m. Central Time, on November 21, 2017 and the place for the Auction as the Offices of Attorneys for the Debtor, Cohen & Krol, 105 W. Madison Street, Suite 1100, Chicago, IL 60602;
  - E. Sets a deadline for parties to submit competing bids and bid requirements by November 20, 2017;
  - F. Sets a deadline for parties to object to the proposed sale by November 24, 2017 and schedules sale hearing to be held, subject to Court's availability,

on November 28, 2017, at which time the Debtor will seek the entry of the Sale Order (the “Sale Hearing”); and

- F. Authorizes and directs the Debtor to execute any documents that may be reasonably necessary or desirable to implement the Agreement.

#### VI. BASIS FOR RELIEF REQUESTED

13. The Debtor believes that the sale of the Property to Purchaser, subject to the Auction, represents the best opportunity under the existing circumstances to maximize the value of this particular property. The Debtor has reached this conclusion, based on the exercise of its business judgment, after consultation with the parties. Accordingly, the Debtor respectfully submits that entry of the Procedures Order and the Sale Order are in the best interests of the estate and its creditors and should be approved.
14. The Debtor has also determined that it is in the best interests of the estate that the Court authorizes the Debtor to sell the Property at the Auction. The Debtor proposes to conduct the Auction at the Offices of Debtor’s Attorneys, Cohen & Krol, or such other place as the Debtor designates, on November 21, 2017, or such other place or date as the Court shall set.

#### VII. SALE UNDER SECTION 363 (b)(1)

15. Section 363(b)(1) permits a trustee to “use, sell, or lease, other than in the ordinary course of business, property of the estate,” after notice and a hearing. “[T]he sale substantially all of a debtor’s assets is a transaction outside of the ordinary course of business, which requires bankruptcy court approval to become effective.” *In re O’Brien Env’tl. Energy, Inc.*, 181 F.3d 527, 531 (3<sup>rd</sup> Cir.1999).
16. Courts generally approve sales outside of the ordinary course of business under §363(b)(1) whenever such sale is in the best interests of the estate. *See, In re Telesphere Communications, Inc.*, 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994); *In re Apex Oil Co.*, 92 B.R. 847, 866 (Bankr. E.D. Mo. 1988).

17. Additionally, courts generally require that adequate and reasonable notice of the sale be provided to interested parties, and that the purchase price be fair and reasonable. *See, In re Delaware & Hudson Rwy. Co.*, 124 B.R. 169, 176 (D.Del. 1991); *In re Taylor*, 198 B.R. 142, 156-57 (Bankr. D. S.C. 1996); *In re Country Manor of Kenton, Inc.*, 172 B.R. 217, 220 (Bankr. N.D. Ohio 1994). Further, the Debtor and the Purchaser will request that the Court make a finding that: (i) the Purchaser acted in good faith in negotiating the sale price; (ii) the Notice Procedures provided sufficient notice for entry of the Sale Order; and (iii) the sale price is fair and reasonable.

#### VIII. SECTION 363(M) GOOD FAITH PURCHASER DESIGNATION

18. Section 363(m) of the Bankruptcy Code, which pertains to a sale such as that proposed in this Motion, incorporates the term “good faith” as a requirement. Section 363(m) provides:

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 lease such property **in good faith**, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. §363(m) (emphasis added).

19. A good faith purchaser under Section 363 (m) has been defined in the case law to mean “one who purchases in ‘good faith’ and for ‘value’.” *Kabro Assocs. Of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hills Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997), citing, *Cumberland Farms Dairy, Inc. v. National Farmers’ Org. (In Re Abbotts Dairies of Penn., Inc.)*, 788 F.2d 143, 147 (3d Cir. 1986)); *see, Ewell v. Diebert (In re Ewell)*, 958 F.2d 276, 281 (9<sup>th</sup> Cir. 1992); *Badami v. Burgess (In re Burgess)*, 246 B.R. 352, 355-56 (B.A.P. 8<sup>th</sup> Cir. 2000).

20. As the United States Court of Appeals for the Seventh Circuit stated in *In re Rock Industries Machinery Corp.*, 571 F.2d 1195 (7<sup>th</sup> Cir. 1978), the “good faith” component of the test:

speaks to the equity of [the bidder’s] conduct in the course of sale proceedings. Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

*Id.* At 1198; *see, Kabro Assocs.*, 111 F.3d at 276; *Mark Bell Furniture Warehouse, Inc. v. D.M. Reid Assocs. (In re Mark Bell)*, 992 F.2d 7, 8 (1<sup>st</sup> Cir. 1992); *In Ewell*, 958 F.2d at 281.

21. With respect to the proposed transaction, the managing member of this Purchaser LLC is a business associate of the managing member of the Debtor; however, no person affiliated with the Debtor has any financial stake in this Purchaser LLC. Notwithstanding this, the Debtor will request a finding if it believes the Purchaser qualifies for designation as a good faith purchaser. In this respect, the Debtor may provide testimony that the Purchaser has at all times in the sales process and Auction, acted in good faith.

Accordingly, at the Sale Hearing, the Trustee may request that the Court designate the Purchaser as a good faith purchaser, as such term is used in §363(m).

#### IX. BREAK-UP FEE

22. “A break-up fee, or more appropriately a termination fee, is an incentive payment to a prospective purchaser with which a company fails to consummate a transaction.” *In re Integrated Resources, Inc.*, 147 Bankr. 650, 653 (S.D.N.Y. 1992), app. dismissed on jurisdictional grounds, 3 F.3d 49 (2d Cir. 1993). Outside of bankruptcy, the courts have dealt with the concept of break-up fees and other

bidding incentives in merger and acquisition cases, in which break-up fees are often part of the deal. The break-up fee is designed in part to compensate for the risk of losing a signed deal. *Beebe v. Pacific Realty Trust*, 578 Supp. 1128, 1150 n.7 (D.Or. 1984).

23. Generally, break-up fees are allowed as long as they “enhance” the bidding, and are reasonable in relation to the bidder’s efforts and the size of the transaction. As long as procedural safeguards accompanied the approval of the bidding incentive by the board of directors, those bidding incentives will not be disturbed by the courts. The Court should consider the potential Purchaser’s investment of both time and money when determining whether a break-up fee is reasonable. In general, a break-up fee is permissible if reasonably related to the bidder’s efforts and the transaction’s magnitude. *Cottle v. Storer Communications, Inc.*, 849 F.2d 570, 578 (11<sup>th</sup> Cir. 1988).
24. Purchaser has undertaken due diligence in determining whether to make an offer for the Property. Any other prospective purchaser may choose to do less due diligence relying on the fact that Purchaser has already determined its willingness to commit to acquire the Property. Accordingly, a Break-Up Fee is fair, reasonable and necessary to protect the Purchaser and to attract the Purchaser as a purchaser of the Property. Accordingly, the Debtor respectfully requests that the Break-Up Fee provision of the Agreement be explicitly approved and authorized by the Court.

#### X. THE COMPETITIVE BIDDING PROCEDURES

25. “The purpose of procedural bidding orders is to facilitate an open and fair sale designed to maximize value for the estate. To accomplish that goal, bankruptcy courts are necessarily given discretion and latitude in conducting the sale.” *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998); *Corporate Assets, Inc. v. Paloian*, 368 F.3d 761, 767 (“bankruptcy court’s confirmation or refusal to

confirm an asset sale will only be overturned in extreme cases, when the bankruptcy court has abused discretion”).

26. The Debtor believes that the Bidding Procedures will effectuate these goals and that these procedures represent the best opportunity for the maximization of value for the estate and its creditors. In this same vein, the Debtor believes that the Bidding Procedures adequately safeguard the interests of the estate and its creditors in achieving a maximum return from the sale of the Property. According, the Debtor respectfully requests that the Bidding Procedures be approved and authorized.

XI. SECTION 363(F): SALE FREE AND CLEAR

27. Section 363 (f) of the Bankruptcy Code governs “free and clear” sales of estate property, providing, in relevant part, as follows:

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

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. §363(f)

28. Accordingly, under this provision, the Debtor may sell the Property free and clear of all liens, claims, interests and encumbrances. The Debtor believes that the free and clear provisions of the Agreement now comport, or at the time of sale will

comport, with §363(f). In this respect, the Debtor believes that all creditors asserting valid interests in and against the Property either already have, or prior to the Sale Hearing will likely have, consented to (or otherwise not object to) the sale or that such creditors could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of their interest.

29. Further, the Debtor submits that any lien, claim, interest, or encumbrance asserted against the Property will be adequately protected by attachment to the Sale Proceeds. Accordingly, the Debtor respectfully requests that the Court permit the transfer of the Property to the Purchaser free and clear of all liens, claims, interests and encumbrances, with such liens, claims, interests and encumbrances attaching to the Sale Proceeds.

#### XII. THE NOTICE PROCEDURES

30. Upon entry of the Procedures Order, the Debtor shall serve the Auction Notice, in substantially the form attached hereto, upon (a) all of the Debtor's creditors; (b) all entities known to have expressed a substantial interest in purchasing the Property; (c) all other entities known to have asserted any lien, claim, interest or encumbrance in or upon any Property; (d) all federal, state, and local regulatory or taxing authorities or recording offices which have reasonably known interest in the relief requested by the Motion; (e) the United States Trustee; and (f) the Internal Revenue Service. Subsequent to such service of the Auction Notice, the Debtor shall provide the Auction Notice in response to any party's written request.
31. The Debtor believes that if the foregoing Notice Procedures are approved and authorized, creditors and other parties in interest will receive adequate notice of the sale. Under these procedures, notice of the sale is reasonably calculated to provide timely and adequate notice to those parties most interested in the case, and those parties potentially interested in bidding for the Personal Property.

XIII. NOTICE

Notice of this motion has been given to: (i) the Office of the United States Trustee; (ii) counsel to the Lender; (iii) counsel to the Purchaser; and (iv) parties requesting notice in the case. In light of the nature of the relief requested, the Debtor requests that this Court find the notice provided for herein sufficient under the circumstances and waive and dispense with any further notice requirements.

WHEREFORE, the Debtor requests that this Court enter an order granting the relief requested in this Motion, specifically authorizing the terms, conditions and procedures as outlined herein and granting such other and further relief as the Court deems just and equitable.

TRINITY 83 DEVELOPMENT LLC, Debtor

By: /s/ Gina B. Krol  
One of Attorneys for the Debtor

GINA B. KROL  
COHEN & KROL  
105 W. Madison Street  
Suite 1100  
Chicago, IL 60602  
312/368-0300

**CONTRACT FOR PURCHASE  
AND SALE OF REAL ESTATE**

THIS CONTRACT FOR PURCHASE AND SALE OF REAL ESTATE (this "*Contract*"), entered into on the \_\_\_\_ day of October, 2017, by and between Trinity 83 Development, LLC (the "*Seller*") and 19100 Crescent Building, LLC (the "*Purchaser*").

**WITNESSETH:**

**WHEREAS**, the Seller owns certain land and improvements being the site of a commercial retail center commonly known as 19100 S. Crescent Drive, Mokena, County of Will, Illinois; and

**WHEREAS**, Purchaser desires to purchase from Seller and Seller desires to sell to Purchaser such land and improvements on the terms set forth herein.

**WHEREAS**, Seller is currently a Debtor in a Chapter 11 Bankruptcy case pending in the United States Bankruptcy Court for the Northern District of Illinois, under Case No: 16-24652. Al Lieberman of Michigan Avenue Group is now, and has been since July 2015, the receiver appointed to manage the Property.

**NOW THEREFORE**, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**ARTICLE 1  
AGREEMENT TO PURCHASE AND SELL**

**1.1 The Property**. Purchaser shall purchase, and Seller shall sell, pursuant to the terms set forth herein, the following:

- (a) the land legally described on Exhibit A attached hereto (the "*Land*");
- (b) all buildings, improvements and structures located on the Land (collectively the "*Improvements*");
- (c) all right, title and interest of Seller in and to, easements and appurtenances to the Land and the Improvements;

- (d) all personal property and other tangible and intangible property (if any) located on the Land and the Improvements, including the assignment of any existing leases (the "*Personalty*"); and

The Improvements, the Land and the items described in (c) above are collectively referred to as the "*Real Property*." The Real Property and Personalty are collectively referred to as the "*Property*."

## ARTICLE 2 PURCHASE PRICE

**2.1 Purchase Price.** The purchase price (the "*Purchase Price*") to be paid by Purchaser to Seller for the Property shall be One Million Seven Hundred Fifteen Thousand and No/100 Dollars (\$1,715,000.00). The Purchase Price, less the Earnest Money, and plus or minus any adjustments, credits or prorations, shall be paid to Seller pursuant to Article 3.

## ARTICLE 3 EARNEST MONEY

**3.1 Earnest Money.** Within two (2) Business Day after the Effective Date, Purchaser shall deposit into escrow (the "*Earnest Money Escrow*") with Seller's counsel, Gina Krol ("Escrowee"), located 105 W. Madison Street, Suite 1100, Chicago, Illinois 60602, the sum of Ten Thousand (\$10,000.00) Dollars (the "*Earnest Money*"). The Earnest Money shall be held in Escrowee's Trust Account. If this Agreement is terminated pursuant to Section 4.4 below, then the Earnest Money shall be returned to Purchaser. The Earnest Money shall not be invested. The Earnest Money shall be applied to the Purchase Price at the Closing. Seller shall promptly direct Escrowee to deliver the Earnest Money in accordance with the terms hereof. As used herein, "*Business Day*" shall mean any day other than a Saturday, Sunday or a holiday observed by national banks or the Title Insurer.

## ARTICLE IV

**4.1 Survey.** Seller shall provide to Buyer, at Seller's expense, a boundary survey of the Property. Purchaser shall have ten (10) days after receipt of said survey to state any objections in writing; provided, however, that Seller shall have no obligation to satisfy any survey objection. In the event that Purchaser does not make any written survey objections within said ten (10) day period, Purchaser shall be deemed to have waived all survey objections and to have accept the survey as delivered by Seller.

**4.2 Title Policy.** At or before the Closing, Seller shall deliver to Purchaser an ALTA Owner's Title Insurance Policy, or in lieu thereof, a marked-up Title Commitment, for the Property, from the Title Insurer (the "*Title Policy*") which shall: (i) be dated the Closing Date; (ii) name Purchaser or its nominee as the insured; (iii) have a liability amount equal to the Purchase Price; (iv) show Purchaser or its nominee as the owner of the Property in fee simple subject to no exceptions other than the Permitted Exceptions or those unpermitted exceptions over which the Title Insurer is willing to endorse or insure; and (v) include extended coverage over the standard printed exceptions. The Title Policy shall be conclusive evidence as to good title as shown therein with respect to all matters insured by the Title Policy.

**4.3 No Further Liens.** Seller shall not from and after the date of this Contract voluntarily or consensually perform any act which results in any additional exception(s) to title that would survive the Closing without Purchaser's prior written consent.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES**

**5.1** The Seller hereby warrants and represents only that Seller has marketable title and ownership of the Property. Seller makes no other representations or warranties whatsoever with regard to the Property, either as to the title thereto, or as to the rights to possession thereof, or as to its physical or environmental state or condition, any and all of which representations and warranties are hereby disclaimed and disavowed in full by Seller, without qualification, limitation or exception. Accordingly, in the event that Purchaser does not terminate this Agreement in accordance with the specific terms and provision hereof providing for same, Purchaser shall take title "as is", without qualification, limitation or exception.

**5.2 Purchaser's Representations and Warranties.** Purchaser hereby represents, warrants and covenants to Seller on and as of the date hereof and on and as of the Closing Date as follows:

- (a) Neither the execution, nor delivery of this Contract, consummation of the transactions contemplated hereby, nor fulfillment of or compliance with the terms and conditions hereof, conflict with or will result in a breach of any of the terms, conditions or provisions of any agreement or instrument to which Purchaser is a party or by which it is bound, or constitutes a default under any of the foregoing; and

- (b) Purchaser has full power and authority to execute this Contract and purchase the Property as provided for in this Contract and this Contract is binding and enforceable against the Purchaser.
- (c) Purchaser has the financial ability to consummate this transaction.

Purchaser shall deliver to Seller at Closing a statement signed by Purchaser certifying that all the representations, warranties and covenants set forth in this Section 5.2 are true and correct as of the Closing Date with the same effect as though made on the Closing Date and shall survive the Closing for six (6) months. Purchaser agrees to indemnify, defend and hold Seller, its agents, employees and assigns harmless from and against any and all loss, damage, liability and expense (including reasonable attorneys' fees and litigation expenses) such parties may suffer, sustain or incur as a result of any misrepresentations or breach of warranty or agreement by Purchaser under or in respect to this Contract or any documents or instrument executed or to be executed by or on behalf of Purchaser pursuant to this Contract or in furtherance of the transaction contemplated hereby.

**5.3 Breach of Representations and Warranties.** Each party shall notify the other promptly if such party becomes aware prior to the Closing Date of any matter which would render any of the representations or warranties of such party contained in this Article 5 untrue in any material respect.

## **ARTICLE 6 THE CLOSING**

**6.1 Definition; Time and Place.** The performance by Seller and Purchaser of their respective obligations under this Contract constitute the closing of the sale (the "*Closing*"). The date of Closing shall be within fourteen (14) days after Seller obtains Bankruptcy Court approval of this sale ("Closing Date"). The Closing shall take place at the office of the Title Insurer. Purchaser and Seller shall cooperate with each other to extend and shorten closing date as necessary.

**6.2 Possession.** Possession of the Property shall be delivered at the Closing.

**6.3 Documents To Be Delivered By Seller At Closing.** At the Closing, Seller shall deliver or cause to be delivered to Purchaser directly the following, each of which shall be in form reasonably satisfactory to Purchaser and (if applicable) the Title Insurer:

- (a) A duly executed and acknowledged trustee deed to the Property subject only to the Permitted Exceptions;
- (b) Affidavit of Title;
- (c) Bill of Sale for the Personalty, if any;
- (d) The Title Policy;
- (e) An affidavit to the affect that Seller is not a foreign person under Section 1445(b) of the United States Internal Revenue Code (FIRPTA);
- (f) All other documents (if any) reasonably required, pursuant to other provisions of this Contract, to be executed and delivered by Seller; and
- (g) Such other instruments and documents as may be reasonably required in order to carry out the purposes of this Contract.
- (h) Utility letters indicating that all utilities are current and paid.
- (i) Any and all architectural plans and site plans obtained by Seller in regard to remodeling the premises to comply with the requirements of Popeye's Restaurant. The said plan, drawings, etc., shall be turned over to Purchaser upon Purchaser reimbursing Seller for one-half of the expenses of preparation of the same.
- (j) An order of the Bankruptcy Court allowing for the sale of the Property as set forth herein free and clear of all liens and encumbrances.

**6.4 Documents To Be Delivered By Purchaser At Closing.** At the Closing, Purchaser shall deliver or cause to be delivered to Seller directly, the following, each of which shall be in form reasonably satisfactory to Seller and (if applicable) the Title Insurer:

- (a) The Purchase Price, plus or minus adjustments, credits and prorations provided for herein;
- (b) All other documents required pursuant to other provisions of this Contract to be executed and delivered by Purchaser; and

- (c) Such other instruments and documents as may be reasonably required in order to carry out the purposes of this Contract.

**6.5 Documents to be Jointly Delivered by Seller and Purchaser at Closing.** At the Closing, Seller and Purchaser shall each execute and deliver, directly, the following, each of which shall be in form reasonably satisfactory to both parties and (if applicable) the Title Insurer:

- (a) Applicable transfer tax declarations for Mokena, County of Will and State of Illinois as prepared by Seller;
- (b) A Closing Statement (in triplicate); and
- (c) ALTA Statements as required by the Title Insurer.

**6.6 Prorations.** General real estate taxes against the Property which are accrued but not yet due and payable shall be prorated on the basis of 110% of the most recent ascertainable tax bills. If, on the Closing Date, an assessment affects the Property or any part thereof which assessment is or may become payable in annual installments, then for the purposes of this Contract Seller shall pay all unpaid installments of any such assessment which are due and payable as of the Closing Date. All charges for utilities, including water and sewer charges, shall be paid by Seller to the Closing Date. Seller shall pay all State and County transfer taxes applicable to this transaction. Any local transfer taxes shall be paid by the party indicated in the local statute. All such prorations shall be made on the basis of the actual number of days of the year and month which shall have elapsed as of the Closing. Bills received after Closing which relate to expenses incurred or services performed prior to the date of Closing shall be paid by Seller.

## **ARTICLE 7 DEFAULTS; REMEDIES**

**7.1 Purchaser's Default.** If the transaction contemplated hereby does not close by reason of a default by Purchaser in any of the terms hereof, and such default is not cured within ten (10) Business Days after written notice of such default is given by Seller to Purchaser, then Seller shall receive all monies deposited with Escrow agent and Purchaser shall reimburse Seller its out-of-pocket expenses including attorney's fees.

**7.2 Seller's Default.** If the transaction contemplated hereby does not close by reason of a default by Seller in any of the terms hereof, and such default is not cured within thirty (30) Business Days after written notice of said default is given by Purchaser to Seller, then Purchaser may enforce specific performance of this Contract and in such action Purchaser shall have the right to recover direct damages suffered by Purchaser by reason of the delay in the acquisition of the Property.

## **ARTICLE 9 SELLER'S MOTION FOR SALE OF ASSETS**

Seller will, as soon as is reasonably practical after the execution of this Agreement, file a motion with the Bankruptcy Court under Sec. 363 of the Bankruptcy Code, and any other applicable law (the "Sale Motion") requesting the Bankruptcy Court enter an order (the "Order to Sell"):

(i) approving the sale of the Property to the Purchaser in accordance with Section 363 of the Bankruptcy Code

(ii) providing that the purchase of the Property shall be the purchase price, or such greater sum as may be bid in accordance with the bid procedures set forth herein

(iii) vacating the automatic stay of the Bankruptcy Code or the Federal Rule of Bankruptcy Procedure as they relate to the Purchaser or the Property

(iv) finding that the Purchaser is a "good faith purchaser" as that term is defined in the Bankruptcy Code Section 363(m)

(v) providing that all Property will be transferred to Purchaser free and clear of all liens, claims and encumbrances pursuant to Bankruptcy Code Section 363(f) and

(vi) providing that Purchaser shall not be deemed a successor of the Seller and shall acquire no successor liability for any obligation of the Seller for any claims against the Seller as a result of the sale of the Property to the Purchaser. Seller will provide Purchaser and Purchaser's counsel with copies of all proposed pleadings and order in the Bankruptcy Case pertaining to the sale of the Property with sufficient time to permit review and comment by the Purchaser. Purchaser will cooperate with the Seller in the filing of the Sale Motion and seeking the Order to Sell. The hearing at

which the Bankruptcy Court considers entering the Order to Sell is being referred to as the “Bankruptcy Sale Hearing”.

The Sale Motion shall, among other things, specifically request that the Bankruptcy Court preliminary approve after a hearing (the “Bid Procedures Hearing”) those certain bid procedures that, among other things, will provide Purchaser with compensation if Purchaser is willing to go forward with the purchase of the Property in the manner set for herein, but the Property are sold to a person or entity other than Purchaser or the assignee of the Purchaser. Without limiting the generality of the foregoing, the Sale Motion shall request establishment of the following bid procedure for the Property:

(i) Notice of the proposed sale and the contents of this Agreement shall be given to (A) all persons required to receive copies thereof pursuant to the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, local rules of the Bankruptcy Court, (B) all Creditors of the Debtor in this Bankruptcy Case as listed on the UCC search of the Debtor or listed on the matrix submitted to the Bankruptcy Court in connection with the Bankruptcy Case, and (C) any third parties that have requested information or notice of the proposed sale.

(ii) If, at the Bankruptcy Hearing, no other persons or entities shall have appeared in the Bankruptcy Court and submitted a bid meeting the requirements of subparagraph (iv) of this section below, which will yield to Seller an amount higher than the amount that would be received as the Purchase Price agreed to be paid by Purchaser under this Agreement, then Purchaser shall be approved as the successful bidder and, on the Closing Date, the Property shall be sold and transferred to Purchaser on the terms set forth in this Agreement.

(iii) Seller agrees that, in view of Purchaser’s efforts to establish a base price for the Property and the fact that Purchaser has expended or shall expend sums in connection with due diligence, legal fees, and other direct and indirect costs, it would be unjust if another potential purchaser should purchase the Property without Purchaser obtaining compensation for the valuable services that Purchaser has provided to Seller and the bankruptcy estate. For the reason stated above, Seller specifically agrees that, if Purchaser is willing to proceed with the purchase of the Property and ultimately shall not be the buyer of the Property, then Purchaser shall be entitled to receive a fee payable by Seller, in cash, at the closing and out of the proceeds of sale in the amount of \$25,000.00 if the Property shall be sold to another buyer (the “Break – Up Fee”).

(iv) The Bankruptcy Court Order shall also provide for the following requirements for all bids submitted hereafter for the Property:

- a. Any Bid must be submitted on the terms set for in this Agreement, except that such bid must specify a higher purchase price, as set forth below.
- b. The bid may not be conditioned on completion of due diligence, obtaining financing, obtaining regulatory approval or any other term that would delay closing.
- c. The bid must be in writing and delivered to Seller's counsel, with a copy delivered to Purchaser's counsel, no later than twenty-four (24) hours before the Bankruptcy Hearing (the "Competitive Bid Deadline").
- d. The written bid must be accompanied by a cashier's check in the amount of \$50,000.00 or wire transfer payable to the order of Seller, which amount shall be returned if the bid, or a higher bid by the same party, is not approved.
- e. The initial bid must be at least One Hundred Thousand Dollars (\$100,000.00) more than the Purchase Price.
- f. All additional incremental bids thereafter must increase the Purchase Price by not less than Fifty Thousand Dollars (\$50,000.00).
- g. Neither Seller nor the Bankruptcy Court will consider any bids or incremental bids submitted after the Bankruptcy Hearing on the Sale Motion.
- h. Any bid that otherwise conforms with the requirements of (a) through (g) as set forth immediately hereinabove, must be made as a cash bid in its entirety.

## ARTICLE 9

### MISCELLANEOUS

- 9.1 Uniform Risk Act.** The Uniform Vendor and Purchaser Risk Act as enacted in the State of Illinois shall apply to this transaction.
- 9.2 Payment of Real Estate Brokers and Consultants.** Each party represents to the other that no real estate broker has been used in connection with this transaction. Purchaser agrees to indemnify, defend and hold Seller harmless from and against any claim for a real estate broker's commission or fee by any party claiming by, through or under Purchaser. Seller agrees to indemnify, defend and hold Purchaser harmless from and against any claim for a real estate broker's commission or fee by any party claiming by, through or under Seller.
- 9.3 Notices.** All notices and other communications which are required to be, or which may be, given under this Contract shall be in writing, and shall be delivered at the addresses set out herein below. Notice may be given by personal delivery, facsimile, recognized overnight courier, or by United States mail in the manner set forth below. Notice shall be deemed to have been duly given (a) if by personal delivery, on the first to occur of the date of actual receipt or refusal of delivery by any person at the intended address, (b) if by facsimile, the date of such receipt provided, receipt is made by 3:00 p.m. and a copy of the faxed document is mailed within twenty-four (24) hours of any such facsimile transmission (c) if by overnight courier, on the first (1<sup>st</sup>) Business Day after being delivered to a recognized overnight courier, or (d) if by mail, on the second (2<sup>nd</sup>) Business Day after being deposited in the United States mail, certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to Seller: c/o Gina Krol  
Cohen & Krol  
105 W. Madison Street, Suite 1100  
Chicago, Illinois 60602

If to Purchaser: c/o Sheila Ramacci  
Daniel L. Freeland & Associates, P.C.  
1020 Kennedy Avenue  
Schererville, Indiana 46375

or to such other address as either party may from time to time specify as its address for the receipt of notices hereunder, in a notice to the other party.

- 9.4 Assignment.** Purchaser may designate a trust as the party which will acquire the Property, in which event all instruments, documents and agreements required to be delivered to Purchaser hereunder shall be delivered to, and run for the benefit of such designee. Subject to the foregoing, this Contract shall be binding upon the undersigned and each of their successors and assigns.
- 9.5 Entire Agreement.** This Contract embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof except as may be set forth in writing executed by both parties contemporaneously with or subsequent to this Contract.
- 9.6 Severability.** If any term or provision of this Contract or any application thereof shall be invalid or unenforceable, the remainder of this Contract and other applications thereof shall not be affected thereby.
- 9.7 Captions; Number.** The captions contained in this Contract are for the convenience of reference only, and shall not affect the meaning, interpretation or construction of this Contract. As used in this Contract, the singular form shall include the plural and the plural shall include the singular, to the extent that the context renders it appropriate.
- 9.8 Counterparts.** This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.
- 9.9 Time of the Essence.** Time is of the essence of this Contract.
- 9.10 Modification.** The provisions of this Contract may not be amended, changed or modified orally, but only by an agreement in writing signed by the party against whom any amendment, change or modification is sought.
- 9.11 Waiver.** Except as otherwise expressly provided in this Contract, no waiver by a party of any breach of this Contract or of any warranty or representation hereunder by the other party shall be deemed to be a waiver of any other breach by such other party (whether proceeding or succeeding and whether or not of the same or similar nature) and no acceptance of payment or performance by a party after any breach by the other party shall be deemed to be a waiver of any breach of this Contract or of any representation or warranty hereunder by such other party whether or not the first party knows of such breach at the time it accepts

such payment or performance. No failure or delay by a party to exercise any right it may have by reason of the default of the other party shall operate as a waiver of default or modification of this Contract or shall prevent the exercise of any right by the first party while the other party continues to be so in default.

- 9.12 Business Days.** If any date specified in this Contract for the Closing Date or for commencement or expiration of time periods for termination or approvals or for notice occurs on a day other than a Business Day, then any such date shall be postponed to the following Business Day.
- 9.13 Recording of Contract.** Neither this Contract or any memorandum thereof shall be filed or recorded.
- 9.14 Offer; Effective Date.** The execution of this Contract by the first party to do so and delivery thereof to the other party constitutes an offer to purchase or sell, as the case may be, and shall be automatically revoked unless the party to which the offer is made shall execute and deliver at least two (2) copies of this Contract to the offering party at the address given for notice herein on or before 5:00 p.m., local time, on the date which is ten (10) days after the date on which the offering party has executed this Contract as first set forth above. Regardless of any date heretofore or hereafter inserted in this Contract, the term "*Effective Date*" as used herein shall be the date on which this Contract is executed and delivered in final form by the latter of Purchaser or Seller to so execute and deliver it.
- 9.15 Bankruptcy Court Approval.** This Contract is contingent on Seller obtaining Bankruptcy Court approval of the sale of the Property, free and clear of all liens and encumbrances bearing against the Property under the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date  
first written above.

**SELLER:**

**Trinity 83 Development, LLC**

by: \_\_\_\_\_

**PURCHASER:**

**19100 Crescent Building, LLC**

by:  \_\_\_\_\_

**EXHIBIT A**  
**Legal Description of Property**

19100 S. Crescent Drive, Mokena, Illinois 60448

LOT 83, (EXCEPT THE NORTH 10 FEET THEREOF DEDICATED FOR HIGHWAY PER DOCUMENT NO.R2000-101055) IN HIGHLAND SUBDIVISION PHASE ONE, BEING A SUBDIVISION OF PART OF THE NORTH ½ OF SECTION 8, TOWNSHIP 35 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 1, 1999 AS DOCUMENT NO. R99-145916, AND CERTIFICATE OF CORRECTION THERETO RECORDED MAY 3, 2001 AS DOCUMENT R2001-51363, IN WILL COUNTY, ILLINOIS

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>IN THE MATTER OF:</b>	)	<b>Chapter 11</b>
	)	
<b>TRINITY 83 DEVELOPMENT, LLC,</b>	)	<b>Case No. 16 B 24652</b>
<b>Debtor.</b>	)	

**NOTICE OF ENTRY OF ORDER SETTING AUCTION AND SALE  
HEARING DATE, APPROVING SALE TERMS AND PROCEDURES,  
AND APPROVING BIDDING PROCEDURES**

**PLEASE TAKE NOTICE** that on October 24, 2017 and upon motion (the “Motion”) of Trinity 82 Development LLC, Debtor in Possession herein, the Court entered an order (the “Procedures Order”): (a) authorizing the sale of the certain real and personal property of the Debtor which consists of a two tenant building that is located at 19100 S. Crescent Dr., Mokena, IL. In addition, the Debtor is also the owner of certain personal property in the nature of equipment, used in the operation of the commercial building (hereinafter the “Property”) to 19100 Crescent Building LLC (“Purchaser”) for the amount One Million Seven Hundred and Fifteen Thousand Dollars (1,715,000.00)(the “Purchase Price”) pursuant to the terms and conditions of a certain Contract for Purchase Agreement dated October 17, 2017, (hereinafter, the “Agreement”); (b) authorizing the Debtor to offer the Property for sale at auction pursuant to the terms set forth below and in the Procedures Order; (c) and approving the Bidding Procedures and the Notice Procedures. Terms not otherwise defined in this Notice shall have the same meaning as prescribed by the Agreement. **Any discrepancies between the terms of this Notice and the Procedures Order shall be resolved in conformity with the Procedures Order.**

**PLEASE TAKE FURTHER NOTICE** that the Debtor is authorized to proceed with the Sale of the Property pursuant to the terms of the Motion and the Agreement with Purchaser and subject to the auction process and the terms and procedures (the “Bidding Procedures”) set forth herein and the Procedures Order as follows:

- (a) Any competitive bidding for the Real Property shall be conducted at an auction (the “Auction”) at the Law Offices of Trustee’s counsel, Cohen & Krol, after which the Court, after notice and a hearing, shall enter an order, authorizing the Sale of the Property free and clear of liens and interests (other than Permitted Exceptions) (the “Sale Order”). At the Auction, the Debtor shall conduct the sale by open bidding except that nothing contained in the Procedures Order or elsewhere shall prohibit the Debtor, at the Auction, from conducting separate or joint discussions with the Purchaser, any Qualified Bidder (as defined below) or any creditor or their representatives in private and not on the record of such proceeding. A court reporter shall make a record of the open bidding as it occurs.
- (b) Unless otherwise ordered by the Court for cause shown, for any person to participate in the Auction (each a “Potential Bidder”), such person must deliver to the Debtor such information as the Debtor shall request establishing a Potential Bidder’s ability to close the Sale of the Property in a timely manner, including a demonstration of financial wherewithal to close such sale; a wire transfer or cashier’s or certified check made payable to the Debtor as an Earnest Money Deposit of \$50,000.00; and an executed agreement for purchase of the Property in substantially the same form as the Agreement, are in form and substance acceptable to the Debtor. Any Potential Bidder meeting all of the above requirements that wishes to participate in the Auction must attend the Auction and acknowledge in writing that it is familiar with, understands and accepts the procedures specified in the Procedures Order. Any person qualifying under all of the above standards shall be entitled to bid to purchase the Property and will be hereinafter referred to as a “Qualified Bidder”. Any bid made by a Qualified Bidder shall be referred to as a “Qualified Bid”. Any party wishing to bid at Auction for the purchase of the Property must submit said bid and bidding requirements to the Debtor by no later than November 20, 2017.

- (c) The Debtor shall grant reasonable access to the Property to any person expressing an interest in viewing the same for the purpose of making a bid thereon, and the Debtor will further agree to make financial and such other information concerning the Property available to prospective bidders.
- (d) The Debtor will offer the Personal Property for sale at the Auction in conformity with these Terms and Procedures and the Procedures Order. At the conclusion of the Auction, the Debtor will undertake the Bid Analysis to determine which Qualified Bid is, in its best judgment, the Winning Bid. At the conclusion of the Bid Analysis, the Debtor shall ask the Court to enter an order authorizing the Debtor to consummate the transaction in accordance with the Winning Bid with the Winning Bidder and to execute such additional documentation as is reasonably necessary to close such Sale (as defined below).
- (e) A bid submitted must have a net cash value that exceeds the Purchase Price by at least One Hundred Thousand Dollars (\$100,000.00) with subsequent bidding increments be in an amount not less than Fifty Thousand Dollars (\$50,000.00) of the previous bid.
- (f) The offers of all Qualified Bidders shall be irrevocable until the earlier of (i) the Closing of the sale of the Real and Personal Property or (ii) the withdrawal of the Property for sale by the Trustee.
- (g) In the event that a Winning Bidder defaults in the performance of its obligation to purchase the Real and Personal Property pursuant to a Winning Bid, the Winning Bidder's Earnest Money Deposit shall be forfeited and shall immediately be transferred to the Debtor. Notwithstanding the foregoing, such forfeiture shall not be in full satisfaction of any damages caused to any person by Winning Bidder's default as described herein. Any person making an Earnest Money Deposit who does not become the Purchaser (as the Winning Bidder as specified in the Sale Order as entered by the Court) shall have its Earnest Money Deposit returned to it within two (2) business days after the conclusion of the hearing at which time the Winning Bid is confirmed.
- (h) In the event that a Winning Bidder defaults in the performance of its obligations to purchase the Property pursuant to a Winning Bid, then the next highest bidder for the Property shall be required to proceed as the Winning Bidder. Consequently, that person's bid (the "Back-Up Bid") will be treated as the Winning Bid, without further notice, hearing or entry of additional order by the Court.
- (i) Any sale of the Property pursuant to the Sale Order (the "Sale") shall be free and clear of all liens and interests (unless otherwise agreed to by such Winning Bidder), with such liens and interests attaching to the proceeds of the Sale (the "Sale Proceeds") in the same priority as those liens and interests enjoyed prior to the Auction and Sale. The Sale Order shall expressly so provide.
- (j) **THE SALE OF THE REALAND PERSONAL PROPERTY SHALL BE ON AN "AS IS, WHERE IS" BASIS AND WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, NATURE OR DESCRIPTION BY THEDEBTOR, THE BANKRUPTCY ESTATE, OR ITS RESPECTIVE AGENTS.** By submitting a bid, each Qualified Bidder shall be deemed to have acknowledged and represented that (i) it has had an opportunity to inspect and examine the Property and to conduct any and all due diligence regarding the Property prior to making its bid; (ii) it has relied solely upon it own independent review, investigation and/or inspection of any documents and the Property in making its bid; and (iii) it did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Property by any person whatsoever, or the completeness of any information provided in connection therewith or the Auction.
- (k) Notwithstanding anything to the contrary in this Motion or the Agreement, a Winning Bid shall have been accepted by the Debtor only upon entry of the Sale Order and the Debtor will not be obligated to take any action related to the sale of the Property unless and until the Court enters the

Sale Order. The Debtor's presentation to the Court for the approval of a Winning Bid does not constitute the Debtor's acceptance thereof.

- (l) Upon the Court's entry of the Sale Order, a Winning Bidder(s) (which may be the Purchaser) shall become the "Purchaser".
- (m) If the Winning Bidder, other than the original Purchaser, 19100 Crescent Building LLC, shall acquire the Personal Property under competitive bidding as described herein, then 19100 Crescent Building LLC shall be entitled to a cash break-up fee of Twenty Five Thousand Dollars (\$25,000.00) ("Break-Up Fee"), which amount will be paid by the Debtor from the proceeds of the Sale of the Property at the closing. However, if 19100 Crescent Building LLC acquires the Property, then 19100 Crescent Building LLC shall not be entitled to payment of the Break-Up Fee or any reduction of the Purchase Price or Winning Bid. If 19100 Crescent Building LLC acquires the Property, the price set forth in the Winning Bid shall thereafter be and constitute the Purchase Price pursuant to the Agreement.
- (n) Any and all bids must be submitted in accordance with this Notice and the Sale Order by no later than November 20, 2017.

**PLEASE TAKE FURTHER NOTICE** that the Auction is set for 11:00 a.m. Central Standard Time on November 21, 2017 at the Law Offices of Trustee's Counsel, Cohen & Krol, 105 W. Madison Street, Suite 1100, Chicago, IL.

**PLEASE TAKE FURTHER NOTICE** that any party wishing to object to said auction sale must file and serve said objections upon the Debtor and other parties in interest on or before November 24, 2017 and a hearing to approve the Sale of the Property to the Purchaser shall be held on November 28, 2017 at 10:00 a.m. Central Standard Time, before the Honorable Deborah L. Thorne, Courtroom 613, in the United States Courthouse, 219 S. Dearborn St., Chicago, IL, or in her absence, before such Judge who may be sitting in his place and stead and hearing bankruptcy motions.

TRINITY 83 DEVELOPMENT LLC, Debtor

By: /s/ Gina B. Krol  
One of Attorneys for Debtor

GINA B. KROL  
COHEN & KROL  
105 W. Madison Street  
Suite 1100  
Chicago, IL 60602  
312/368-0300