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

In re:

THE BIG APPLE CIRCUS, LTD.

Debtor.

Chapter 11

Case No. 16-13297 (SHL)

**DEBTOR’S MOTION FOR ENTRY OF AN ORDER APPROVING PRIVATE
SALE OF THE WALDEN PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES, AND OTHER INTERESTS, AND GRANTING RELATED RELIEF**

The above-captioned debtor and debtor in possession, The Big Apple Circus, Ltd.

(the “**Circus**” or the “**Debtor**”), respectfully states as follows:

Relief Requested

1. The Circus hereby submits this motion, pursuant to sections 105(a), 363, 503, 541, 1107(a) and 1108 of title 11 of the United States Code (the “**Bankruptcy Code**”), rules 2002, 6004, and 9006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), rule 9013-1 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Bankruptcy Rules**”), the “Amended Guidelines for the Conduct of Assets Sales” promulgated by General Order M-383 of this Court (the “**Sale Guidelines**”), and the applicable provisions of the New York Not-for-Profit Corporation Law, respectfully requesting entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Sale Order**”), (a) authorizing

the Circus to sell real property located at 39 Edmunds Lane, Walden, New York (the “**Walden Property**”), free and clear of all liens, claims, encumbrances, and other interests, to Polich Tallix Inc. (the “**Purchaser**”) pursuant to the “Real Estate Purchase and Sale Agreement,” dated November 23, 2016, by and among the Circus and the Purchaser (the “**REPSA**”),¹ attached hereto as **Exhibit B**, and (b) granting related relief.

2. In support of this motion, the Circus relies upon the “Declaration of Will Maitland Weiss, Executive Director of The Big Apple Circus, Ltd., in Support of Chapter 11 Petition and First Day Pleadings” (the “**First Day Declaration**”), filed on November 20, 2016, and the “Declaration of Will Maitland Weiss in Support of Debtor’s Motion for Entry of an Order Approving Private Sale of the Walden Property Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and Granting Related Relief” (the “**Sale Declaration**”), filed concurrently herewith, both of which are incorporated herein by reference.

Jurisdiction and Venue

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

General Background

4. On November 20, 2016 (the “**Petition Date**”), the Circus commenced a voluntary case under chapter 11 of the Bankruptcy Code in this Court. The Circus is authorized to continue to operate its business and manage its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the REPSA.

or examiner has been made, and no statutory committee has been appointed or designated, in this chapter 11 case.

5. The Circus is a Type B not-for-profit corporation organized under section 201 of the New York Not-for-Profit Corporation Law (“**N.Y. N-PCL**”) that is exempt from federal taxes under section 501(c)(3) of the Internal Revenue Service Code.² Founded in 1977 by Paul Binder and Michael Christensen to establish a performing circus and school for the instruction and artistic development of circus arts, the Big Apple Circus is a venerated, New York cultural institution renowned for its critically-acclaimed performances and dedicated community programs. During its illustrious history, the Circus has performed 38 unique seasons of an annual ring show under the Big Top at venues across the country, featuring circus performers from around the globe and bringing the highest standards of artistic excellence to its multigenerational, multiethnic, and multilingual audience, both on tour and from the Circus’ home base in New York City’s Lincoln Center.

6. As set forth in the First Day Declaration, the Circus has faced significant financial distress during recent years. In response, the Circus aggressively cut operating costs wherever possible, reduced its performance schedule, and actively sought donor contributions, most recently through the “Save the Circus” campaign mounted this summer. However, despite receiving donations from over 1,400 donors as well as continued financial support of the Circus’ officers and directors, the Circus was ultimately unable to raise sufficient funds. In July, the Circus made the difficult decision to cancel the 2016-17 performance season and release the Circus’ artists and production crew.

² A copy of the Circus’ certificate of incorporation (as amended) is attached to the First Day Declaration as Exhibit B.

7. Based on the foregoing and other factors, the Circus, in consultation with its directors, officers and advisors, determined that the best course of action to maximize the Circus' value for creditors and honor its mission was to commence this chapter 11 case to effectuate an orderly wind down of the Circus' affairs, sell certain assets, and satisfy creditor claims, all while continuing a downsized operation of its community programs, some of which may be transitioned to other capable not-for-profit organizations, and preserving the opportunity to restart the annual ring show with new financial support or through a sale of the circus to an interested buyer. Specifically, in light the cancellation of the Circus' performance season, the Circus intends to sell the Walden Property, as well as its circus equipment and other personal and intellectual property associated with the Circus' performance unit (such equipment and other personal and intellectual property, the "**Circus Assets**"), which are no longer necessary to support the Circus' mission or operations. The Circus will request approval of the sale of the Circus Assets by separate motion.

8. Additional information regarding the Circus' business, its capital structure, and the events leading to the filing of its chapter 11 case, and the facts and circumstances supporting the relief requested herein are set forth in the First Day Declaration.

Proposed Sale of the Walden Property

A. The Walden Property

9. The Circus seeks to sell the Walden Property, consisting of two legal lots, identified on the Village of Walden Tax Assessor's Maps and Records as Section 313, Block 3, and Lots 4 & 5. The Walden Property is comprised of an approximately 60,000 square foot single industrial facility situated on roughly 31 acres in the Town of Montgomery, Village of Walden. The Circus has owned the Walden Property in fee simple since 2004, and has used the property as a storage and training facility.

B. Prior Appraisals of the Walden Property

10. The Walden Property has been appraised several times since 2008:

- In 2008, Armstrong Appraisals LLC conducted an appraisal of the Walden Property, effective September 29, 2008, and concluded that the property's market value was \$2,430,000. See Summary Appraisal Report, The Big Circus, Ltd Training Facility & Offices (effective Sept. 29, 2008), attached to the Sale Declaration as Exhibit 1.
- In 2011, Armstrong Appraisals LLC conducted an appraisal of the Walden Property, effective February 9, 2011, and concluded that the property's market value was \$2,310,000. See Summary Appraisal Report, The Big Circus, Ltd Training Facility & Offices (effective Feb. 9, 2011), attached to the Sale Declaration as Exhibit 2.
- In 2014, RE/MAX Benchmark Realty Group conducted an appraisal of the Walden Property, and concluded that the property had a fair market value range of \$1,750,000 to \$2,150,000, with a central tendency and probable selling price of approximately \$1,950,000. See RE/MAX Benchmark Realty Group Appraisal Letter (Oct. 22, 2014), attached to the Sale Declaration as Exhibit 3.
- On October 27, 2014, using an income capitalization approach, John J. Lease Realtors (“**JJL Realtors**”) valued the Walden Property at between \$2,100,000 and \$2,300,000. See John J. Lease Realtors Letter to Ron Gross, Director, Big Apple Circus (Oct. 27, 2014), attached to the Sale Declaration as Exhibit 4. At that time, JJL Realtors estimated a “quick sale value” for the Walden Property between \$1,850,000 and \$1,900,000. Id. JJL Realtors further noted that if the property were to be marketed under normal conditions, their starting asking price would be \$2,500,000. Id.

C. Recent Comparable Transactions

11. In 2016, the Walden Property was marketed for sale by JJL Realtors. On April 12, 2016, JJL Realtors conducted a review of recent transactions involving properties similar to the Walden Property in the vicinity of the Village of Walden, and determined that the following three transactions were the most comparable:

- 21 Charles Street, Maybrook, New York: a 45,000 square foot industrial building, with similar attributes to the Walden Property, to be sold to an industrial user for the purpose of relocating and expanding their business, for \$2,700,000.

- 206 Wembly Road, New Windsor, New York: a 51,000 square foot warehouse/distribution facility situated on 6+ acres of land sold in January 2015 for \$2,500,000 to a purchaser that planned to use the building for its business.
- 311 North Plank Road, Newburgh, New York: a 26,800 square foot warehouse/distribution facility, situated on less than 2 acres of land, sold on July 28, 2016 at a price of \$1,275,000 to a purchaser that planned to use the building for its business.

See John J. Lease Realtors, Update on Listing Located at 39 Edmunds Lane, Walden, N.Y. (Apr. 12, 2016), attached to the Sale Declaration as Exhibit 5. Based upon this review, JJL Realtors suggested a starting list price for the Walden Property of \$2,750,000. See id.

D. Walden Property Listing and Purchase Offers

12. On May 3, 2016, the Walden Property was listed for sale for \$2,750,000. See John J. Lease Realtors Properties for Sale (prepared May 3, 2016), attached to the Sale Declaration as Exhibit 6. After listing the Walden Property, the Circus received the following offers to purchase the Walden Property: (a) on or about July 25, 2016, Weiner Holdings LLC (“**Weiner Holdings**”), through Toners World, an import company, submitted an all-cash bid to purchase the Walden Property for \$2,500,000³; (b) on or about July 28, 2016, Mastertex, a company that distributes bedding, submitted a bid of \$2,500,000 for the Walden Property; and (c) on or about October 21, 2016, the Purchaser, operator of a fine art foundry and maker of the Oscar statuettes given out at the Academy Awards, submitted an all-cash bid to purchase the Walden Property for \$2,500,000. See Sale Declaration ¶ 3.

³ On June 29, 2016, the Purchaser initially offered to pay \$2,000,000 for the Walden Property, which bid, following negotiations with the Circus, was improved on several occasions. See Sale Declaration ¶ 3.

E. Board Approval of the Walden Property Sale

13. On October 5, 2016, after receiving the initial bids from Weiner Holdings and Mastertex, the Circus' board of directors (the "**Board**") held a duly-called special meeting to consider the offers submitted for the purchase of the Walden Property. See Sale Declaration ¶ 3. The Board is comprised of 25 voting members, 15 of whom attended the meeting and constituted a quorum under the Circus' by-laws.⁴ Id.

14. At the meeting, the Board discussed the bids and determined to pursue the proposed sale of the Walden Property to Weiner Holdings. Specifically, the Board noted that the bid from Weiner Holdings represented the same economic terms as the other bidder at the time (Mastertex) – \$2,500,000 in immediately available funds – and was perceived to preserve future optionality for the Circus because Weiner Holdings was amenable to potentially allowing for a leaseback of the Walden Property to the Circus to facilitate the sale of the Circus Assets or preserve the opportunity to restart the ring show. See id. ¶ 4. The consideration offered by Weiner Holdings was fair and reasonable based on the appraised value of the Walden Property and recent comparable transactions. See id. Further, the transaction was negotiated at arm's length, and none of the directors, officers, or key employees of the corporation or their relatives would receive a direct or indirect financial benefit as a result of the transaction or commitments for distribution of proceeds. See id.

15. In accordance with applicable law, the Board adopted and approved resolutions, attached to the Sale Declaration as Exhibit 7, authorizing the sale of the Walden

⁴ Under the Circus' by-laws, a quorum at a meeting of the Board consists of (a) a majority of those directors who hold such of the offices of Chair, Vice Chair, President, Secretary, Treasurer, Artistic Director and Executive Director as are at that time filled plus (b) a majority of the Executive Committee present at a meeting of the Board of Directors, unless a greater or lesser number is required by law or by the certificate of incorporation. A copy of the Circus' by-laws is attached to the First Day Declaration as Exhibit C.

Property “on terms and conditions substantially similar” to those in the purchase and sale agreement entered into between the Circus and Weiner Holdings. See id. ¶ 5. That purchase and sale agreement provided for an all-cash purchase price of \$2,500,000. See id. The transaction was then approved by 14 members of the Board with one member abstaining, which satisfies the applicable approval requirements under the New York Not-for-Profit Corporations Law.⁵ See id. ¶ 5 & Ex. 7.

16. Subsequent to the Circus’ entry into the purchase and sale agreement with Weiner Holdings, Weiner Holdings attempted to terminate the agreement on improper grounds. See id. ¶ 6. Accordingly, the Circus intends to seek return of the \$250,000 deposit placed in escrow by Weiner Holdings and such other appropriate relief related to Weiner Holdings’ breach of contract. See id.

17. On or about October 21, 2016, the Circus then received an expression of interest in the Walden Property by the Purchaser. See id. ¶ 7. The Circus and the Purchaser conducted good faith, arm’s length negotiations and agreed upon the REPSA, which contains terms and conditions substantially similar to the terms and conditions in the purchase and sale agreement entered into between the Circus and Weiner Holdings. See Exhibit B. The consideration offered by the Purchaser is the same as that offered by Weiner Holdings, and fair and reasonable based on the appraised value of the Walden Property and recent comparable transactions. Moreover, the REPSA provides a 90-day license agreement to continue using certain indoor and outdoor space at the Walden Property. None of the directors, officers, or key employees of the corporation or their relatives will receive a direct or indirect financial benefit as a result of the transaction or commitments for distribution of proceeds. See id. Accordingly, the

⁵ The Circus does not have any members, and accordingly, member approval of the proposed transaction is not required.

Circus proceeded to enter into the REPSA based upon the prior Board resolution authorizing entry into such an agreement. See id. The sale of the Walden Property to the Purchaser was subsequently ratified on November 16, 2016, by the Executive Committee of the Board. See id.

F. Private Sale of Walden Property

18. The Circus now seeks this Court's approval to sell the Walden Property to the Purchaser in accordance with the REPSA pursuant to a private sale. No auction for the Walden Property is contemplated because the Circus, through JJJ Realtors, has already actively sought competitive offers and determined that the Purchaser's proposal is the best and highest offer.

G. Proposed Use of the Walden Property Sale Proceeds

19. If the sale of the Walden Property is approved by this Court, the Circus proposes to use the sale proceeds to satisfy related closing costs associated with the sale, as well as the outstanding mortgage on the Walden Property owed to Nonprofit Finance Fund, pay the Circus' debtor-in-possession financing that matures upon the closing of the sale of the Walden Property, and apply the net proceeds of the sale in accordance with section 363 of the Bankruptcy Code, pursuant to a confirmed chapter 11 plan, or as otherwise authorized by the Court. Notably, satisfaction of the outstanding mortgage on the Walden Property will facilitate the sale of the Circus Assets by clearing title on the Circus' various vehicles and other equipment on which Nonprofit Finance Fund asserts liens. Pursuant to the proposed Sale Order, the Debtor will stipulate to the validity of Nonprofit Finance Fund's liens and claims in connection with satisfaction of the mortgage.

Basis for Relief Requested

20. For the reasons set forth herein, the Debtor submits that the sale of the Walden Property to the Purchaser pursuant to the REPSA and the related relief will serve the

best interests of the Debtor and its estate, creditors, stakeholders, and other parties in interest, and are authorized under the Bankruptcy Code, the Bankruptcy Rules and the New York Not-for-Profit Corporation Law. Accordingly, the Debtor respectfully requests entry of the proposed Sale Order.

A. The Sale of the Walden Property Is Supported by the Debtor's Sound Business Judgment and Should Be Approved

21. Section 363 of the Bankruptcy Code authorizes a debtor in possession to “use, sell, or lease, other than in the ordinary course of business, property of the estate,” after notice and a hearing. 11 U.S.C. § 363(b)(1). Courts interpreting section 363(b) have held that transactions should be approved when they are supported by sound business reasons. See Comm. of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983); In re Global Crossing Ltd., 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003).

22. “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). When a valid business justification exists, the law vests the debtor’s decision to use property out of the ordinary course of business with a strong presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)).

23. The Court also may grant the requested relief pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, which provides that “[t]he court may issue

any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

24. Here, the Debtor has articulated clear business justifications for consummating the proposed sale of the Walden Property. Based on the current financial and operational condition of the Debtor’s business, the Debtor has determined that the Walden Property is no longer necessary to support its mission or operations. In the meantime, the Debtor continues to incur monthly costs, including taxes and maintenance fees, associated with the Walden Property. Further, the Debtor will be able to use the funds from the sale of the Walden Property to satisfy outstanding debts, including the costs of the sale transaction (including applicable brokers’ fees and noticing costs), the mortgage on the Walden Property and other creditors’ claims, and potentially prolong the Debtors’ operations.

25. JLL Realtors actively marketed the Walden Property prior to identifying the Purchaser. As a result of those marketing efforts and the good faith negotiations with the Purchaser that followed, the Debtor has secured a sale of the Walden Property for a price that will generate significant cash for the benefit of the Debtor’s estate and creditors and avoid further unnecessary costs of retaining the Walden Property. Moreover, the bid by the Purchaser is the best offer for the Walden Property, provides a fair and reasonable price for the property, and grants the Debtor a temporary license to continue using the Walden Property. Given the marketing of the Walden Property, the prior appraisals of the property, and recent comparable transactions, the Debtor maintains that the purchase price proposed under the REPSA is fair, reasonable, and maximizes the value of the Walden Property. Bank of Am. Nat’l Trust & Sav. Ass’n v. 203 N. LaSalle St. P’ship, 526 U.S. 434, 457 (1999) (“[T]he best way to determine value is exposure to a market.”); see also VFB LLC v. Campbell Soup Co., 482 F.3d 624, 633

(3d Cir. 2007) (“Absent some reason to distrust it, the market price is ‘a more reliable measure of the stock’s value than the subjective estimates of one or two expert witnesses.”); In re Boston Generating, LLC, 440 B.R. 302, 325 (Bankr. S.D.N.Y. 2010) (finding that “it is generally accepted . . . that absent a showing that there has been a clear market failure, behavior in the marketplace is the best indicator of . . . value”); In re Granite Broad. Corp., 369 B.R. 120, 143 (Bankr. S.D.N.Y. 2007) (“[T]here is no dispute that in many circumstances the best evidence of value is what a third party is willing to pay in an arm’s length transaction.”).

26. Moreover, Bankruptcy Rule 6004(f)(1) explicitly permits a debtor to enter into transactions outside of the ordinary course of business through private sales. Various courts have approved private sales where the benefit of the private sale outweighs the delay and expense of conducting a public auction. See In re Hawker Beechcraft, Inc., Case No. 12-11873 (SMB) (Bankr. S.D.N.Y. Nov. 29, 2012) (ECF No. 857) (authorizing private sale under Rule 6004(f)(1) where public auction would require estate to incur substantial additional costs, but would result in no additional value to the estate); In re Dewey & Leboeuf LLP, Case No. 12-12321 (MG), 2012 Bankr. LEXIS 5116 at *17–18 (Bankr. S.D.N.Y. Nov. 1, 2012) (finding good business reason to sell assets pursuant to private sale where public sale would be more costly); In re Chemtura Corp., Case No. 09-11233 (REG), 2010 Bankr. LEXIS 5349 (Bankr. S.D.N.Y. July 23, 2010) (approving private sale of debtor’s business pursuant to asset purchase agreement where prior purchase right would stifle third party interest in the business and purchaser was uniquely positioned to operate the business); In re Sonix Med. Res. Inc., Case No. 09-77781 (DTE), 2010 Bankr. LEXIS 5471, at *6–7 (Bankr. E.D.N.Y. Mar. 19, 2010) (authorizing private sale of debtor’s assets and approving asset purchase agreement where there was substantial risk that value of assets would deteriorate if sale was not consummated and purchase agreement was

best opportunity to realize value of assets on going-concern basis and avoid decline and devaluation of debtor's business). With respect to the Walden Property, the benefit of a private sale outweighs the cost of a public auction. The Walden Property was marketed by JJJ Realtors, which publicized the sale of the property and sought potentially interested purchasers. After marketing the property, three potential purchasers expressed interest in the property. The Purchaser has agreed to pay a fair and reasonable price that exceeds all appraisals of the property, and an auction would merely delay the sale process, while the Debtor continues to incur costs associated with the Walden Property.

B. The Proposed Sale Is Consistent with Section 511 of the New York Not-for-Profit Corporation Law

27. Under section 363(d) of the Bankruptcy Code, a not-for-profit corporation, like the Debtor, may sell property “only in accordance with nonbankruptcy law applicable to the transfer of property by a debtor that is such a corporation” 11 U.S.C. § 363(d)(1). Further, section 541(f) of the Bankruptcy Code provides that “[n]otwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.” 11 U.S.C. § 541(f).

28. The Debtor is a Type B not-for-profit corporation incorporated under section 201 of the New York Not-for-Profit Corporation Law. Approval of sales of all or substantially all of the assets of New York not-for-profit corporations is governed by section 511 of the New York Not-for-Profit Corporation Law. N.Y. N-PCL § 511. Accordingly, pursuant to section 363(d) and section 541(f) of the Bankruptcy Code, a sale of the Walden Property must also comply with section 511 of the New York Not-for-Profit Corporation Law.

29. Because the Debtor is insolvent, section 511 would ordinarily require the approval of the New York Supreme Court for a sale of substantially all of the Circus' assets. N.Y. N-PCL §§ 510(a)(3); 511-a(a); 511(d). However, section 1221(e) of the Bankruptcy Abuse Prevention and Consumer Protection Act requires that this Court – not the state court – must approve the transfer of property. Pub. L. No. 109-8, § 1221(e) (2005) (“Nothing in this section shall be construed to require the court in which a case under chapter 11 of title 11, United States Code, is pending to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.”); see also Bench Decision Regarding Debtor’s Sale Motion, at 3–5, In re HHH Choices Health Plan, LLC, Nos. 15-11158-MEW, 15-13265-MEW, 16-10028-MEW (ECF No. 359) (Bankr. S.D.N.Y. Aug. 23, 2016) (“[M]y interpretation of section 363 is that any determination that would be made by a state court, under section 511 of the Not-For-Profit Corporation Law, in the absence of a bankruptcy case, is now a determination to be made by [the bankruptcy court], and not the state court.”); 3 *Collier on Bankruptcy* ¶ 363.04 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2016) (“The applicability of such nonbankruptcy law restrictions does not impair the jurisdiction of the bankruptcy courts to apply them in particular cases, and the bankruptcy court is not required to defer to another forum.”).

30. The Debtor submits that the sale of the Walden Property is consistent with the standards set forth in section 511 of the New York Not-for-Profit Corporation Law and should be approved by this Court. Under section 511(d) of the New York Not-for-Profit Corporation Law, a proposed sale of substantially all of a corporation’s assets should be approved if: (1) “the consideration and terms of the transaction are fair and reasonable to the

corporation,” and (2) “the purposes of the corporation or the interests of its members will be promoted” by the transaction. See N.Y. N-PCL § 511(d). Here, both criteria are met.

31. First, the consideration and terms of the proposed sale of the Walden Property to the Purchaser are fair and reasonable to the Debtor. “Whether a transaction is fair and equitable to the seller usually involves consideration of whether the proposed sale is at a price that is consistent with fair market value.” Bench Decision Regarding Debtor’s Sale Motion, at 5–6, In re HHH Choices Health Plan, LLC, Nos. 15-11158-MEW, 15-13265-MEW, 16-10028-MEW (ECF No. 359) (Bankr. S.D.N.Y. Aug. 23, 2016) (citing Wolkoff v. Church of St. Rita, 505 N.Y.S.2d 327 (Sup. Ct. 1986); Church of God v. Fourth Church of Christ, Scientist, 431 N.Y.S.2d 834 (App. Div. 1981)). As detailed above, JLL Realtors conducted a thorough marketing of the Walden Property to effectively identify interested parties, and the Debtor ultimately received three definitive bids. The purchase price offered by the Purchaser of \$2,500,000 all cash is equal to the price offered by the other bidders, exceeds all recent appraisals of the Walden Property, and falls well within the range of recent sale transactions involving comparable properties. Further, terms of the sale to the Purchaser, which include a license to temporarily continue using the Walden Property, were negotiated at arm’s length and in good faith, and were approved by the Board following due and proper deliberations. See generally In re Church of St. Francis de Sales of N.Y. City, 442 N.Y.S.2d 741 (Sup. Ct. 1981).

32. Second, the sale of the Walden Property will allow the Debtor to cease incurring costs associated with the property, including taxes and maintenance, and to use the funds to satisfy certain outstanding debts in accordance with these proceedings. New York courts have held that use of sale proceeds to pay off a corporation’s debts constitutes a permissible purpose that promotes the interest of a non-profit pursuant to section 511 of the New

York Not-for-Profit Corporation Law. See Bench Decision Regarding Debtor’s Sale Motion, at 9, In re HHH Choices Health Plan, LLC, Nos. 15-11158-MEW, 15-13265-MEW, 16-10028-MEW (ECF No. 359) (Bankr. S.D.N.Y. Aug. 23, 2016) (“As the New York courts have held, it furthers the purposes and interests of any corporation, including a not-for-profit corporation, to pay its debts.”); Friends World Coll. v. Nicklin, 671 N.Y.S.2d 489, 490 (App. Div. 1998) (affirming order approving sale of property pursuant to Not-For-Profit Corporation Law § 511 where “the transaction promoted the interest of the College by enabling it to pay its debts”); In re Sculpture Ctr., Inc., No. 113773/01, 2001 WL 1568739, at *4 (N.Y. Sup. Ct. Aug. 24, 2001) (holding that a transaction furthered the purposes of a not-for-profit corporation by enabling debt payments, even though some sculpture classes would be terminated). Moreover, the sale of the Walden Property to the Purchaser permits the property to continue serving the arts as a fine art foundry that creates, among other things, the Oscars.

33. Therefore, the sale of the Walden Property to the Purchaser pursuant to the terms and conditions of the REPSA should be authorized and approved pursuant to section 511 of the New York Not-for-Profit Corporation Law.⁶

C. The Walden Property Should Be Sold Free and Clear of All Liens, Claims, Encumbrances, and Other Interests

34. Under section 363(f) of the Bankruptcy Code, a debtor may sell property “free and clear of any interest in such property of an entity other than the estate.” 11 U.S.C. § 363(f). In particular, that section authorizes a debtor to sell property free and clear if:

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

⁶ Sections 509 through 511 of the New York Not-for-Profit Corporation Law also identify certain corporate governance requirements for approving a sale of substantially all of the assets of a not-for-profit corporation and informational requirements for any related sale petition. The Debtor submits that this motion and the Debtor’s other filings made with this Court satisfy these requirements.

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

11 U.S.C. § 363(f); see also In re Gen. Bearing Corp., 136 B.R. 361, 366 (Bankr. S.D.N.Y. 1992) (listing requirements). Because section 363(f) of the Bankruptcy Code is stated in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the assets “free and clear” of interests. See In re Kellstrom Indus., Inc., 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions is met, the debtor has the authority to conduct the sale free and clear of all liens.”) (citing Citicorp Homeowners Servs., Inc., v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988)); In re Dundee Equity Corp., No. 89–B–10233, 1992 WL 53743, at *4 (Bankr. S.D.N.Y. March 6, 1992) (“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.”); see also Michigan Emp’t Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.), 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (“[T]he sale free and clear of the interest concerned can occur if any one of the conditions of section 363(f) have been met.”).

35. The sale of the Walden Property to the Purchaser free and clear of all liens, claims, encumbrances, and other interests is appropriate under section 363(f) of the Bankruptcy Code. The Debtor proposes to sell the Walden Property in a commercially reasonable manner and believes that the value of the proceeds from such sale fairly reflect the value of the Walden Property. To the extent that any interest holder does not object to the

proposed sale, that entity should be deemed to have consented to the relief sought herein, thereby satisfying section 363(f)(2) of the Bankruptcy Code. Any entity holding interests in the Walden Property will receive notice of this motion and the hearing with respect thereto. Accordingly, all parties in interest will be given sufficient opportunity to object to the relief requested herein. Failure to object should be deemed consent. See Futuresource LLC v. Reuters Ltd., 312 F.3d 281, 285–86 (7th Cir. 2002) (“It is true that the Bankruptcy Code limits the conditions under which an interest can be extinguished by a bankruptcy sale, but one of those conditions is the consent of the interest holder, and lack of objection (provided of course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in the bankrupt’s assets had to execute a formal consent before they could be sold.” (internal citations omitted)).

36. Further, any party with an interest in the Walden Property shall have a corresponding security interest in the proceeds of the sale received by the Debtor therefrom (with all of the Debtor’s claims, defenses and objections with respect to the amount, validity, or priority of each such interest and the underlying liabilities expressly preserved). See MacArthur Co. v. Johns-Manville Corp., 837 F.2d 89, 94 (2d Cir. 1988) (“It has long been recognized that when a debtor’s assets are disposed of free and clear of third-party interests, the third party is adequately protected if his interest is assertable against the proceeds of the disposition.”). Therefore, any lien holders are adequately protected and could be compelled to accept a monetary satisfaction of their interest. As such, the requirements of section 363(f) of the Bankruptcy Code would be satisfied for a sale of the Walden Property free and clear of all liens, claims, encumbrances, and other interests.

D. The Purchaser Is a Good-Faith Purchaser Entitled to the Protections of Section 363(m) of the Bankruptcy Code

37. Section 363(m) provides that “[t]he 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. . . .” 11 U.S.C. § 363(m).

38. The Bankruptcy Code does not define “good faith,” but courts generally find that where there is no evidence of fraud, impropriety or collusion, a purchaser that purchases in “good faith,” “for value,” and “without notice of adverse claims,” and that conducts itself with integrity in the course of sales proceedings is a good faith purchaser. Bay Harbour Mgmt., L.C. v. Lehman Bros. Holdings Inc. (In re Lehman Bros. Holdings, Inc.), 415 B.R. 77, 83-84 (Bankr. S.D.N.Y. 2009); see also Mark Bell Furniture Warehouse, Inc. v. D.M. Reid Assocs. (In re Mark Bell Furniture Warehouse, Inc.), 992 F.2d 7, 8 (1st Cir. 1993); Hardage v. Herring Nat’l Bank, 837 F.2d 1319, 1323 (5th Cir. 1988); In re Abbotts Dairies, Inc., 788 F.2d 143, 147 (3d Cir. 1986).

39. The proposed sale of the Walden Property is a product of extensive, arm’s length negotiations between the Debtor and the Purchaser. The Purchaser is unaffiliated with the Debtor and is not an “insider” of the Debtor within the meaning of section 101(31) of the Bankruptcy Code, and will not be controlled by, or acting on behalf of, any insider of the Debtor. There is no evidence of fraud or collusion in the terms of the proposed sale. Accordingly, the Debtor requests that the Court find that the Purchaser is a “good faith” buyer for purposes of section 363(m) with respect to the Walden Property.

E. The Court Should Waive the Bankruptcy Rule 6004(h) Stay

40. The Debtor requests that the Court waive the fourteen-day stay provision of Bankruptcy Rule 6004(h). The purpose of this rule is to provide sufficient time for an objecting party to appeal before a sale order can be implemented. See Advisory Committee Notes to Bankruptcy Rule 6004. Although Bankruptcy Rule 6004(h) is silent as to when a court should “order otherwise” and eliminate or reduce the fourteen-day stay period, *Collier on Bankruptcy* suggests that the period should be eliminated to allow a sale or other transaction to close immediately “when there has been no objection to the procedure.” 10 *Collier on Bankruptcy*, ¶ 6004.11 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2016). Furthermore, *Collier* suggests that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay should be reduced to the amount of time actually necessary to file such appeal and to seek a stay. Id. The Debtor desires to close the sale of the Walden Property at the earliest possible date in order to immediately cease incurring costs associated with maintaining and caring for the property and to use the funds to satisfy its current debts consistent with the Bankruptcy Code. The Debtor thus requests that the Court waive the Bankruptcy Rule 6004(h) stay.

Motion Practice

41. This motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to this motion. Accordingly, the Debtor submits that this motion satisfies Local Bankruptcy Rule 9013-1(a).

Notice

42. Pursuant to Bankruptcy Rules 2002 and 6004, Local Bankruptcy Rule 9013-1(b), the Sale Guidelines, and section 511 of the New York Not-for-Profit Corporation

Law, notice of this motion shall be given to (a) the Office of the United States Trustee for the Southern District of New York, (b) the U.S. Attorney for the Southern District of New York, (c) the New York State Attorney General, (d) all known creditors of the Debtor, (e) any entity known or reasonably believed to have asserted a security interest in or lien against the Walden Property, (f) the New York City Department of Cultural Affairs, (g) any entity that has expressed a bona fide interest in acquiring the Walden Property, (h) all taxing authorities having jurisdiction over the Walden Property, including the Internal Revenue Service, (i) the United States Environmental Protection Agency, (j) the New York State Department of Environmental Conservation, (k) the Office of the Mayor of New York City and (l) all parties who have requested notice in the Debtor's chapter 11 case pursuant to Bankruptcy Rule 2002. Due to the nature of the relief requested herein, the Debtor respectfully submits that no further notice of this Motion is required.

No Prior Request

43. No prior request for the relief sought herein has been made by the Debtor to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court (a) enter the Sale Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein, and (b) grant such other and further relief as is just and proper.

Dated: December 9, 2016
New York, NY

/s/ Christopher Updike
M. Natasha Labovitz
Christopher Updike
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, New York 10022
Telephone: (212) 909-6000
Facsimile: (212) 909-6836
Email: nlabovitz@debevoise.com
cupdike@debevoise.com

Proposed Counsel to the Debtor
and Debtor in Possession

Exhibit A

Proposed Order

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

In re:

THE BIG APPLE CIRCUS, LTD.

Debtor.

Chapter 11

Case No. 16-13297 (SHL)

**ORDER APPROVING PRIVATE SALE OF THE WALDEN PROPERTY
FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES,
AND OTHER INTERESTS, AND GRANTING RELATED RELIEF**

Upon the motion, dated December 9, 2016 (the “**Motion**”),¹ of The Big Apple Circus, Ltd. (the “**Circus**” or the “**Debtor**”), pursuant to sections 105(a), 363, 503, 541, 1107(a) and 1108 of title 11 of the United States Code (the “**Bankruptcy Code**”), rules 2002 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), rule 9013-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the “**Local Bankruptcy Rules**”), the “Amended Guidelines for the Conduct of Assets Sales” promulgated by General Order M-383 of this Court (the “**Sale Guidelines**”), and the applicable provisions of the New York Not-for-Profit Corporation Law, for entry of an order (a) authorizing the Debtor to sell real property located at 39 Edmunds Lane, Walden, New York (the “**Walden Property**”), free and clear of all liens, claims, encumbrances, and other interests, to Polich Tallix Inc. (the “**Purchaser**”) pursuant to the Real Estate Purchase and Sale Agreement, dated November 23, 2016, by and among the Debtor and the Purchaser (the “**REPSA**”), attached to the Motion as **Exhibit B**, and (b) granting related relief, all as further set forth in the Motion; and upon consideration of the First Day Declaration and the exhibits attached thereto and the Sale Declaration and the exhibits attached thereto; and the Court having

¹ Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Motion.

jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and adequate notice of the Motion and opportunity for objection having been given under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein and that such relief is in the best interests of the Debtor, its estate, its creditors and all parties in interest and consistent with the applicable requirements of the New York Not-for-Profit Corporation Law; and the Court having found that the terms and conditions of the sale of the Walden Property, including the consideration to be realized by the Debtor pursuant to the REPSA, are fair and reasonable, and the purposes of the Debtor will be promoted by the proposed sale of the Walden Property; and the Debtor having demonstrated good, sufficient and sound business reasons and compelling circumstances to sell the Walden Property pursuant to the REPSA, and such sale is an appropriate and reasonable exercise of the Debtor's business judgment; and any objections to the Motion having been withdrawn or overruled on the merits; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Motion is granted as set forth herein.
2. Pursuant to sections 105(a) and 363 of the Bankruptcy Code and the applicable sections of the New York Not-for-Profit Corporation Law, the Debtor is authorized (a) to execute the REPSA, along with any additional instruments, documents, or agreements that may be necessary to implement the REPSA, (b) to consummate the sale of the Walden Property in accordance with the terms and conditions of the REPSA and instruments, documents, and

agreements contemplated thereby, including the transfer of the Walden Property on an “as is and with all faults” basis, (c) to take any and all further actions necessary and appropriate to consummate, effectuate, implement and close on the sale of the Walden Property, including payment of the claims, costs, and expenses related thereto, (d) and, on the Closing Date, directed, to satisfy all outstanding amounts owed under the mortgage (the “**Walden Mortgage**”) owed to Nonprofit Finance Fund secured by the Walden Property within five (5) business days following the Closing Date, and (e) to apply the net proceeds of the sale of the Walden Property in accordance with section 363 of the Bankruptcy Code, pursuant to a confirmed chapter 11 plan, or as otherwise authorized by the Court.

3. The Debtor and the “Lender-Directors”² permanently, immediately, and irrevocably acknowledge, represent, stipulate and agree:

(a) As of the Petition Date, the Debtor is indebted and liable to Nonprofit Finance Fund under those certain loan and security agreements dated as of December 30, 2008 and September 2, 2009 (as amended and restated from time to time, the “**Prepetition First Lien Loan Documents**”), without objection, defense, counterclaim or offset of any kind, in the aggregate principal amount of not less than \$711,647.10 (subject to currency fluctuations), plus any interest, fees, expenses, reimbursement obligations, and other obligations under the Prepetition First Lien Loan Documents, including, without limitation, any attorneys’, accountants’, consultants’, appraisers’ and financial and other advisors’ fees, to the extent chargeable or reimbursable under the Prepetition First Lien Loan Documents (collectively, the “**Prepetition First Lien Secured Obligations**”).

² The “Lender-Directors” are Paul Goldenheim, Ronnie Gross, and Rick Mayberry.

(b) The Prepetition First Lien Secured Obligations and the Prepetition First Lien Loan Documents are (a) legal, valid, binding, non-avoidable, and enforceable against the Debtor, and (b) not subject to any contest, attack, objection, recoupment, defense, counterclaim, offset, subordination, re-characterization, avoidance or other claim, cause of action or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise.

(c) The liens granted by the Debtor to or for the benefit of Nonprofit Finance Fund as security for the Prepetition First Lien Secured Obligations (the “**Prepetition First Priority Liens**”) encumber the Walden Property, as the same existed on or at any time prior to the Petition Date. The Prepetition First Priority Liens have been properly recorded and perfected under applicable non-bankruptcy law, and are legal, valid, enforceable, non-avoidable, and not subject to contest, avoidance, attack, offset, re-characterization, subordination or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise. The Debtor is not aware of any liens or security interests over the Prepetition First Lien Collateral having priority over the Prepetition First Priority Liens.

4. The REPSA, attached to the Motion as Exhibit B, and all terms and conditions thereof, are hereby approved.

5. Pursuant to section 363(f) of the Bankruptcy Code, the sale of the Walden Property to the Purchaser is hereby granted free and clear of all liens, claims, encumbrances, and other interests in or on the Walden Property, with all such liens, claims, encumbrances, and other interests attaching solely to the proceeds of the sale of the Walden Property with the same validity, priority, force and effect as existed immediately prior to the sale, subject to any and all claims and defenses the Debtor and its estate may possess with respect thereto, and persons or

entities holding any such liens, claims, encumbrances, and other interests are hereby barred, estopped, and permanently enjoined from asserting such interests against the Purchaser, its successors or assigns, or the Walden Property, unless the Purchaser has otherwise agreed.

6. On the Closing Date, each holder of a lien, claim, encumbrance, or other interest in or on the Walden Property is authorized and directed to execute such documents and take all other actions as may be necessary to release such lien, claim, encumbrance, or other interest. Upon satisfaction of all outstanding amounts owed under the Walden Mortgage, Nonprofit Finance Fund is authorized and directed to execute such documents and take all other actions as may be necessary to release any lien, claim, encumbrance, or other interest in or on any other property of the Debtor or its estate, including, but not limited to, the Debtor's vehicles and other personal property.

7. Upon the consummation of the transactions contemplated in the REPSA, the Purchaser shall be authorized to file termination statements or lien terminations in any required jurisdiction to remove any record, notice of filing, or financing statement recorded to attach, perfect or otherwise notice any lien or encumbrance that is extinguished or otherwise released pursuant to this Order under section 363 and the related provisions of the Bankruptcy Code.

8. A certified copy of this Order may be filed with any appropriate clerk and/or recorded with any appropriate recorder to act to cancel any of the liens, claims, encumbrances, and other interests of record in or on the Walden Property and to resolve any title issues with respect to the Walden Property.

9. If any person or entity that has filed statements or other documents or agreements evidencing a lien, claim, encumbrance, or other interest in the Walden Property shall

not have delivered to the Debtor prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary or desirable to the Purchaser for the purpose of documenting the release of all liens, claims, encumbrances, and other interests in the Walden Property that the person or entity has or may assert with respect to all or any portion of the Walden Property, the Debtor and the Purchaser are hereby authorized to execute and file such statements, instruments, releases, and other documents on behalf of such person or entity with respect to the Walden Property.

10. This Order is and shall be binding upon and govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental entities, agencies, and departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease, and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the REPSA.

11. Notwithstanding any provision of this Order, the REPSA, related instruments or documents, or otherwise, all rights, claims, defenses, causes of action and rights of offset or counterclaim of the Debtor against the Purchaser are in all cases expressly retained by the Debtor.

12. The Walden Property is property of the Debtor's estate and good title thereto is vested in the Debtor's estate within the meaning of section 541(a) of the Bankruptcy Code, and the transfer of the Walden Property to the Purchaser complies with section 541(f) of the Bankruptcy Code and applicable non-bankruptcy law.

13. The Purchaser is a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Court, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the sale of the Walden Property shall not affect the validity of such sale, unless such authorization and consummation of such sale are duly stayed pending such appeal.

14. The REPSA was negotiated, proposed, and entered into by the Debtor and the Purchaser without collusion, in good faith and from arm's-length bargaining positions. Neither the Debtor nor the Purchaser have engaged in any conduct that would cause or permit the transaction to be avoided under section 363(n) of the Bankruptcy Code.

15. Notice of the Motion, the sale of the Walden Property, and the hearing to consider the Motion was good and sufficient and satisfies sections 102(l) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002(a), 6004, and 9006, all applicable Local Bankruptcy Rules, and the applicable provisions of the New York Not-for-Profit Corporation Law.

16. A copy of this Order shall be served on the New York State Attorney General, who shall also receive written notice that the sale of the Walden Property has closed, if such sale has been abandoned, or if it is still pending 90 days after entry of this Order.

17. The Debtor has full corporate power and authority to execute and deliver the REPSA and all other documents contemplated thereby, and the sale of the Walden Property has been duly and validly authorized by all necessary corporate action by the Debtor. No further

consents or approvals, including that of any other court or the New York State Attorney General, are required for the Debtor to consummate the sale of the Walden Property pursuant to the REPSA.

18. The terms and provisions of the REPSA and this Order shall be binding in all respects upon the Debtor, its estate and creditors, all holders of any lien, claim, encumbrance, or other interest in the Walden Property, the Purchaser and all successors and assigns of the Purchaser, and any trustees subsequently appointed in the Debtor's chapter 11 case or upon conversion to chapter 7 under the Bankruptcy Code of the Debtor's case. This Order and the REPSA shall inure to the benefit of the Debtor, its estate and creditors, the Purchaser, and their respective successors and assigns.

19. Notwithstanding Bankruptcy Rule 6004(h) or any other applicable Bankruptcy Rule, the terms and conditions of this Order are immediately effective and enforceable upon its entry.

20. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2016

UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Real Estate Purchase and Sale Agreement

REAL ESTATE PURCHASE AND SALE AGREEMENT

by and between

THE BIG APPLE CIRCUS, LTD.
SELLER

and

POLICH TALLIX INC.
PURCHASER

November 23, 2016

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement"), is made and entered into as of the 23 day of November, 2016, (the "Execution Date") by and between THE BIG APPLE CIRCUS, LTD. ("Seller"), and POLICH TALLIX INC. ("Purchaser").

RECITALS:

WHEREAS, Seller is the owner of certain real property located in Orange County, New York, more particularly identified and described on the attached Exhibit "A", incorporated herein and made a part hereof for all purposes, together with any fixtures, structures, buildings, and other improvements thereon, (the "Property");

WHEREAS, Seller desires to sell, and Purchaser desires to purchase, the Property, at the price and upon the terms and conditions set forth herein;

WHEREAS, Seller and Purchaser intend to effectuate the sale of the Property through a voluntary case to be commenced by Seller under chapter 11 of the United States Bankruptcy Code;

WHEREAS, the date that Seller commences its voluntary case under chapter 11 of the United States Bankruptcy Code shall be the "Effective Date", unless Seller has commenced its voluntary case under chapter 11 of the United States Bankruptcy Code on or before the Execution Date, in which case the Execution Date shall be the "Effective Date";

NOW, THEREFORE, in consideration of the mutual covenants, promises, conditions, and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, Seller and Purchaser covenant and agree as follows:

1. **PURCHASE AND SALE**. Seller agrees to sell, and Purchaser agrees to purchase, the Property, at the price and upon the terms and conditions set forth herein.
2. **DEPOSIT**. Within one business day of the Execution Date, Purchaser shall deposit the sum of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) (the "Deposit") with a mutually acceptable escrow agent (the "Escrow Agent"), with whom both parties shall enter into an escrow agreement (the "Escrow Agreement"), as earnest money for Purchaser's obligations under this Agreement. The Deposit shall be applied to Purchaser's obligations under this Agreement at the closing of the sale of the Property (the "Closing") as a credit. If Purchaser fails to timely submit the Deposit as of the Execution Date, Seller shall be entitled to terminate this Agreement by providing written notice to Purchaser.
3. **CLOSING DATE**. The transaction contemplated by this Agreement shall be closed on or before the date that is thirty (30) days after the Due Diligence Period (defined in Section 4 herein below), with such date of Closing hereinafter referred to as the "Closing Date", and with the Closing to occur in such place as the parties mutually agree. Possession of the Property shall be transferred to Purchaser at the Closing.
4. **DILIGENCE PERIOD**. Seller and Purchaser agree that Purchaser shall have a period beginning on the Effective Date and expiring forty-five (45) days after the Effective Date (the "Due Diligence Period") to conduct such inspections, reviews, studies or assessments of the Property as the Purchaser deems advisable. Purchaser's entry on the Property during the Due Diligence Period is limited to business hours, and Purchaser must give Seller's property manager at least 24

Period is limited to business hours, and Purchaser must give Seller's property manager at least 24 hours' notice of entry. If any testing or inspection alters the physical condition of the Property, Purchaser will promptly restore the Property to a condition that is at least as good as its previous condition immediately following any entry, test or inspection by Purchaser. At any time prior to the expiration of the Due Diligence Period, if and only if a reputable structural engineer and/or a reputable environmental engineer estimates that the cost to address structural stability, including weight bearing capacity of floor sufficient to meet the requirements described on "Exhibit B" attached, and/or environmental matters at the Property exceeds Twenty-Five Thousand and No/100 Dollars (\$25,000.00), then Purchaser shall have the right to terminate this Agreement by delivering written notice to Seller on or before the expiration of the Due Diligence Period, in which event Purchaser shall be entitled to return of the Deposit. If Purchaser does not proceed to Closing for any other reason not due to Seller's acts or omissions, Seller shall retain the Property and the Deposit as Seller's sole and exclusive remedy and this Agreement shall terminate. Seller shall provide Purchaser access to the Property prior to the Closing during business hours to conduct investigations including with respect to environmental and structural matters and for the purpose of surveying the property. Seller will provide to Purchaser the opportunity to review such non-confidential information and documents regarding the Property as are in Seller's possession. Seller has attached to this Agreement a copy of the existing certificate of occupancy for the Property and certain information relating thereto.

5. **PURCHASE PRICE AND PAYMENT.** The purchase price shall be Two Million Five Hundred and No/100 Dollars (\$2,500,000.00), the "Purchase Price"). The Purchase Price shall be paid to Seller at the Closing in immediately available funds, payable by acceptable bank check or wire transfer.
6. **TITLE.** Seller agrees to convey marketable, fee simple title to the Property to Purchaser by bargain and sale deed on the Closing Date, which title shall not be subject to any liens, encumbrances or defects, as of the Closing Date, that impact the marketability of the title to the Property, other than Permitted Exceptions ("Marketable Title"). Permitted Exceptions are (A) utility, sewer and drainage easements of record, and similar easements and (B) current city, state and county property taxes not yet due and payable. If Seller cannot convey Marketable Title on the Closing Date, Purchaser may elect to either (i) proceed with the Closing notwithstanding the lack of Marketable Title without any adjustment in Purchase Price or (ii) not proceed with the Closing but receive a refund of the Deposit from Seller. .
7. **FINANCING.** Purchaser shall have forty five (45) days following the Effective Date (the "Financing Contingency Period") to obtain a commitment from an accredited financial institution for a first mortgage loan to finance the acquisition of the Property (the "Financing"). Purchaser shall, in good faith, use best efforts to apply for and obtain Financing in a principal amount of no greater than 70% of the Purchase Price, at prevailing interest rates and other terms. Purchaser shall apply and submit applications for Financing to at least two separate accredited financial institutions within two weeks of the Effective Date. To the extent that Purchaser is a newly formed entity created solely for the purpose of holding the title to the Property, Purchaser shall include in its applications for Financing a parent company that shall serve as a recourse guarantor for the Financing. If Purchaser is unable to obtain the required loan commitment within the Financing Contingency Period, Purchaser shall deliver written notice thereof to Seller and Escrow Agent, at which time this Agreement shall terminate and the entirety of the Deposit shall be immediately refunded to Purchaser. If Purchaser does not deliver written notice of the failure to obtain Financing within the Financing Contingency Period, the contingency discussed in this Section 7 shall be deemed waived. Nothing herein precludes Purchaser from obtaining any amount of other financing which may become available prior to the Closing.

8. **SURVEY**. Seller shall agree to convey the Property subject to any state of facts that an accurate survey or personal inspection may show, provided that title is not made unmarketable by such survey or personal inspection, and provided that the structure, well and septic systems and improvements are within the perimeter of the property and not in violation of zoning ordinances or restrictions of record. Purchaser shall have the option to cancel this Agreement upon notice to the Seller in the event that an accurate survey or personal inspection shows any encroachments upon the premises or show any improvements included in the sale located outside the boundary lines or the premises; provided that such notice has been delivered to Seller prior to the end of the Diligence Period. If the Purchaser terminates the Agreement under this provision, the Seller's sole responsibility to Purchaser shall be to return the Deposit.
9. **ASSIGNMENT**. Purchaser may not assign this Agreement or Purchaser's rights under this Agreement without the prior written consent of Seller, which consent may be withheld in Seller's sole and absolute discretion. Notwithstanding the foregoing, Purchaser may assign this Agreement to an entity owned or controlled by Purchaser. No assignment of this Agreement or Purchaser's rights hereunder shall relieve Purchaser of its liabilities under this Agreement. This Agreement is solely for the benefit of Seller and Purchaser; there are no third party beneficiaries hereof. Any assignment of this Agreement in violation of the foregoing provisions shall at Seller's option be null and void.

10. **SETTLEMENT DELIVERIES**.

- a. **Seller's Deliveries**. At the Closing, Seller shall deliver to Purchaser all of the following documents and instruments, which shall have been executed by Seller:
- i. A bargain and sale deed with covenants against grantor's acts (the "Deed") granting and conveying to Purchaser title to the Property in fee simple absolute, subject only to the Permitted Exceptions, such Deed to be delivered in hand at Closing;
 - ii. A Certification of Non Foreign Status pursuant to Section 1445;
 - iii. Such title affidavits and certificates as may be commercially reasonably required by Purchaser's title insurer;
 - iv. Evidence that the person executing the deed and closing documents is legally capable and authorized to bind Seller;
 - v. Any notices, statements, certificates, affidavits, releases, and other documents required by this Agreement or law necessary for the Closing, all of which must be completed and executed by Seller as necessary.
- b. **Purchaser's Deliveries**. At the Closing, Purchaser shall deliver to Seller all of the following:
- i. The balance of the Purchase Price;
 - ii. Evidence that the person executing the closing documents is legally capable and authorized to bind Purchaser; and

- iii. Any notices, statements, certificates, affidavits, releases, and other documents required by this Agreement, the commitment, or law necessary for the closing of the sale and the issuance of the title policy, all of which must be completed and executed by Purchaser as necessary.

11. SETTLEMENT COSTS: PRORATED ITEMS AND ADJUSTMENTS.

a. Closing Costs.

i. Seller's Expenses: Seller will pay for the following at or before the Closing:

1. releases of existing liens, including prepayment penalties and recording fees;
2. tax statements or certificates;
3. preparation of the deed;
4. costs to record any documents to cure title objections that Seller is required to cure;
5. any transfer tax; and
6. such other expenses that Seller is required to pay under other provisions of this Agreement.

ii. Purchaser's Expenses: Purchaser will pay for the following at or before closing:

1. recording fees for the deed;
2. premiums for flood and hazard insurance as may be required by Purchaser;
3. the basic premium for the Owner's Title Policy of Title Insurance covering the Property; and
4. any and all other expenses that Purchaser is required to pay under other provisions of this Agreement including survey, title examination and title insurance.

- iii. Pro-Rations. The Purchase Price shall be adjusted for customary closing pro-rations on the Closing Date, including real estate taxes and other utility charges with the understanding that Seller shall have the right to pay or cure any taxes, charges or liens due and payable, including any delinquent amounts, by either (i) a credit to the Purchase Price, or (ii) the use of sale proceeds to pay such outstanding amounts.

12. REPRESENTATIONS OF SELLER. Seller represents and warrants to Purchaser as of the Execution Date, and as of the Closing Date, that:

- a. Authorization of Transaction. Seller has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement and this Agreement constitutes the valid and legally binding obligation of Seller, provided, however, that this Agreement and Seller's representations and obligations thereunder are subject to (i) approval by Seller's Board of Directors and (ii) any regulatory and/or court approval required under applicable law. Seller shall have the right to extend the Closing Date by thirty (30) days to obtain any required approvals, if necessary. Within five (5) days of execution of this Agreement, Seller's Board of Directors will notify Purchaser whether Board approval has been granted. In the event that Seller does not obtain any of the

required approvals described in clauses (i) and (ii), Seller agrees to reimburse up to \$25,000 of Purchaser's due diligence costs with regard to environmental and structural reports, provided that (iii) such costs are incurred prior to the date on which Seller informs Purchaser that any such required approval has been rejected, and (iv) such environmental and structural reports are certified to Seller by the applicable engineering firm. Any such reimbursements shall be paid from the proceeds of the sale of the Property once the Property is in fact sold to another purchaser. This paragraph shall survive the termination of this Agreement.

- b. Noncontravention. Neither the execution and delivery of this Agreement by Seller, nor the consummation by Seller of the transactions contemplated by Seller will violate any statute, regulation, rule, judgment, order, decree, stipulation, injunction, charge or other restriction of any government, governmental agency or court to which Seller is subject or any provision of the certificate of formation or company agreement of Seller.
- c. Instruments. This Agreement and all deeds, assignments, certificates or other instruments executed or delivered by Seller in connection with the transactions contemplated hereby are legal, valid, and binding obligations of Seller, enforceable in accordance with their respective terms except as may be limited by applicable bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor's rights generally and the application of general equity principles.
- d. Legal Entity. Seller is duly organized, validly existing, and in good standing under the laws of the State of New York, is qualified to do business in the State of New York and the party signing below has the requisite authority to bind the Seller.

13. **REPRESENTATIONS OF PURCHASER.** Purchaser represents and warrants to Seller as of the Execution Date, and as of the Closing Date, that:

- a. Authorization of Transaction. Purchaser has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. This Agreement constitutes the valid and legally binding obligation of Purchaser.
- b. Noncontravention. Neither the execution and delivery of this Agreement by Purchaser, nor the consummation by Purchaser of the transactions contemplated by Purchaser will violate any statute, regulation, rule, judgment, order, decree, stipulation, injunction, charge or other restriction of any government, governmental agency or court to which Purchaser is subject or any provision of the charter or bylaws of Purchaser.
- c. Financing. Pursuant to Section 7 herein, Purchaser shall use best efforts and good faith to apply for and obtain Financing to acquire the Property.
- d. Instruments. This Agreement and all certificates or other instruments executed or delivered by Purchaser in connection with the transactions contemplated hereby are legal, valid, and binding obligations of Purchaser, enforceable, in accordance with their respective terms except as may be limited by applicable bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor's rights generally and the application of general equity principles.

- e. Legal Entity. Purchaser is duly organized, validly existing, and in good standing under the laws of the State of New York and the party signing below has the requisite authority to bind the Purchaser.
- f. Property Condition. **PURCHASER IS PURCHASING THIS PROPERTY, AND THE PROPERTY SHALL BE CONVEYED AND TRANSFERRED TO PURCHASER, "AS IS AND WITH ALL FAULTS". WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PURCHASER REPRESENTS AND WARRANTS THAT SELLER HAS NOT, DOES NOT, AND WILL NOT, WITH RESPECT TO THE PROPERTY, MAKE ANY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, OTHER THAN THE WARRANTY OF TITLE IN SELLER'S DEED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF CONDITION, MERCHANTABILITY, HABITABILITY, SUITABILITY, FITNESS FOR A PARTICULAR USE, PROFITABILITY, OR MARKETABILITY. MOREOVER, PURCHASER REPRESENTS AND WARRANTS THAT SELLER HAS NOT, DOES NOT, AND WILL NOT, WITH RESPECT TO THE PROPERTY, MAKE ANY REPRESENTATION OR WARRANTY WITH REGARD TO COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION, OR LAND USE LAWS (INCLUDING, WITHOUT LIMITATION, WHETHER ANY PLAT OR REPLAT FOR THIS PROPERTY WILL BE REQUIRED), RULES, REGULATIONS, ORDERS, OR REQUIREMENTS INCLUDING WITHOUT LIMITATION THOSE PERTAINING TO THE HANDLING, GENERATING, TRADING, STORING OR DISPOSING OF ANY HAZARDOUS OR REGULATED WASTE OR SUBSTANCE. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING AND DELIVERY OF THE DEED TO PURCHASER AND SHALL BE BINDING ON THE SUCCESSORS AND ASSIGNS OF PURCHASER.**
14. **BROKERS.** Each of Seller and Purchaser hereby represent and warrant to the other that they have not contracted with any broker or other person with reference to the sale of the Property, other than Jay Feinberg/John J. Lease Realtors, Seller's and Purchaser's sole broker, the commissions of both of which shall be paid by Seller pursuant to an agreement with John J. Lease Realtors.
15. **CONDITION AT CLOSING.** Subject to Section 15 below, the structures, buildings, improvements and surrounding Property area included in the sale are to be delivered to Purchaser by deed, keys and physical possession to buildings, at the day and time of settlement, and free of tenancies. Any area, internal or external, not included in the Post-Closing Period Areas (hereinafter defined) shall be delivered to Seller at the day and time of settlement vacant, broom clean and free of debris. The Property shall be maintained in the customary manner between the date of the Agreement and the date of the Closing.
16. **POST-CLOSING PERIOD.** Notwithstanding Section 14 above, for up to ninety (90) days after the Closing (the "Post-Closing Period") and pursuant to: (i) the Occupancy License for Outdoor Space, dated as of the date of Closing and attached hereto as "Exhibit C" and (ii) the Occupancy License for Indoor Space, dated as of the date of Closing and attached hereto as "Exhibit D", Purchaser shall grant to Seller non-transferable licenses to access, use and occupy (i) certain external portions of the Property and (ii) an internal portion of the building on the Property (the "Post-Closing Period Areas"), in order for Seller to finalize the sale or disposal of Seller's personal property. At any point during the ninety (90) day (i) Occupancy License for Outdoor

Space and (ii) Occupancy License for Indoor Space, if Seller, in its sole discretion, determines that it no longer requires use of either space, Seller may terminate the occupancy licenses upon five (5) days' notice to Purchaser. The Post-Closing Period Areas have been agreed upon by Purchaser and Seller and are described in the Occupancy Licenses attached as Exhibit C and Exhibit D.

17. GENERAL PROVISIONS.

- a. Confidentiality. The terms and conditions of this Agreement and the transaction contemplated hereunder will be held by Seller and Purchaser in confidence and will not be disclosed to anyone, other than (i) legal counsel, (ii) other advisors, (iii) as required to obtain any regulatory and/or court approval, and (iv) as required under applicable law.
- b. Governing Law. This Agreement and all documents referred to herein shall be governed by New York law.

18. RISK OF LOSS.

- a. If, prior to Closing, the Property or any part thereof shall be destroyed or damaged by fire or other casualty, then Seller shall so notify Purchaser in writing, and:
 - i. If such event (a) would result (in Purchaser's reasonable opinion) in costs to restore in excess of ten percent (10%) of the Purchase Price or (b) causes the Buildings located on the Premises to fail to comply with applicable law or code, (any such event, a "Material Event"), then Purchaser shall have the option either to (i) terminate this Agreement (by Purchaser's delivery of written notice to Seller within twenty (20) days of Purchaser's receipt of notice of the applicable event) or (ii) consummate the transaction contemplated by this Agreement notwithstanding such destruction or damage. If Purchaser elects to consummate the transaction contemplated by this Agreement, Purchaser shall be entitled to settle the loss under all policies of insurance applicable to the destruction or damage and receive the proceeds of insurance applicable thereto, and Seller shall credit Purchaser for the amount of all deductibles under any insurance policies and further shall execute and deliver to Purchaser all required proofs of loss, assignments of claims and other similar items. If Purchaser elects to terminate this Agreement, this Agreement shall, without further action of the parties, become null and void and neither party shall have any rights or obligations under this Agreement; and
 - ii. If such event is not a Material Event Purchaser shall be required to proceed to Closing, but shall be entitled settle the loss under all policies of insurance applicable to the destruction or damage and receive the proceeds of insurance applicable thereto, and Seller shall credit Purchaser for the amount of all deductibles under any insurance policies and further shall execute and deliver to Purchaser all required proofs of loss, assignments of claims and other similar items.
- b. If before Closing, condemnation proceedings are commenced against any part of the Property, Purchaser may:

- i. terminate this Agreement by providing written notice to Seller within five (5) days after Purchaser is advised of the condemnation proceedings and the Deposit will be refunded to Purchaser; or
- ii. appear and defend the condemnation proceedings and any award will, at Purchaser's election, belong to: (a) Seller, and the Purchase Price will be reduced by the same amount; or (b) Purchaser, and the Purchase Price will not be reduced.

19. **COUNTERPARTS.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

20. **NOTICES.** Any notice required by or permitted under this Agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given. Accordingly, notices are to be delivered to the parties at the following addresses:

a. If to Purchaser, to:

Polich Tallix, Inc.
453 State Route 17K
Rock Tavern, NY 12575
Attn: Adam Demchak

With copy to:

Jacobowitz and Gubits, LLP
PO Box 367, 158 Orange Ave.
Walden, NY 12586
Attn: Howard Protter, Esq. & David Gubits, Esq.

b. If to Seller, to:

The Big Apple Circus
1 Metrotech Center, 3rd Floor
Brooklyn, NY 11201
Attn: Executive Director

With copy to:

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, New York 10006
Attn: Steven G. Horowitz, Esq.

c. If to Title Company, to:

Hill-N-Dale Abstracters, Inc.
PO Box 547, Goshen, NY 10924
Attn: John Wood

Purchaser and Seller shall each have the right from time to time to change the place notice is to be given under this Section by written notice thereof to the other party. Any notice to be delivered under this Agreement shall be deemed to have been delivered on the date actually delivered to or received by the other party(ies) as evidenced in the case of certified mail, by the date noted on the return receipt.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Execution Date defined above.

PURCHASER:

[] POLICH TALLIX INC,

Richard F. Polich

By: RICHARD F POLICH

Title: PRESIDENT

SELLER:

THE BIG APPLE CIRCUS, LTD.

By: Will Maitland Weiss

Title: Executive Director

SELLER:

THE BIG APPLE CIRCUS, LTD.

By: Will Maitland Weiss
Name: Will Maitland Weiss
Title: Executive Director

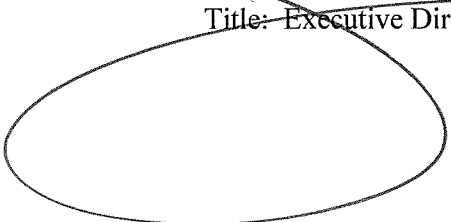


EXHIBIT A

As to Lot 4:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Village of Walden, Town of Montgomery, County of Orange and State of New York, bounded and described as follows:

BEGINNING at a concrete monument found along the southeasterly line of Edmunds Lane, said point being the northerly most corner of lands, now or formerly, Lyons, Liber 2093 Page 631;

RUNNING THENCE along said Edmunds Lane, the following three (3) courses and distances:

1. North 49 degrees 28 minutes 20 seconds east, 220.07 feet;
2. On a curve to the left having a radius of 615.81 feet and an arc length of 431.44 feet;
3. North 09 degrees 19 minutes 50 seconds east, 86.04 feet;

THENCE along lands, now or formerly, Muschel & May, Liber 2089 Page 741 and lands, now or formerly Village of Walden, Liber 1736 page 1050, south 81 degrees 32 minutes 00 seconds east, 1936.39 feet;

THENCE along lands, now or formerly, Crist Brothers, Liber 2226 Page 527 and the division line between the Village of Walden and the Town of Montgomery, south 45 degrees 25 minutes 35 seconds west, 1,067.32 feet to a found iron pipe in the intersection of stonewalls;

THENCE continuing along said division line between the Village of Walden and the Town of Montgomery and along lands, now or formerly, Quackenbush, Liber 2907 page 304, lands, now or formerly, Van Dam, Liber 3018 page 185 and lands, now or formerly, Spence Engineering Company, Inc., Liber 1744 page 429, north 71 degrees 05 minutes 00 seconds west, 769.27 feet;

THENCE continuing along said division line between the Village of Walden and the Town of Montgomery and said lands, now or formerly, Spence Engineering Company, South 35 degrees 43 minutes 00 seconds west, 193.89 feet;

THENCE along other lands, now or formerly, Spence Engineering Company, Inc., Liber 4083 Page 120 and said lands, now or formerly, Lyons, Liber 2093 Page 631, north 63 degrees 47 minutes 00 seconds west, 783.37 feet to the point or place of BEGINNING.

EXCEPTING therefrom the portion of property now known as Section 313 Block 3 Lot 5.

FOR information only: Said premises also known as 39 Edmunds Lane, Montgomery, NY; Section 313 Block 3 Lot 4.

As to Lot 5

ALL that certain plot, piece or parcel of land, situate, lying and being in the Village of Walden, Town of Montgomery, County of Orange and State of New York, bounded and described as follows:

BEGINNING at a point, said point being the following two (2) courses and distances from the intersection of the southerly line of lands, now or formerly, Muschel and May, Liber 2089, Page 741 and the easterly line of Edmunds Lane;

1. Along the southerly line of lands of the above mentioned Muschel and May, south 81 degrees 32 minutes 00 seconds east, 594.38 feet;

2. Through the lands of the above described parcel to be conveyed to the Big Apple Circus, south 23 degrees 16 minutes 05 seconds west, 377.64 feet to the point of BEGINNING.

THENCE from said point of beginning, running westerly and southerly on a curve to the left, having a radius of 120.00 feet and an arc length of 247.24 feet, said point being located the following two (2) courses and distances from the intersection of the northerly line of lands, now or formerly, Lyons, Liber 2093 page 631 and the easterly line of Edmunds Lane;

1. Along the northerly line of the above mentioned Lyons and lands, now or formerly, Spence Engineering Company, Inc., Liber 4083, page 120, south 63 degrees 47 minutes 00 seconds east, 623.53 feet;

2. Through the lands of the above described parcel to be conveyed to the Big Apple Circus, north 31 degrees 32 minutes 10 seconds east, 307.00 feet to the point on the aforementioned curve;

THENCE continuing to the south, east and north on a curve to the left, having a radius of 120.00 feet and an arc length of 506.54 feet to the point or place of BEGINNING.

FOR information only: Said premises also known as n/a Edmunds Lane, Montgomery, NY;
Section 313 Block 3 Lot 5.

EXHIBIT B

Floor Requirements

The concrete floor in the building on the Property must have load bearing capacities of either (i) 500 psf or (ii) 800 psf depending upon location. The aforementioned bearing capacities must be verified by Purchaser's structural engineering consultant by performing calculations to: confirm that the design of the slabs in fact equate to the capacities mentioned herein above in (i) and (ii).

EXHIBIT C

Occupancy License for Outdoor Space

TEMPORARY OUTDOOR SPACE LICENSE AGREEMENT

LICENSEE: BIG APPLE CIRCUS, LTD BUILDING: _____
ADDRESS: _____ SPACE: See attached Exhibit A
CITY: _____ DATE: _____
TERM: _____ to _____ TELEPHONE: _____
FEE: \$ 500 per month, payable monthly in advance

In consideration of the mutual covenants and agreements herein contained, Licensor hereby grants permission to Licensee to use property in the Temporary Space ("Space") designated above upon the following terms and conditions:

1. **Term:** This Agreement shall be for the Term of up to 90 calendar days set forth above. If Seller, in its sole discretion, determines that it no longer requires the use of the Space, at any time during the Term, Seller may terminate this occupancy license upon five (5) days' notice to Purchaser. This license shall expire after 90 calendar days.
2. **Fee:** Licensee shall pay the monthly fee as set forth above punctually in advance on the first day of each month of the Term.
3. **Use:**
 - A. The Space is provided in an "As Is, Where Located" condition, without any representations or warranties whatsoever. Licensee is solely responsible for the care, custody and control of any stored property in the Space. Licensor shall furnish electricity for only such lighting as is contained in the Space as of the date hereof. No other utilities or services are to be furnished by Licensor or used by Licensee in the Space without the prior written consent of Licensor and on the terms and conditions specified in such written consent. Licensee shall make no alterations or additions to the Space. Licensee agrees to abide by all rules and regulations relating to the Space now in effect and such as may be promulgated from time to time hereafter by Licensor. Licensee covenants throughout the Term, at its sole cost and expense and subject to such terms and conditions as Licensor may from time to time impose, keep the Space in good condition. At the expiration of the Term hereof, Licensee shall yield up the Space, broom clean and in good order and condition, and remove all of its property therein.
 - B. ALL PROPERTY STORED WITHIN THE SPACE BY LICENSEE SHALL BE AT LICENSEE'S SOLE RISK. IT IS THE LICENSEE'S DUTY TO PROVIDE PROOF OF LIABILITY INSURANCE COVERAGE TO LICENSOR. LICENSEE SHALL NOT BE RESPONSIBLE FOR ANY CARRYING ANY OTHER INSURANCE. THE SPACE IS PROVIDED FOR LICENSEE'S SELF-SERVICE AND IN NO EVENT SHALL LICENSOR BECOME A BAILEE (EITHER VOLUNTARY OR OTHERWISE) OR ACCEPT OR BE CHARGED WITH THE DUTIES THEREOF, OF THE STORED PROPERTY.
 - C. Licensee shall have access to the Space, be able to store property in the Space, inspect the Space and access and/or remove any stored property in the Space throughout the Term.
 - D. Licensor has the right to: (1) make repairs, alterations, additions, or improvements, whether structural or otherwise, in and about the Building and the Space, or any part thereof, and for such purposes to enter upon the Space, and, during the continuance of any of said work, to temporarily close doors, entryways, public space and corridors in the Building and to interrupt or temporarily suspend Building services and facilities, and (2) enter the Space for the purpose of inspecting them. Licensee covenants and agrees not to suffer or permit any lien or encumbrance be placed against the Space or the Building, and, in case of any such lien or encumbrance attaching, or claim thereof being asserted, Licensee shall cause it to be immediately released and removed of record.
4. **Waiver of Claims; Indemnity:** Except for the willful acts or negligence of Licensor, and except to the extent otherwise provided in paragraph 3 hereof, Licensee hereby assumes all risk of loss and waives any claims it may have against Licensor, the owners of the Building, and their respective directors, officers, members, shareholders, partners, trustees, managers, principals, agents, beneficiaries, employees and insurers, (collectively, the "Protected Parties") for any injury to or illness of person or loss or damage to property or business, of any person or entity by whomever or howsoever caused. Licensee shall protect, defend, indemnify and hold the Protected Parties harmless from and against any and all liabilities, claims, demands, costs and actions of whatever nature (including reasonable attorney's fees) for any injury to or illness of person, or damage to or loss of property or business, in or about the Building caused or occasioned by Licensee, its invitees, servants, agents or employees, or arising out of Licensee's use of the Space, or arising out of Licensee's breach of this Agreement. The provisions of this paragraph shall survive any expiration or termination of this Agreement.
5. **Default; Remedies:** If at any time Licensee fails to pay the fee or otherwise breaches or fails to perform any of Licensee's covenants and agreements herein contained, Licensor may, at any time following three (3) days' written notice to Licensee and without further notice or demand, terminate this Agreement and the Term created hereby in which event Licensor may forthwith repossess the Space and be entitled to recover all damages. If Licensee shall fail or refuse to remove the stored property upon termination of its permission hereunder, Licensor may treat such failure, as conclusive evidence that Licensee has abandoned the property and Licensor may enter the Space and dispose of all or any part of such property in any manner that Licensor shall choose.
6. **Miscellaneous:** The permission herein granted is a license only and does not constitute a lease or create any interest or estate for Licensee in the Space, the Building, or any part thereof. Licensee shall not, without Licensor's prior written consent, assign or otherwise transfer any right or permission under this Agreement to any third party,

and any attempt to do so shall result in automatic revocation of this license. All of the representations and obligations of Licensor with respect to the Space and the Building are contained herein and no modification, waiver or amendment to this Agreement shall be binding unless such modification, waiver or amendment is in writing and signed by duly authorized persons for both parties. No waiver of any condition in this Agreement shall be implied by any neglect of Licensor to enforce any remedy on account of the violation of any such condition and no receipt of money by Licensor after the termination in any way of the Term hereunder or after the giving of any notice shall reinstate, continue or extend the Term hereof or affect any notice given to Licensee. Time is of the essence in this Agreement. Each of the provisions of this Agreement shall extend to and shall, as the case may be, inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns. All notices required or desired hereunder shall be in writing or electronic correspondence and either delivered in person, mailed certified mail, return receipt requested, postage prepaid, addressed to Licensor at The Office of the Building and to Licensee at the address stated above. Submission of this instrument for examination shall not bind Licensor in any manner, and no obligation on Licensor shall arise until this instrument is signed and delivered by both Licensor and Licensee. The laws of the State of New York shall govern this Agreement. The invalidity or unenforceability of any provision of this Agreement shall not affect or impair any other provision.

LICENSEE:

BY: _____

TITLE: _____

LICENSOR: [RSB], Landlord

By: _____

BY: _____

TITLE: _____

Richard J. Deuch
PRESIDENT

RULES AND REGULATIONS

1. Licensee agrees, for itself, its employees, agents, servants, clients, customers, invitees, licensees and guests, to observe and comply at all times with the rules and regulations set forth herein and with such modifications thereof and additions thereto as Licensor may from time to time make for the Building, and that failure to observe and comply with such rules, regulations, modifications and additions shall constitute a default under the Agreement.
2. Licensee assumes full responsibility for protecting the Space and the goods therein from theft, robbery and pilferage and all goods are stored at the Licensee's sole risk.
3. Licensee shall not bring upon, use or keep in the Space any hazardous or toxic materials, perishable food, alcoholic liquor, explosives or flammable items, animals, items that may leak, spill or freeze, or any illegal or stolen property.
4. Licensee shall not paint, display, affix, or inscribe any sign, color, advertisement or picture on or about the Space.
5. Licensee, and its agents and employees, shall not encumber or obstruct sidewalks, halls, passageways, exits, entrances, elevators, stairways or other common areas in or about the Building. All personal property must be stored entirely within the Space, and any discarded items, litter and debris must be deposited in rubbish areas designated by Licensor. Licensee shall not cause any unnecessary janitorial labor or services by reason of Licensee's litter, carelessness or indifference in the preservation of good order and cleanliness.
6. Upon the termination of the Term, Licensee shall deliver to Licensor all keys for the Space.
7. Movements of Licensee's property into or out of the Building and within the Building are entirely at the risk and responsibility of Licensee. Licensee shall fully cooperate with Licensor's security measures.
8. Notwithstanding anything contained therein, the Licensor shall provide Licensee full access to the temporary space.

SLEEPERS, COOK HOUSE, ICE TRUCK (7 total)

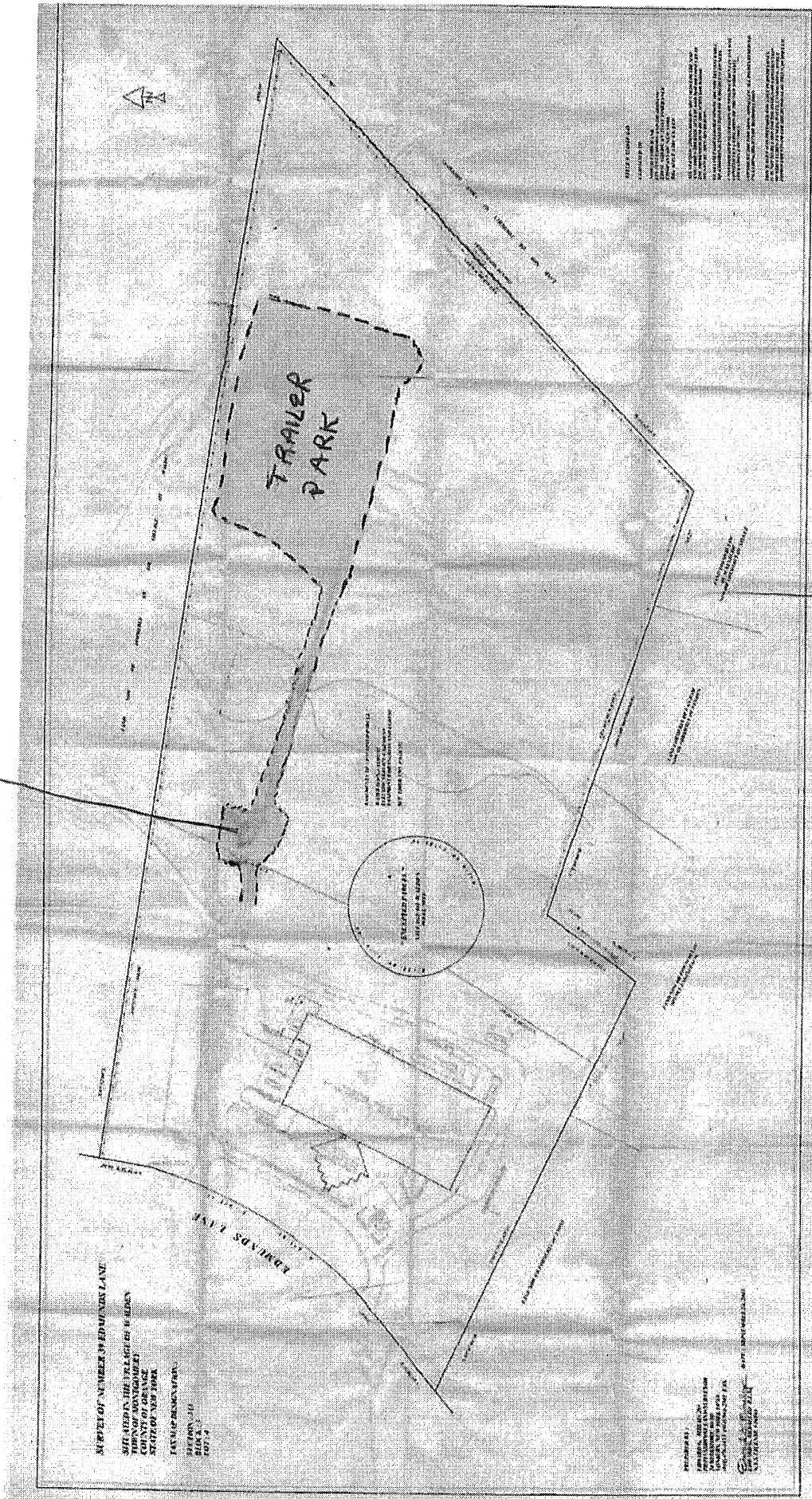


EXHIBIT A

Exhibit D
Occupancy License for Indoor Space

TEMPORARY INDOOR SPACE LICENSE AGREEMENT

LICENSEE: BIG APPLE CIRCUS, LTD BUILDING: _____
ADDRESS: _____ SPACE: See attached Exhibit A
CITY: _____ DATE: _____
TERM: _____ to _____ TELEPHONE: _____

FEE: \$.40 per square foot actually used by Licensee, to be adjusted at the start of every month, payable monthly in advance

In consideration of the mutual covenants and agreements herein contained, Licensor hereby grants permission to Licensee to use property in the Temporary Space ("Space") designated above upon the following terms and conditions:

1. **Term:** This Agreement shall be for the Term of up to 90 calendar days set forth above. If Seller, in its sole discretion, determines that it no longer requires the use of the Space, at any time during the Term, Seller may terminate this occupancy license upon five (5) days' notice to Purchaser. This license shall expire after 90 calendar days.
2. **Fee:** Licensee shall pay the monthly fee as set forth above punctually in advance on the first day of each month of the Term. Licensee shall give Licensor at least 5 days' prior written notice before the first day of each month in the case that any adjustments in square footage is needed, and the fee shall be adjusted accordingly.
3. **Use:**
 - A. The Space is provided in an "As Is, Where Located" condition, without any representations or warranties whatsoever. Licensee is solely responsible for the care, custody and control of any stored property in the Space. Licensor shall furnish electricity for only such lighting as is contained in the Space as of the date hereof. No other utilities or services are to be furnished by Licensor or used by Licensee in the Space without the prior written consent of Licensor and on the terms and conditions specified in such written consent. Licensee shall make no alterations or additions to the Space. Licensee agrees to abide by all rules and regulations relating to the Space now in effect and such as may be promulgated from time to time hereafter by Licensor. Licensee covenants throughout the Term, at its sole cost and expense and subject to such terms and conditions as Licensor may from time to time impose, keep the Space in good condition. At the expiration of the Term hereof, Licensee shall yield up the Space, broom clean and in good order and condition, and remove all of its property therein.
 - B. ALL PROPERTY STORED WITHIN THE SPACE BY LICENSEE SHALL BE AT LICENSEE'S SOLE RISK. IT IS THE LICENSEE'S DUTY TO PROVIDE PROOF OF LIABILITY INSURANCE COVERAGE TO LICENSOR. LICENSEE SHALL NOT BE RESPONSIBLE FOR ANY CARRYING ANY OTHER INSURANCE. THE SPACE IS PROVIDED FOR LICENSEE'S SELF-SERVICE AND IN NO EVENT SHALL LICENSOR BECOME A BAILEE (EITHER VOLUNTARY OR OTHERWISE) OR ACCEPT OR BE CHARGED WITH THE DUTIES THEREOF, OF THE STORED PROPERTY.
 - C. Licensee shall have access to the Space, be able to store property in the Space, inspect the Space and access and/or remove any stored property in the Space throughout the Term.
 - D. Licensor has the right to: (1) make repairs, alterations, additions, or improvements, whether structural or otherwise, in and about the Building and the Space, or any part thereof, and for such purposes to enter upon the Space, and, during the continuance of any of said work, to temporarily close doors, entryways, public space and corridors in the Building and to interrupt or temporarily suspend Building services and facilities; and (2) enter the Space for the purpose of inspecting them. Licensee covenants and agrees not to suffer or permit any lien or encumbrance be placed against the Space or the Building, and, in case of any such lien or encumbrance attaching, or claim thereof being asserted, Licensee shall cause it to be immediately released and removed of record.
4. **Waiver of Claims; Indemnity:** Except for the willful acts or negligence of Licensor, and except to the extent otherwise provided in paragraph 3 hereof, Licensee hereby assumes all risk of loss and waives any claims it may have against Licensor, the owners of the Building, and their respective directors, officers, members, shareholders, partners, trustees, managers, principals, agents, beneficiaries, employees and insurers, (collectively, the "Protected Parties") for any injury to or illness of person or loss or damage to property or business, of any person or entity by whomever or howsoever caused. Licensee shall protect, defend, indemnify and hold the Protected Parties harmless from and against any and all liabilities, claims, demands, costs and actions of whatever nature (including reasonable attorney's fees) for any injury to or illness of person, or damage to or loss of property or business, in or about the Building caused or occasioned by Licensee, its invitees, servants, agents or employees, or arising out of Licensee's use of the Space, or arising out of Licensee's breach of this Agreement. The provisions of this paragraph shall survive any expiration or termination of this Agreement.
5. **Default; Remedies:** If at any time Licensee fails to pay the fee or otherwise breaches or fails to perform any of Licensee's covenants and agreements herein contained, Licensor may, at any time following three (3) days' written notice to Licensee and without further notice or demand, terminate this Agreement and the Term created hereby in which event Licensor may forthwith repossess the Space and be entitled to recover all damages. If Licensee shall fail or refuse to remove the stored property upon termination of its permission hereunder, Licensor may treat such failure, as conclusive evidence that Licensee has abandoned the property and Licensor may enter the Space and dispose of all or any part of such property in any manner that Licensor shall choose.

6. **Miscellaneous:** The permission herein granted is a license only and does not constitute a lease or create any interest or estate for Licensee in the Space, the Building, or any part thereof. Licensee shall not, without Licensor's prior written consent, assign or otherwise transfer any right or permission under this Agreement to any third party, and any attempt to do so shall result in automatic revocation of this license. All of the representations and obligations of Licensor with respect to the Space and the Building are contained herein and no modification, waiver or amendment to this Agreement shall be binding unless such modification, waiver or amendment is in writing and signed by duly authorized persons for both parties. No waiver of any condition in this Agreement shall be implied by any neglect of Licensor to enforce any remedy on account of the violation of any such condition and no receipt of money by Licensor after the termination in any way of the Term hereunder or after the giving of any notice shall reinstate, continue or extend the Term hereof or affect any notice given to Licensee. Time is of the essence in this Agreement. Each of the provisions of this Agreement shall extend to and shall, as the case may be, inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns. All notices required or desired hereunder shall be in writing or electronic correspondence and either delivered in person, mailed certified mail, return receipt requested, postage prepaid, addressed to Licensor at The Office of the Building and to Licensee at the address stated above. Submission of this instrument for examination shall not bind Licensor in any manner, and no obligation on Licensor shall arise until this instrument is signed and delivered by both Licensor and Licensee. The laws of the State of New York shall govern this Agreement. The invalidity or unenforceability of any provision of this Agreement shall not affect or impair any other provision.

LICENSEE:
[]

LICENSOR: [RFP], Landlord

BY: _____

By: []
BY: Richard J. Polich

TITLE: _____

TITLE: PRESIDENT

RULES AND REGULATIONS

1. Licensee agrees, for itself, its employees, agents, servants, clients, customers, invitees, licensees and guests, to observe and comply at all times with the rules and regulations set forth herein and with such modifications thereof and additions thereto as Licensor may from time to time make for the Building, and that failure to observe and comply with such rules, regulations, modifications and additions shall constitute a default under the Agreement.
2. Licensee assumes full responsibility for protecting the Space and the goods therein from theft, robbery and pilferage and all goods are stored at the Licensee's sole risk.
3. Licensee shall not bring upon, use or keep in the Space any hazardous or toxic materials, perishable food, alcoholic liquor, explosives or flammable items, animals, items that may leak, spill or freeze, or any illegal or stolen property.
4. Licensee shall not paint, display, affix, or inscribe any sign, color, advertisement or picture on or about the Space.
5. Licensee, and its agents and employees, shall not encumber or obstruct sidewalks, halls, passageways, exits, entrances, elevators, stairways or other common areas in or about the Building. All personal property must be stored entirely within the Space, and any discarded items, litter and debris must be deposited in rubbish areas designated by Licensor. Licensee shall not cause any unnecessary janitorial labor or services by reason of Licensee's litter, carelessness or indifference in the preservation of good order and cleanliness.
6. Upon the termination of the Term, Licensee shall deliver to Licensor all keys for the Space.
7. Movements of Licensee's property into or out of the Building and within the Building are entirely at the risk and responsibility of Licensee. Licensee shall fully cooperate with Licensor's security measures.
8. Notwithstanding anything contained therein, the Licensor shall provide Licensee full access to the temporary space.

WALDEN BUILDING - INSIDE OF WAREHOUSE

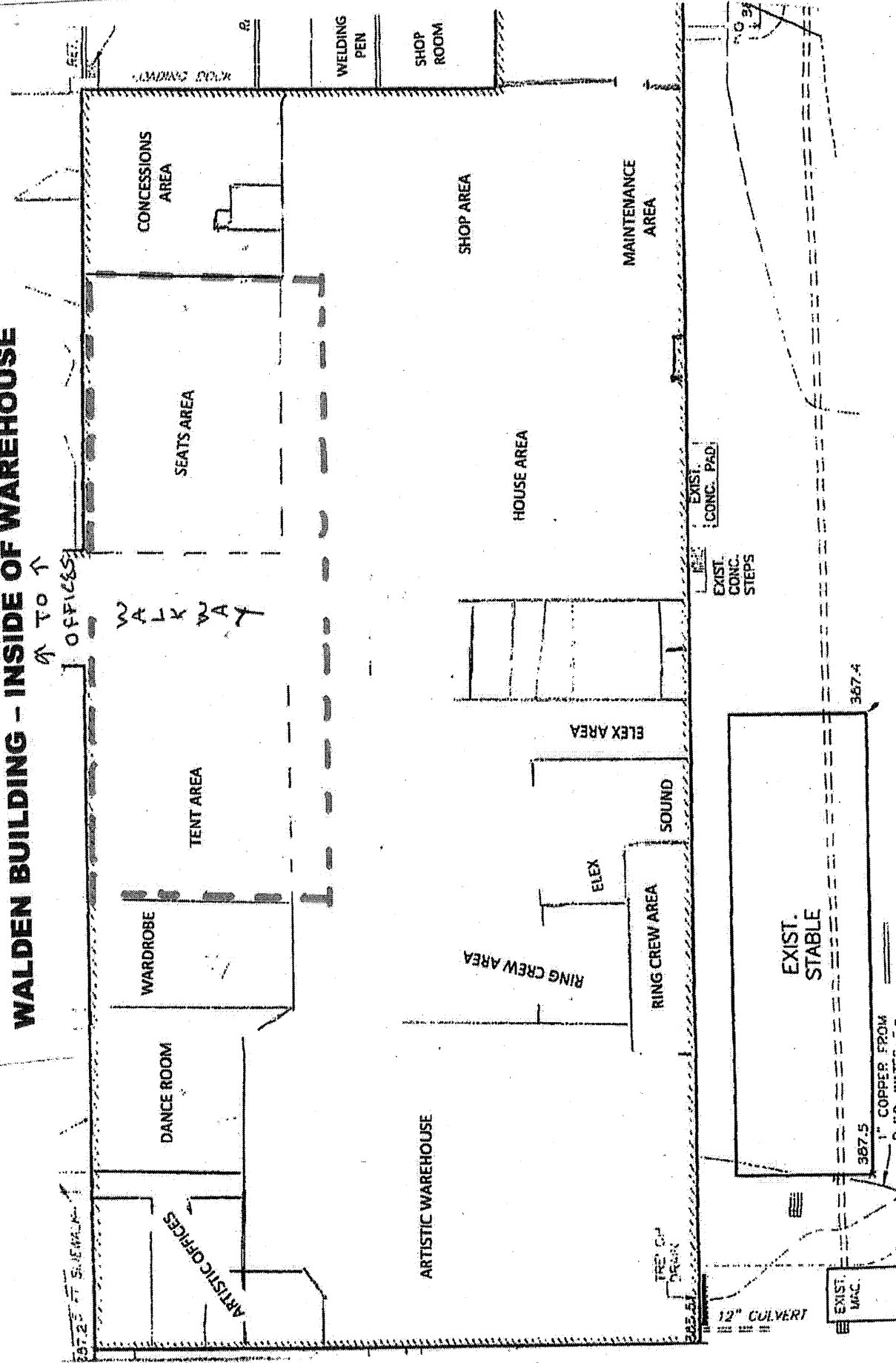


EXHIBIT A

