

# **EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WISCONSIN

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In re:

The Young Men's Christian Association  
of Metropolitan Milwaukee, Inc.

Case No. 14-27174-svk

(Chapter 11)

Debtor.

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## **SALE PROCEDURES**

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On July 31, 2014, the Young Men's Christian Association of Metropolitan Milwaukee, Inc. (the "Debtor") filed the Debtor's Motion for Authority to Sell Certain Real Property and Associated Personal Property, Free and Clear of Liens, Claims and Encumbrances, Pursuant to 11 U.S.C. § 363 (the "Sale Motion"). In the Sale Motion, the Debtor sought authority to sell substantially all of the Debtor's assets associated with the YMCA facilities it operates in the western suburbs to the City of Milwaukee and in Port Washington, WI (collectively, the "Assets").

On August 6, 2014, the Debtor filed the Debtor's Emergency Motion for an Order Establishing Sale Procedures Pertaining to Debtor's Waukesha Area and Feith Family YMCA Assets (the "Sale Procedures Motion"). In the Sale Procedures Motion, the Debtor sought, among other things, approval of the process and procedures through which it will determine the highest or otherwise best bid for the Assets.

On August \_\_, 2014, the United States Bankruptcy Court for the Eastern District of Wisconsin (the "Court") entered its order (the "Sales Procedures Order") which, among other things, authorized and directed the Debtor to determine the highest or otherwise best bid for the Assets through the process and procedures set forth below (the "Sale Procedures"). Capitalized terms used below, not defined herein, shall have the meanings given such terms in the Sales Procedures Order.

### **1. General Information About the Sale Process.**

The Debtor and its Sales Agent (as defined below) shall coordinate the process for the sale of the Assets, in consultation with the Secured Lenders and Creditors' Committee. Any person or entity who wishes to bid on the Assets must comply with the participation requirements below. The Debtor shall have the right to adopt such other procedures that are consistent

with these Sale Procedures, if such other rules will better promote the maximization of value to the Debtor's estate and contribute to the Debtor's successful reorganization.

## **2. Participation Requirements.**

Unless otherwise ordered by the Court for cause shown, to participate in the bidding process each interested person or entity (a "Potential Bidder") must execute a confidentiality agreement in substantially the form attached hereto as Appendix 1 and deliver same to the Debtor's proposed sales agent, Ken Mann, Equity Partners, 16 N. Washington St., Suite 102, Easton, MD 21601, KMann@EquityPartnersHG.com (the "Sales Agent"). A Potential Bidder shall then identify to the Sales Agent which of the Assets the Potential Bidder has a bona fide interest in purchasing (the "Identified Assets").

As soon as practicable after receipt of the executed confidentiality agreement, the Sales Agent will deliver to the Potential Bidder: (a) a confidential information memorandum containing information and financial data with respect to the Identified Assets (the "Information Memorandum"); (b) a copy of the KMY Offer and/or the CWC Offer, as applicable to the Identified Assets; (c) confidential due diligence information in electronic form pertaining to the Identified Assets; (d) a copy of the form of Asset Purchase Agreement attached hereto as Appendix 2 (the "Form APA"); and (e) all due diligence materials previously provided to KMY and/or CWC, as applicable (the "Due Diligence Materials"). Unless otherwise determined by the Debtor, the availability of additional due diligence to a Potential Bidder will cease (i) if the Potential Bidder does not become a Qualified Bidder, or (ii) at the Qualification Deadline.

## **3. Due Diligence.**

Until the Qualification Deadline (as defined below), the Debtor will afford such due diligence access or additional information relating to the Identified Assets as may requested by a Potential Bidder and which the Debtor, in its business judgment, determines to be reasonable and appropriate under the circumstances. All due diligence requests shall be directed to the Sales Agent.

## **4. Assets Offered in Four Lots / Minimum Bids.**

The Assets are comprised of the following four (4) lots (each, a "Lot") and will be offered at the Auction (as defined below) at the respective minimum bids indicated immediately below:

- (i) Lot No. 1: The real and personal property located at 11311 West Howard Avenue, Greenfield, WI comprising the Southwest YMCA. The minimum bid for Lot 1 is \$2,333,333.
- (ii) Lot No. 2: The real and personal property located at 2420 N. 124th Street, Wauwatosa, WI comprising the West Suburban YMCA. The minimum bid for Lot 2 is \$2,333,333.
- (iii) Lot No. 3: The real and personal property located at N84 W17501 Menomonee Ave., Menomonee Falls, WI comprising the Tri-County YMCA. The minimum bid for Lot 3 is \$2,333,333.

- (iv) Lot No. 4: The real and personal property located at 465 Northwoods Road, Port Washington, WI comprising the Feith Family Y. The minimum bid for Lot 4 is \$2,100,000.

Bids may be made for any, all, or any number and combination of Lots.

## **5. Qualification Deadline.**

Not later than 5:00 p.m., Central Time, on September 22, 2014 (the "Qualification Deadline") any Potential Bidder that desires to participate in the Auction shall deliver to the Sales Agent (i) a notice signed by an authorized person or officer of the Potential Bidder of the Lots on which the Potential Bidder intends to bid (a "Notice of Intent"); (ii) an earnest money deposit, by wire transfer, cashier's check or other collected funds, equal to \$100,000 times the number of Lots that such Potential Bidder intends to bid on (the "Good Faith Deposit"); (iii) an executed copy of the Form APA, marked to show any proposed amendments and modifications, but without specifying the Purchase Price (a "Bid APA"); and (iv) evidence acceptable to the Sales Agent in its sole discretion of such Potential Bidder's wherewithal to consummate a purchase of all of the Lots on which the Potential Bidder intends to bid. Any Potential Bidder that timely complies with the foregoing requirements shall be deemed a "Qualified Bidder."

CWC and KMY are each deemed a Qualified Bidder and the CWC Offer and KMY Offer each constitute a Qualified Bid, provided, however, that the Debtor will evaluate the CWC Offer and the KMY Offer in light of any remaining contingencies not waived or satisfied on or before the date of the Auction.

The Sales Agent will promptly transmit electronic copies of each Notice of Intent and Bid APA to: (i) Debtor's counsel, Mark L. Metz, Levenson Lucey & Metz S.C., 3030 W. Highland Blvd., Milwaukee, WI 53208, mlm@levmetz.com; (ii) Committee counsel, Matthew E. McClintock, Goldstein & McClintock, LLLP, 316 North Milwaukee Street, Suite 20, Milwaukee, WI 53202, mattm@restructuringshop.com; and (iii) Secured Lender's counsel, Valerie L. Bailey-Rihn, Quarles & Brady LLP, 33 E. Main St., Suite 900, Madison, Wisconsin 53703, val.bailey@quarles.com.

## **6. Auction.**

In the event that, by the Qualification Deadline, there are Qualified Bidders in addition to CWC and KMY, the Sales Agent will conduct an auction at the offices of Quarles & Brady, LP, 411 E. Wisconsin Avenue, Milwaukee, WI 53202, beginning at 9:00 a.m. Central Time on September 24, 2014, or at such later time or such other place as the Sales Agent shall designate and notify to all Qualified Bidders. Only Qualified Bidders will be eligible to participate in the Auction.

At the Auction, the opening bid for each such Lot shall be its Minimum Bid. Each Qualified Bidder (including CWC and KMY) will, thereafter, be permitted to increase its bids in increments of not less than \$50,000 per Lot, or such other increments as the Sales Agent determines to be in the best interest of the Debtor's estate.

Bidding will proceed in rounds. During each round, each Qualified Bidder will have the opportunity to increase its bid on any Lot included in its Notice of Intent. Bidding will end after there has been one full round, during which no Qualified Bidder increased or otherwise improved its offer.

Immediately prior to the conclusion of the Auction, the Debtor, in consultation with the Sales Agent shall: (a) review and evaluate all final bids made at the Auction on the basis of financial and contractual terms, including any benefit to the Debtor's bankruptcy estate from any proposal to assume obligations of the Debtor, and other factors relevant to the sale process, including factors affecting the speed and certainty of consummating a Sale, and the impact of a Sale on the Debtor's prospects for a successful reorganization; (b) identify the successful bid (the "Successful Bid") for each Lot; and (c) notify all Qualified Bidders participating in the Auction, prior to its adjournment, of the successful bidder (the "Successful Bidder") for each Lot, and the amount and other material terms of the Successful Bid(s). At the conclusion of the Auction, no other or further bids from Qualified Bidders or other bidders shall be considered for any purpose. At the Sale Hearing, the Debtor shall present the Successful Bid(s) to the Bankruptcy Court for approval.

#### **7. Executory Contracts and Unexpired Leases.**

The Sales Agent will make available to all Potential Bidders information pertaining to any executory contracts or unexpired leases of the Debtor necessary or desirable for the operation of each Lot. To the extent that any Bid APA includes provision for the assumption and assignment of any executory contract or unexpired lease of the Debtor, the Qualified Bidder shall be responsible for any cure obligation as agreed between the Debtor and the contract counterparty or as determined by the Court, and for providing the counterparty with adequate assurance of future performance. In the event such Bid APA becomes a Successful Bid, the Debtor will promptly move the Court pursuant to 11 U.S.C. § 365 for an order authorizing assumption and assignment of such contracts and/or leases to the Successful Bidder.

#### **8. Acceptance of Qualified Bids.**

The Debtor may, in consultation with the Sales Agent: (a) determine, in its reasonable business judgment, which Qualified Bid is the Successful Bid and the next best bid (the "Next Best Bid") for each Lot; and (b) reject at any time before entry of the Sale Order any bid which, in the Debtor's judgment, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Sale Procedures or the terms and conditions of the sale, or (iii) contrary to the best interests of the Debtor and its estate.

The Debtor's presentation to the Court for approval of any Successful Bid does not constitute a binding acceptance of that bid or create enforceable rights for the Successful Bidder. The Debtor will be deemed to have accepted a Successful Bid only when such bid has been approved by the Court.

The Debtor and the Successful Bidder(s) shall close all sales on or before October 1, 2014, or such other date as may be specified in the Sale Order. If a Successful Bidder does not close the sale by such date, then the Debtor shall be authorized, but not required, to close with the party that submitted the Next Best Bid (the "Next Best Bidder"), without a further Court order. If the Debtor decides to close with the Next Best Bidder, the Debtor and the Next Best Bidder shall have an additional eight (8) business days to close. If the Next Best Bidder fails to consummate the Sale on the terms set forth in the relevant Bid APA within such time period for any reason, the Debtor shall be authorized, but not required, to proceed down the list of Qualified Bidders, in order of the size of each Qualified Bidder's best bids, until they can consummate a sale on the terms and conditions provided for in the applicable Bid APA.

## **9. Return of Good Faith Deposit.**

The Good Faith Deposits of all Qualified Bidders, including CWC and KMY, shall be held in a non-interest-bearing escrow account by the Sales Agent, and shall not become property of the Debtor's estate absent further order of the Court.

The Good Faith Deposit of each Successful Bidder will be retained by the Sales Agent, notwithstanding the Court's approval of the Sale, until the earlier of (a) the Closing of the Sale, or (b) the termination of an executed Bid APA and withdrawal of the Assets for sale by the Debtor. At the closing of each sale contemplated by each Successful Bid, the Successful Bidder will be entitled to a credit toward the purchase price for the amount of its Good Faith Deposit.

The Good Faith Deposits of all Qualified Bidders, other than the Successful Bidders, shall be released by the Sales Agent upon the earlier of (a) closing of the Sale, or (b) the withdrawal of the Assets for sale by the Debtor. The Good Faith Deposits of any Successful Bidder, Next Best Bidder, or other Qualified Bidder that fails to close after becoming the leading bidder pursuant to the previous paragraph shall become property of the Debtor's estate.

## Appendix 1

### CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT ("Agreement"), which is effective immediately as to any party upon execution by such party who shall be bound hereby, is made by and between THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF METROPOLITAN MILWAUKEE, INC. ("Seller"), a Wisconsin corporation currently operating as a debtor-in-possession under Chapter 11 of the United States Bankruptcy Code, and \_\_\_\_\_ ("Purchaser"), a \_\_\_\_\_ corporation.

#### RECITALS

- A. Seller and Purchaser desire to enter into business discussions concerning the possible purchase of certain assets of Seller by Purchaser;
- B. In order to pursue such discussions, it is necessary that Seller disclose certain confidential business information to Purchaser;
- C. Seller desires to protect its confidential business information in the event that such business discussions do not result in the purchase of such assets by Purchaser;
- D. Purchaser desires to obtain such confidential business information in order to evaluate the possible purchase of Seller or its assets by Purchaser.

**NOW, THEREFORE, FOR VALUE RECEIVED** and in consideration of the mutual covenants and agreements contained herein, Seller and Purchaser agree as follows:

1. "Confidential Business Information" to be provided to Purchaser by Seller shall be defined to include, but not be limited to, the following:
  - a. Any and all financial records and financial information relating to Seller including, but not limited to, annual and interim financial statements, tax returns, and work papers or work sheets;
  - b. Any and all information relating to Seller's employees including, but not limited to, employee profiles and job descriptions;
  - c. Any and all information relating to Seller's sales including, but not limited to, customer profiles and customer lists;
  - d. Any and all information relating to Seller's purchases including, but not limited to, vendor profiles and vendor lists;
  - e. Any and all information relating to the value of Seller's assets including, but not limited to, appraisals and asset lists;
  - f. Any and all other information relating to Seller that Seller has marked as "Confidential" or as Seller may otherwise indicate is of a confidential nature or any and all other information relating to Seller that is not generally ascertainable from public or published information or trade sources.

2. Except as required by applicable federal, state or local law or regulation, Confidential Business Information as used in this Agreement shall not include information that:

a. At the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any act or omission by the Purchaser or any of its representatives;

b. At the time of disclosure is, or thereafter becomes, available to the Purchaser on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Business Information to Purchaser by any legal, fiduciary or contractual obligation;

c. Was known by or in the possession of Purchaser, as established by documentary evidence, prior to being disclosed by or on behalf of Seller pursuant to this Agreement;

d. Was or is independently developed by the Purchaser, as established by documentary evidence, without reference to or use of, in whole or in part, any of Seller's Confidential Business Information.

3. Seller agrees to disclose to Purchaser such of Seller's Confidential Business Information as Seller deems appropriate for Purchaser to properly evaluate a purchase of Seller's assets. Purchaser agrees that it will use Seller's Confidential Business Information solely for the purpose of evaluating a purchase of Seller's assets, and shall not use any Confidential Business Information in any other manner.

4. Purchaser agrees to receive and hold Seller's Confidential Business Information in the strictest confidence, and Purchaser shall ensure that all Confidential Business Information is reviewed only by its shareholders, directors, and such agents and employees of Purchaser who have a need to know such Confidential Business Information. Purchaser, and its shareholders, directors, and such agents and employees as provided for in this paragraph, shall not disclose such Confidential Business Information to any other person, corporation, entity, or other organization outside of Purchaser, except in the limited circumstances set forth in the following paragraph, or unless ordered to do so by a court of competent jurisdiction, and then only within the bounds of the court's order and only after requesting that the Confidential Business Information be sealed from the public and not disclosed by any of the parties to the court action. Purchaser unconditionally guarantees that any and all Confidential Business Information disclosed to its shareholders, directors and such agents and employees as provided for in this paragraph shall be held in the strictest of confidence by such shareholders, directors, agents and employees. Purchaser agrees that neither it nor any of its shareholders, directors, agents or employees shall use any Confidential Business Information in any manner that would, directly or indirectly, assist any person or entity, including, but not limited to, the Purchaser, in competing with Seller, either prior to closing on the sale of Seller or its assets, or at any time after the date of this Agreement in the event that such transaction does not occur or if such transaction results in the sale of less than substantially all of Seller's assets.

5. Purchaser shall ensure that all of Seller's Confidential Business Information shall remain exclusively within Purchaser's knowledge and possession, but Purchaser shall have a limited right to disclose such of Seller's Confidential Business Information to reliable independent consultants as is necessary to obtain professional advice relating to the purchase of Seller or its assets, provided that before any such Confidential Business Information is disclosed, Purchaser shall supply such consultants with a copy of this Agreement and will obtain from each such consultant an agreement to abide by all of the terms and conditions herein. Purchaser unconditionally guarantees that any Confidential Business Information disclosed to any such consultant shall be held in the strictest confidence by such consultant.



6. In the event of any breach of this Agreement, Purchaser specifically recognizes that Seller's remedies at law and suit for damages may well be inadequate and that Seller shall be entitled to injunctive relief as well as such other and equitable relief as may be appropriate to prevent or restrain any breach or threatened breach hereof, and Purchaser shall be liable for any damages that may be incurred by Seller and shall pay the disbursements and reasonable attorney's fees of Seller in obtaining injunctive relief and/or other relief as may be appropriate.

7. Either party may terminate negotiations, for any reason, upon written notice to the other party. No later than five (5) days after such notice, Purchaser shall return all written and other tangible items disclosed by Seller, including but not limited to Seller's Confidential Business Information and Purchaser shall not retain any copy of such Confidential Business Information. Purchaser agrees that all such Confidential Business Information is proprietary and shall not thereafter use such Confidential Business Information in any manner whatsoever whether for its own benefit or intended benefit or for the benefit or other intended benefit of any third party. Notwithstanding any other provisions herein, Purchaser's obligations under this Agreement shall continue for a period of two (2) years from the execution of this Agreement, unless otherwise agreed to in writing by the parties hereto

8. Purchaser shall not, without the prior written consent of Seller, make any statement, or any public announcement or any release to trade publications or to the media, or make any statement to any competitor, customer, supplier, or any other third party, with respect to Purchaser's possible purchase of Seller or its assets

9. Except for this Agreement, neither Purchaser nor Seller shall be committed in any way with respect to the negotiations and business discussions between them, unless and until a formal agreement with respect thereto is executed, pursuant to the approval of their respective officers and directors, shareholders, the approval of either party's lender(s), if such approval is required prior to the closing of any potential transaction, or the approval of any governmental entity or subdivision that may be required prior to the closing of such potential transaction.

10. All notices, consents, requests, demands, instructions or other communications provided for in this Agreement shall be in writing and shall be deemed validly given, made and served when delivered personally, or sent by certified or registered mail, postage prepaid, overnight courier or by telephone facsimile, at such address and telephone number as Purchaser or Seller may specify by written notice. Notices shall be effective as of the date of mailing or facsimile transmission, whichever occurs first

11. This Agreement shall be governed by and interpreted according to the laws of the State of Wisconsin and not the law of conflicts. In the event of a dispute between the parties hereto with regard to any matter covered in this agreement, each of the parties hereto agree to be subject to the jurisdiction of the United States Bankruptcy Court for purposes of the commencement of any legal proceedings concerning this agreement or the matters covered hereby.

12. The promises and obligations hereunder shall be binding upon and shall inure to the successors and assigns of each party. This Agreement constitutes the entire understanding between the parties relating to the subject matter herein and no other understanding or agreement shall be binding upon either party hereto unless in writing and signed by duly authorized representatives of each party.

13. In the event that any provision of this Agreement is rendered invalid by the decision of any court or by the enactment of any law, ordinance or regulation, such provision shall be deemed to have never been included herein, and the balance of this Agreement shall continue in effect in accordance with its terms.



IN WITNESS WHEREOF, Seller and Purchaser represent and warrant that this instrument is executed by their duly authorized representatives.

SELLER:

THE YOUNG MEN'S CHRISTIAN ASSOCIATION  
OF METROPOLITAN MILWAUKEE, INC.

BY: \_\_\_\_\_

Name: Julie A. Tolan

Title: CEO

DATE: \_\_\_\_\_, 2014

BUYER:

BY: \_\_\_\_\_

Name:

Title:

DATE:

## Appendix 2

### ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the “Agreement”) is made and entered into this \_\_\_\_ day of September, 2014, by and between \_\_\_\_\_, a \_\_\_\_\_, and its assigns (“Purchaser”) and The Young Men’s Christian Association of Metropolitan Milwaukee, Inc., as debtor-in-possession (the “Debtor”).

### RECITALS

A. On June 4, 2014 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Wisconsin (the “Court”), Case No. 14-27174-svk (the “Chapter 11 Case”).

B. Purchaser has agreed to purchase certain assets of the Debtor under the terms and conditions set forth below.

### AGREEMENTS

In consideration of the recitals and the mutual agreements which follow, the parties agree as follows:

1. Assets to be Purchased. Subject to the terms and conditions set forth in this Agreement, Purchaser agrees to purchase and the Debtor agrees to sell to Purchaser at the Closing, all of the assets set forth on Schedule 1, attached hereto (the “Purchased Assets”).
2. Excluded Assets. Notwithstanding any other provisions of this Agreement, the Purchased Assets shall not include any of the assets set forth on Schedule 2, attached hereto (collectively, the “Excluded Assets”).
3. Exclusion of Liabilities and Obligations. Purchaser does not assume any liabilities, obligations or commitments of the Debtor, whether absolute or contingent, known or unknown, except as specifically set forth herein.
4. Purchase Price and Payment. Purchaser agrees to pay the amount set forth below for the Purchased Assets.
  - a. Amount. In consideration of the Debtor’s sale, assignment and transfer of the Purchased Assets, Purchaser shall pay to the Debtor the sum of \$\_\_\_\_\_ (the “Purchase Price”).
  - b. Payment Terms. Purchaser agrees to pay the Purchase Price, in full, via wire transfer at the Closing.
  - c. Allocation of Purchase Price. The Purchase Price shall be allocated to the Purchased Assets as mutually agreed by Purchaser and the Debtor by the Closing. All tax returns and reports filed by Purchaser and the Debtor with respect to the transactions contemplated by this Agreement shall be consistent with such allocation.

- d. Personal Property Taxes. Personal property taxes for the Purchased Assets shall be prorated at Closing by allocating such taxes on a per diem basis with the Debtor receiving a credit for any such taxes paid in advance for any period after the date of Closing or with Purchaser receiving a credit for the period prior to and including the date of Closing for which such taxes have not been paid by Debtor. In the event tax bills for the current year's taxes are not available on the date of Closing, taxes shall be prorated based upon the tax bills for the previous year and increased or decreased based upon any known increase or decrease in the assessed valuation or millage rate. The parties agree to have final utility readings as of the Closing, with the Debtor responsible for the utilities up to the date of Closing and Purchaser responsible for the utilities beginning on the date of Closing.
- e. Transfer Taxes. All transfer, documentary, sales, use, stamp, registration and such other taxes and recording, filing and other fees (including penalties and interest) incurred in connection with this Agreement or as a result of the conveyance of the Purchased Assets by the Debtor to Purchaser shall be paid by Purchaser when due, and the Debtor will, at its own expense, file all necessary tax returns and other documentation with respect to all such taxes and fees. If required by applicable law, the Debtor will join in the execution of any such tax returns and other documentation.
- f. Offer of Employment. Purchaser agrees that following the Closing, it will offer employment to all or substantially all of the Debtor's employees at each facility being purchased under this Agreement.
5. Closing. The Closing (the "Closing") of the transaction contemplated by this Agreement shall take place at the offices of the Debtor within five (5) business days after the entry of the Order by the Court in the Chapter 11 Case approving this Agreement (the "Closing Date"). Purchaser shall incur a penalty of \$5,000 per day, payable to the Debtor, for failure to close by the Closing Date.
6. Deliveries at Closing. At the Closing, the Debtor shall deliver to Purchaser (a) a Quit-Claim Deed for each parcel of real property included in the Purchased Assets in the form attached hereto as Schedule 3, duly executed by the Debtor; (b) a Bill of Sale for the remaining Purchased Assets in the form attached hereto as Schedule 4, duly executed by the Debtor; (c) a copy of the Order entered by the Court in the Chapter 11 Case approving this Agreement; and (d) such other documentation as may be reasonably required to effectuate the transactions contemplated by this Agreement. At the Closing, the Purchaser shall deliver to the Debtor the Purchase Price pursuant to Section 4.
7. Conditions Precedent to Obligations the Parties. The respective obligations of the parties to close under this Agreement shall be subject to the satisfaction at or prior to Closing of the following conditions:
- a. Order. Entry of an Order in the Chapter 11 Case (the "Order") approving the sale of the Purchased Assets to the Purchaser free and clear of all liens, claims and encumbrances;
- b. No Injunction. No preliminary or permanent injunction or other order or decree issued by any federal, state, local, municipal, governmental or quasi-governmental authority or court shall be in effect or pending which materially delays, restrains, enjoins, stays or otherwise prohibits the transactions contemplated by this Agreement.
8. Representations and Warranties of the Debtor. The Debtor warrants and represents to Purchaser that the statements contained in this Section 8 are true and correct and complete as of the date of this Agreement and shall be true and correct and complete as of the Closing Date.

- a. Power. The Debtor remains in possession of the Purchased Assets as a “debtor-in-possession” under the Code and will have the power to execute and deliver this Agreement and to consummate the transactions provided for herein, subject to approval of the Court in the Chapter 11 Case.
- b. Authority. The execution and delivery of this Agreement by the Debtor and the Debtor’s performance of its obligations hereunder have been or will be duly authorized by the Court in the Chapter 11 Case.
- c. Title to the Purchased Assets. All of the Debtor’s right, title and interest in the Purchased Assets will be transferred to Purchaser pursuant to the Order.
- d. Limitations on Warranties and Representations. **Purchaser acknowledges and agrees the Purchased Assets are being conveyed by the Debtor “AS IS, WHERE IS” except for the representations and warranties contained in this Agreement, the Debtor makes no express or implied representations of warranties of any kind, including, without limitation, no representations or warranties as to the condition, merchantability, or fitness for a particular purpose of the Purchased Assets, the income derived or potentially to be derived from the Purchased Assets or the Company’s business, or the expenses incurred or potentially to be incurred in connection with the Purchased Assets or the Company’s business.**
9. Representations and Warranties of Purchaser. Purchaser warrants and represents to the Debtor that the statements contained in this Section 9 are true, correct and complete as of the date of this Agreement and shall be true, correct and complete as of the Closing Date.
- a. Power. Purchaser is duly organized and validly existing under the laws of the state of incorporation, and has the power to own its property and carry on its business.
- b. Authority. Purchaser has all necessary power to execute and deliver this Agreement and to consummate the transactions provided for herein. The execution and delivery of this Agreement by Purchaser and the performance by it of the obligations to be performed hereunder have been duly authorized by all necessary and appropriate action. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not and shall not conflict with, or result in a breach of, or constitute a default under the terms or conditions of Purchaser’s entity documents and agreements, any court or administrative order or process to which Purchaser is a party, any agreement or instrument to which Purchaser is a party or by which Purchaser is bound or any statute or regulation of any governmental agency.
- c. Execution and Binding Agreement. This Agreement has been duly and validly executed and delivered by Purchaser and constitutes a valid and legal binding obligation of Purchaser enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting the rights and remedies of creditors generally and to general principles of equity.
10. Miscellaneous.
- a. Amendment and Severability. This Agreement may only be amended by a written agreement of the Debtor and Purchaser. If any provision, clause or part of this Agreement or the application thereof under certain circumstances, is thought to be invalid, the

remainder of this Agreement, or the application of each provision, clause or part under other circumstances, shall not be affected thereby.

- b. Governing Law. This Agreement shall be governed by and subject to the laws of the State of Wisconsin.
- c. Waiver. The failure of the Debtor or Purchaser to insist, in any one or more instances, upon performance of any of the terms or conditions of this Agreement, shall not be construed as a waiver or relinquishment of any rights granted hereunder or the future performance of any such term, covenant or condition.
- d. Notices. Any notice to be given hereunder shall be deemed sufficient if in writing and delivered, in the case of the Debtor, to:

Mark L. Metz, Esq.  
Leverson Lucey & Metz S.C.  
3030 W. Highland Blvd.  
Milwaukee, WI 53208  
Fax: 414-271-8504  
E-mail: mlm@levmetz.com

and in case of Purchaser, to:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

- e. Exclusive Jurisdiction. The Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby. In all claims, actions, classes of action, suits and proceedings relating to the foregoing shall be filed and maintained only in the Court, and the parties hereby consent to the jurisdiction of the Court.
- f. Enforcement. The parties agree that all costs incurred to enforce the terms of this Agreement, including but not limited to reasonable attorneys' fees, shall be paid by the party in violation of this Agreement to the non-violating party.
- g. Time is of the Essence. The parties agree that time is of the essence with respect to all provisions of this Agreement.

*SIGNATURES ON THE NEXT PAGE*

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

THE YOUNG MEN'S CHRISTIAN  
ASSOCIATION OF METROPOLITAN  
MILWAUKEE, INC.

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

PURCHASER:

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