

**THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE COURT.**

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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re	:	Chapter 11
	:	
VINCENT DiCANIO QUALIFIED PERSONAL RESIDENCE TRUST,	:	Case No. 17-77690 [REG]
	:	
Debtor.	:	
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**FIRST AMENDED DISCLOSURE STATEMENT**

**I. INTRODUCTION**

Vincent DiCanio Qualified Personal Residence Trust (the “Debtor”) submits this Small Business Disclosure Statement pursuant to Section 1125(b) of Title 11, United States Code, 11 U.S.C. §§ et seq. (the “Bankruptcy Code”) and Rule 3017 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), in connection with its [First Amended](#) Chapter 11 Plan of Liquidation dated ~~April 18, 2018~~[March 1, 2018](#) (the “Plan”) to all known holders of Claims against or Interests in the Debtor in order to adequately disclose information deemed to be material,

important and necessary to make a reasonably informed judgment about the Plan, including, who is entitled to vote to accept or reject the Plan. A full copy of the Plan is attached to this Disclosure Statement as Exhibit “A”. Hereinafter, all capitalized words not otherwise defined shall have the meanings ascribed to them in the definitional section of the Plan. *Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.*

During the Debtor’s Chapter 11 Case, the Debtor diligently sought a purchaser of the Property located at 1 Pine Point, Nissequogue, New York, New York. The Debtor’s efforts yielded fruit, and Craig and Andrea Fina (defined as “Purchaser” in the Plan) has offered \$1,600,000 as the purchase price. The brokerage commission due ~~Listing Broker DiCanio Realty~~ of 6%, or \$96,000 will be assessed against the purchase price (the “Brokerage Commission”), as well as a ~~Relocation Assistance fee~~ of \$100,000 payable to Vincent DiCanio for peaceful surrender of the Property (the “~~Surrender Fee Relocation Assistance~~”). This ~~payment fee~~ was agreed upon prior to the filing of the Chapter 11 proceeding. Listing Broker may remit up to one-half the Brokerage Commission to Selling Broker. All of the Net Proceeds, estimated to be in the amount of \$1,404,000 and other necessary costs of closing shall be turned over to the holder of the First Mortgage Claim.

The sale process is occurring through the process of confirming the Plan, as may be amended.

Under Section 1126(b) of the Bankruptcy Code, only Classes of Allowed Claims that are “impaired” under the Plan, as defined by Section 1124 of the Bankruptcy Code, are entitled to vote on the Plan. Generally, a Class is impaired if its legal, contractual or equitable rights are altered or

reduced under the Plan. Under the Plan, only Class 2 is Impaired and therefore entitled to vote to accept or reject the Plan. To be accepted by a Class, the Plan must be accepted by more than one half in number and two-thirds in dollar amount of the Allowed Claims actually voting in such Class. Class 3, the holder of the Second Mortgage Claim, receives no distribution and is deemed to reject the Plan. The Plan, however, should be confirmed based on the acceptance of the Plan by the Class 2 Creditor.

### **Purpose of This Document**

#### **This Disclosure Statement describes:**

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims of the type you hold (*i.e.*, what you will receive on your claim if the plan is confirmed and your claim is “allowed” within the meaning of the Plan),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the “Court”) will consider when deciding whether to confirm the Plan,
- Why the Debtor believes the Plan is feasible, and how the treatment of your claim under the Plan compares to what you would receive on your claim in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

#### **A. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing**

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

##### *1. Time and Place of the Hearing to Confirm the Plan*

The hearing at which the Court will determine whether to confirm the Plan will take place on May \_\_, 2018 at 10:00 a.m., before the Honorable Robert E. Grossman, U.S. Bankruptcy Judge,

in Courtroom 860, at the U.S. Bankruptcy Court, Eastern District of N.Y., Alfonse M. D'Amato U.S. Courthouse, 290 Federal Plaza, Central Islip, NY 11722.

*2. Deadline For Voting to Accept or Reject the Plan*

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot to Rattet, PLLC, Counsel for the Debtor, 202 Mamaroneck Avenue, White Plains, New York 10601, Attn: Robert L. Rattet, Esq. See Section IV.A. below for a discussion of voting eligibility requirements.

Your ballot must be received by **May \_\_ at 5:00 p.m. (Eastern Time)** or it will not be counted.

*3. Deadline For Objecting to the Confirmation of the Plan*

Objections to the confirmation of the Plan must be filed with the Court and served upon Rattet, PLLC, Counsel for the Debtor, 202 Mamaroneck Avenue, White Plains, New York 10601, Attn: Robert L. Rattet, Esq. by **May \_\_, 2018 at 5:00 p.m. (Eastern Time)**.

*4. Identity of Person to Contact for More Information*

If you want additional information about the Plan, you should contact Rattet, PLLC, Counsel for the Debtor, 202 Mamaroneck Avenue, White Plains, New York 10601, Attn: Robert L. Rattet, Esq. or James B. Glucksman, Esq. (914) 381-7400.

**B. Disclaimer**

*The Court has approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the*

*fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted.*

## **II. BACKGROUND**

### **A. Description of the Debtor and Events Leading to Bankruptcy**

The Debtor is a qualified personal residential trust. The Property was transferred to the Debtor by quitclaim deed. The holder of the First Mortgage Claim commenced a foreclosure proceeding during 2011 in Supreme Court, Suffolk County entitled Pennymac Corp. vs. Vincent F. DiCanio, Index Number 15871/2011. The Court entered a judgment of foreclosure and sale on June 13, 2017. The petition was filed to stay a sale scheduled for December 15, 2017.

The Property is also subject to a second mortgage in favor of People's United Bank.

#### ***Retention of Professionals***

The Debtor filed this Chapter 11 case pro se. The Debtor engaged Rattet, PLLC as its bankruptcy counsel to assist in the successful administration of the Debtor's bankruptcy case. The Debtor will submit a retention order shortly.

#### ***Schedules and Statement of Financial Affairs***

On December 12, 2017, the Debtor filed its Schedules of Assets and Liabilities and Statements of Financial Affairs. The Debtor will shortly seek the entry of an order establishing a Bar Date establishing a last date to file claims against the Debtor.

#### ***341 Meeting***

On January 12, 2018 the Debtor attended its Section 341(a) Meeting of Creditors. The

Debtor also appeared at the initial case conference in this Bankruptcy proceeding before the Hon. Robert E. Grossman at the United States Bankruptcy Courthouse on February 12, 2018.

***Resolution of Disputed Claims***

The Debtor reserves the right to object to any filed claim.

***The Sale of the Property***

During its Chapter 11 Case, the Debtor was approached by Purchaser. The Debtor decided to accept Purchaser's offer of \$1,600,000. A copy of the Letter of Intent is annexed hereto as Exhibit "C" and an unexecuted copy of the purchase and sale agreement ("APA"), as amended, draft contract of sale is annexed hereto as Exhibit "D". Upon execution by the purchaser, the APA will be electronically filed as a separate exhibit.

In order expeditiously bring the Chapter 11 Case to a close, the Debtor decided to accept this offer and seek plan confirmation on its basis.

**THE PLAN OF REORGANIZATION**

The following is a brief summary of the Plan. The Plan represents a proposed legally binding agreement and creditors are urged to consult with their counsel in order to fully understand the Plan and to make an intelligent judgment concerning it. The Plan governs over any discrepancy in this summary.

As required by the Bankruptcy Code, the Plan places claim in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

**A. Treatment of Unclassified Claims Under the Plan**

Certain types of claims are automatically entitled to specific treatment under the Bankruptcy Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Bankruptcy Code. As such, the Debtor has *not* placed the following claims in any class:

*1. Allowed Administrative Claims other than Claims of Professionals*

Administrative expenses are costs or expenses of administration in connection with the Chapter 11 Case, including, without limitation, any actual, necessary costs and expenses of preserving the Debtor's estate, and all fees and charges assessed against the Debtor's estate pursuant to 28 U.S.C. § 1930. The term Administrative Claim does not include Fee Claims and quarterly fees owed to the Office of the U.S. Trustee, which are treated separately in this Plan. These Allowed Claims shall be paid in Cash on the later of the Effective Date or the Sale Closing Date, or as soon as is practicable thereafter, unless waived.

*2. Allowed Administrative Claims of Professionals*

These are Claims by any Professionals for compensation for legal and other services and reimbursement of expenses allowed or awarded under Bankruptcy Code sections 327, 328, 330(a), 331, 503(b) and/or 1103. The Debtor has three (3) Professionals whose employment has been approved by the Bankruptcy Court; (i) the Debtor's current bankruptcy counsel, Rattet, PLLC ("Rattet" or the "Professionals"). The Allowed Administrative Claim of the Professional shall be paid in full, in Cash, upon the later of (i) allowance by the Court pursuant to 11 U.S.C. § 330, (ii) the Effective Date, or (iii) the Sale Closing Date. The Debtor estimates that the total net unpaid

Allowed Professionals claims on the Effective Date total approximately \$30,000.00, representing net unpaid professional fees incurred through the Effective Date.

*3. United States Trustee's Fees*

These are claims for United States Trustee statutory fees arising under 28 U.S.C. § 1930 and 31 U.S.C. §3717. The Debtor shall pay outstanding United States Trustee statutory fees in full, in Cash, on the later of the Effective Date or the Sale Closing Date, or as soon as is practicable thereafter. Thereafter, such fees shall be paid in full, in Cash, in such amount as incurred in the ordinary course of business by the Debtor by the principal of the Debtor. The Debtor shall be responsible to effectuate payment of United States Trustee quarterly fees through the entry of a final decree closing the Chapter 11 Case. The Debtor estimates these Claims to total approximately \$0.

*4. Allowed Priority Tax Claims*

Priority tax claims are unsecured income, employment, sales, and other taxes described by §507(a)(8) of the Bankruptcy Code.

**B. Classes of Claims**

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

*1. Class 1: Allowed Non-Tax Priority Claims*

Class 1 consists of the holders of Allowed Class 1 Non-Tax Priority Claims. The Debtor shall pay to each holder of Class 1 Non-Tax Priority Claims the amount of its Allowed Claim in full and in Cash on the later of the Effective Date or the Sale Closing Date from the Plan Distribution Fund, in full and final satisfaction of such Claims. The Debtor estimates these Claims



to total approximately \$0.00. Class 1 Claims are unimpaired under the Plan and are deemed to vote in favor of the Plan.

*Class 2: Allowed Secured Claim of Pennymac*

Class 2 consists of the Allowed Secured Claim of Class 2. The Allowed Secured Claim of consists of the Allowed Secured Claim of Pennymac, scheduled by the Debtor in the amount of \$2,660,516.25. The Class 2 Claim shall be paid \$1,600,000.00 less the [Surrender Fee](#) [Relocation Assistance](#) of \$100,000 and a 6% brokerage commission expected to equal \$96,000 on closing. Class 2 Claims are Impaired. However they have previously agreed to accept this treatment and are deemed to accept the Plan as a consenting senior class.

2. *Class 3: Allowed Secured Claim of People's United Bank*

Class 3 consists of the claim of People's United Bank scheduled by the Debtor in the amount of \$850,000. People's United Bank has filed a claim in the amount of \$1,291,299.58. The Class 3 Claim held by People's United Bank shall receive no distribution under the Plan. Class 3 Claims are deemed to reject the Plan. However the plan will be confirmed pursuant to 11 U.S.C. §1129(b)(2)(B) based upon the acceptance of the Plan by the Class 2 creditor.

3. *Class 4: Disputed Unsecured Priority Claim*

Class 4 consists of allowed priority unsecured creditors. The Debtor shall pay all Allowed Priority Tax claims in full, in Cash, on the later of the Effective Date or the Sale Closing Date, or as soon as is practicable thereafter. The Debtor estimates these Claims to total approximately \$0. The IRS has filed a claim for an estimated tax relating to a previously unfiled return. The return has since been filed, showing no tax due. If the IRS does not withdraw the claim the Debtor will file a motion to expunge it.

4. *Class 5: General Unsecured Claims*

Class 5 General Unsecured Claims are Claims which are not an Administrative Claim, Secured Claim, Priority Claim, or Interest that arose prior to the Petition Date. The Debtor believes there are no such creditors. The Class 5 Claims, if any, shall receive no distribution under the Plan. Class 5 Claims are deemed to reject the Plan. However the plan will be confirmed pursuant to 11 U.S.C. §1129(b)(2)(B) based upon the acceptance of the Plan by the Class 5 creditor.

5. *Class 6: Interests*

Class 6 consists of the holders of Interests in the Debtor. Class 6 Interests are held by Vincent DiCanio. His interest shall be eliminated under the Plan. As such he is deemed to reject the Plan. Class 6 Interests are eliminated under the Plan and are not entitled to vote under the Plan.

**C. Resolution of Disputed Claims & Reserves**

1. *Objections.*

An objection to the allowance of a Claim shall be in writing and may be filed with the Bankruptcy Court by the Debtor or any other party in interest no later than thirty (30) days after the Effective Date.

2. *Amendment of Claims.*

A Claim may be amended only up to seven (7) days prior to the Effective Date, unless agreed upon by the Debtor and the holder of such Claim and as approved by the Bankruptcy Court or as otherwise permitted by the Bankruptcy Code and Bankruptcy Rules.

3. *Claims Procedures Not Exclusive.*

All of the aforementioned Claims procedures are cumulative and not necessarily exclusive of one another. On and after Confirmation, Claims which were previously disputed may subsequently be compromised, settled, withdrawn, or otherwise resolved without further order of the Bankruptcy Court.

**D. Plan Funding and Means of Implementing the Plan**

1. *Plan Funding and Means for Implementation.*

The Plan shall be funded with the Net Sale Proceeds. The Net Sale Proceeds shall be distributed to Pennymac, the holder of the First Mortgage Claim. The ~~Surrender Fee~~Relocation Assistance and ~~the Brokerage Commission~~ shall be paid to Vincent DiCanio as consideration under for peaceful surrender of the Property, the respective agreements. The Brokerage Commission of 6% shall be paid to the Listing Broker. The Listing Broker may pay up to one-half of this Brokerage Commission to the Selling Broker.

(a) Free and Clear of all Liens, Claims and Encumbrances. The Purchaser shall acquire upon the Sale, and the Debtor shall convey, all of the right, title and interest that Debtor possesses as of the closing in and to the Lease and the Property (collectively, the “Property”) free and clear of all pre-closing liens, Claims, encumbrances, other interests, debts, causes of action, Interests, obligations, liabilities, and charges of any kind, nature or description whatsoever, whether fixed or contingent, legal or equitable, perfected or unperfected except as expressly provided in the purchase agreement pursuant to 1123(b)(4) and 1129 of the Bankruptcy Code (collectively, the “Liens and Claims”). All persons and entities asserting Liens and Claims of any kind or nature whatsoever against or in Debtor or the Property, including but not limited to the

Class 1, 2 and 3 Claim holders and Class 4 Interest holders, arising under or out of, in connection with, or in any way relating to, Debtor, the Property, or the transfer of the Property to the Purchaser, shall be forever barred, estopped, and permanently enjoined from asserting such Liens and Claims against the successful purchaser, its successors or assigns, its property, or the Property.

(b) Tax Exemption. The Plan expressly contemplates the Sale of the Property on or after the Effective Date. The post-Effective Date Sale shall therefore not be taxed under any law imposing a stamp or similar tax as provided for in Section 1146(a) of the Code including (a) the transfer of the Property; (b) the creation of any mortgage, deed of trust, lien, pledge or other security interest; (c) the making or assignment of any contract, Lease or sublease; or (d) the making or delivery of any deed or other instrument or transfer under, in furtherance of, or in connection with the Plan. All such transfers, assignments and sales will not be subject to any stamp tax, or other similar tax held to be a stamp tax or other similar tax by applicable law.

#### **E. Executory Contracts and Leases**

The Debtor does not believe there are any executory contracts that require assumption or rejection.

#### **F. Tax Consequence of the Plan**

*Creditors Concerned with How the Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, and/or Advisors.*

Confirmation may have federal income tax consequences for the Debtor and Creditors. The Debtor has not obtained, and does not intend to request, a ruling from the Internal Revenue Service (the "IRS"), nor has the Debtor obtained an opinion of counsel with respect to any tax matters.

Any federal income tax matters raised by confirmation of the Plan are governed by the Internal Revenue Code and the regulations promulgated thereunder. Creditors are urged to consult their own counsel and tax advisors as to the consequences to them, under federal and applicable state, local and foreign tax laws, of the Plan. The following is intended to be a summary only and not a substitute for careful tax planning with a tax professional. The federal, state and local tax consequences of the Plan may be complex in some circumstances and, in some cases, uncertain. Accordingly, each holder of a Claim is strongly urged to consult with his or her own tax advisor regarding the federal, state and local tax consequences of the Plan, including but not limited to the receipt of cash and/or stock under this Plan.

*1. Tax Consequences to the Debtor*

The Debtor may not recognize income as a result of the discharge of debt pursuant to the Plan because Section 108 of the Internal Revenue Code provides that taxpayers in bankruptcy proceedings do not recognize income from discharge of indebtedness. However, a taxpayer is required to reduce its "tax attributes" by the amount of the debt discharged. Tax attributes are reduced in the following order: (i) net operating losses; (ii) general business credits; (iii) capital loss carryovers; (iv) basis in assets; (v) passive activity loss and credit carryovers; and (vi) foreign tax credit carryovers.

*2. Tax Consequences to Unsecured Creditors*

An unsecured creditor that receives cash in satisfaction of its Claim may recognize gain or loss, with respect to the principal amount of its Claim, equal to the difference between (i) the creditor's basis in the Claim (other than the portion of the Claim, if any, attributable to accrued interest), and (ii) the balance of the cash received after any allocation to accrued interest. The

character of the gain or loss as capital gain or loss, or ordinary income or loss, will generally be determined by whether the Claim is a capital asset in the creditor's hands. A creditor may also recognize income or loss in respect of consideration received for accrued interest on the Claim. The income or loss will generally be ordinary, regardless of whether the creditor's Claim is a capital asset in its hands.

**G. Avoidance and Recovery Actions**

The Debtor does not believe there are any Avoidance Actions that should be pursued.

**III. CONFIRMATION REQUIREMENTS AND PROCEDURES**

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Bankruptcy Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor at least as much as the creditor would receive in a chapter 7 liquidation case, unless the creditor votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

**A. Who May Vote or Object**

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor has a right to vote for or against the Plan only if that creditor has a claim that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Debtor believes that there is a class impaired under the Plan and that the holder of the claim in these classes are entitled to vote to accept or reject the Plan. Only the Class 2 creditor, Pennymac, is so entitled. If Pennymac does not vote under the Plan or object Pennymac is deemed to accept the Plan. The Debtor believes that classes are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Plan.

*1. What Is an Allowed Claim?*

Only a creditor with an allowed claim has the right to vote on the Plan. Generally, a claim is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim, unless an objection has been filed to such proof of claim. When a claim is not allowed, the creditor holding the claim cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

***The deadline for filing a proof of claim in this case will be established by Order of this Court.***

*2. What Is an Impaired Claim?*

As noted above, the holder of an allowed claim has the right to vote only if it is in a class that is *impaired* under the Plan. As provided in § 1124 of the Bankruptcy Code, a class is considered Impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

Since Class 3 Claims are not receiving interest and may not receive payment in full of their claims, Class 3 Unsecured Claims are Impaired under the Plan and entitled to vote.

Each Holder of a Claim in Class 3 has been sent a ballot together with this Disclosure Statement. The ballot is to be used for voting to accept or reject the Plan.

The Bankruptcy Court has directed that, to be counted for voting purposes, ballots for the acceptance or rejection of the Plan must be mailed or delivered by hand or courier so that they are ACTUALLY RECEIVED no later than 5:00 p.m. (Eastern Standard Time) on October 31, 2016 at the following address:

RATTET PLLC  
202 Mamaroneck Avenue  
White Plains, New York 10601  
Attn: Robert L. Rattet, Esq.

Each Holder of an Allowed Claims in Class 2 shall be entitled to vote to accept or reject the Plan as provided for in the order approving the Disclosure Statement. A vote may be disregarded if the Bankruptcy Court determines that such vote was not solicited or procured in good faith and in accordance with the Bankruptcy Code. **If the Class 2 Creditor does not vote or object it is deemed to affirmatively accept the Plan.**

3. *Who is Not Entitled to Vote*

The holders of the following five types of claims are *not* entitled to vote:

- holders of claims that have been disallowed by an order of the Court;
- holders of other claims that are not “allowed claims” (as discussed above), unless they have been “allowed” for voting purposes;
- holders of claims in unimpaired classes;
- holders of claims that are impaired but are deemed to reject the Plan;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Bankruptcy Code; and
- administrative expenses.



***Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan and to the Adequacy of the Disclosure Statement.***

***4. Who Can Vote in More Than One Class***

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

**B. Votes Necessary to Confirm the Plan**

If Impaired classes exist, the Court cannot confirm the Plan unless (1) at least one Impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by “cram down” on non-accepting classes, as discussed later in Section B.2.

***Votes Necessary for a Class to Accept the Plan***

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

**C. Feasibility and Best Interests Test**

The Bankruptcy Code requires that in order to confirm the Plan, the Bankruptcy Court must find that confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtor (the “Feasibility Test”).

For a plan to meet the Feasibility Test, the Bankruptcy Court must find that the Debtor will possess the resources to meet its obligations under the Plan. Since the Plan contemplates a

liquidation of the Debtor's assets, Confirmation of the Plan is not likely to be followed by the need for further financial reorganization of the Debtor or any successor to the Debtor under the Plan. Moreover, on the Effective Date, the Debtor will have sufficient funds on hand to fund the Plan. A distribution schedule outlining all payments to be made under the Plan from the Plan Distribution Fund is attached to this Disclosure Statement as **Exhibit "B."** *You Should Consult with Your Accountant or other Financial Advisor If You Have Any Questions Pertaining to These Projections.*

In addition, the Bankruptcy Court must determine that the values of the distributions to be made under the Plan to each Class will equal or exceed the values which would be allocated to such Class in a liquidation under Chapter 7 of the Bankruptcy Code (the "Best Interest Test").

The Best Interest Test with respect to each impaired Class requires that each holder of a Claim or Interest in such Class either (i) accept the Plan or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code. Because the Debtor has proposed a liquidating Plan which distributes all proceeds thereof to holders of Allowed Claims in order of priority, no scenario exists, including but not limited to Chapter 7 liquidation, under which the creditors would be entitled to receive a distribution greater than that which the Debtor has proposed in its Plan. In fact, were the Debtor's assets liquidated in a Chapter 7 case, the creditors of the estate would stand to receive far less as the Administrative costs associated with such a case would be significantly higher.

The Debtor believes that the Plan satisfies all of the statutory requirements of Chapter 11 of the Bankruptcy Code, including the "best interest" and feasibility requirements. The Plan is

“fair and equitable” and “does not discriminate unfairly”. The Plan complies with all other requirements of Chapter 11 of the Bankruptcy Code and the Plan has been proposed in good faith.

#### **D. Notices**

All notices and correspondence should be forwarded in writing to:

Vincent DiCanio Qualified Personal Residence Trust, LLC  
c/o Rattet, PLLC  
202 Mamaroneck Avenue  
White Plains, New York 10601  
Attn: Robert L. Rattet, Esq.  
James B. Glucksman, Esq.

### **IV. EFFECT OF CONFIRMATION OF PLAN**

#### **A. Discharge of Debtor**

Since the Plan provides for a liquidation of the Debtor’s assets, the Confirmation Order shall not operate as a discharge pursuant to Section 1141(d)(1) of the Bankruptcy Code.

##### ***1. Exculpation.***

*Neither the Debtor nor any of its respective members, shareholders, officers, directors, employees, attorneys, advisors, agents, representatives and assigns (the “Released Parties”) shall have or incur any liability to any entity for any action taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, Confirmation or consummation of the Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into, or any other action taken or omitted to be taken in connection with the chapter 11 case or the Plan and any related agreement except for bad faith, willful misconduct, gross negligence, breach of fiduciary duty, malpractice, fraud, criminal conduct, unauthorized use of confidential information that causes damages, and/or ultra vires acts. Notwithstanding any other provision hereof, nothing in Sections 11.2 or 11.3 of*

*the Plan shall (a) effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including, without limitation, any claim arising under the Internal Revenue Code, New York State Tax Law, the environmental laws or any criminal laws of the United States or any state and local authority against the Released Parties, nor shall anything in Sections 11.2 or 11.3 of the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings against any of the Released Parties referred to herein for any liability whatever, including, without limitation, any claim, suit or action arising under the Internal Revenue Code, New York State Tax Law, the environmental laws or any criminal laws of the United States or any state and local authority, nor shall anything in this Plan exculpate any party from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including liabilities arising under the Internal Revenue Code, New York State Tax Law, the environmental laws or any criminal laws of the United States or any state and local authority against the Parties referred to herein, or (b) limit the liability of the Debtor's professionals to the Debtor pursuant to Rule 1.8(h)(1) of the New York Rules of Professional Conduct.*

2. *Plan Injunction*

*Upon Confirmation, but subject to the occurrence of the Effective Date, all persons who have held, hold or may hold Claims or Interests are enjoined from taking any of the following actions against or affecting the Debtor or assets of the Debtor with respect to such Claims, Interests or Administrative Claims, except as otherwise set forth in the Plan, and other than actions brought to enforce any rights or obligations under the Plan or appeals, if any, from the Confirmation Order:*

*(i) Commencing, conducting or continuing in any manner, directly or indirectly, any suit, action, arbitration, or other proceeding of any kind against the Debtor or the assets of the Debtor regarding the Claims or Interests;*

*(ii) Enforcing, levying, attaching, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtor, the assets of the Debtor;*

*(iii) Creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the assets of the Debtor;*

*(iv) Asserting any setoff, right of subrogation, or recoupment of any kind, directly or indirectly, against the Debtor, the assets of the Debtor;*

*(v) Proceeding against any entity other than the Debtor with respect to a claim filed against the Debtor; and*

*(vi) Proceeding in any manner and any place whatsoever that does not conform to or comply with the provisions of the Plan.*

3. *Full and Final Satisfaction*

To the fullest extent permitted by Section 1141(a)-(c) of the Bankruptcy Code, all payments and all distributions pursuant to the Plan, shall be in full and final satisfaction, settlement and release of all Claims and Interests, except as otherwise provided in the Plan. Nevertheless, under Section 1141(d) of the Bankruptcy Code, the Debtor will not receive a discharge because the Plan is a liquidating plan.

**B. Amendment, Modification, Withdrawal or Revocation of the Plan.**

The Debtor reserves the right, in accordance with the Section 1127 of the Bankruptcy Code, to amend or modify the Plan by Order of the Bankruptcy Court, as may be required.

The Debtor may withdraw or revoke the Plan prior to Confirmation. If such a withdrawal or revocation occurs, or if Confirmation does not occur, the Plan will be null and void. In such event, nothing contained in the Plan will constitute a waiver or release of any Claim by or against the Debtor or any other person or to prejudice in any manner the rights of the Debtor or any other person in any further proceedings involving the Debtor.

**C. Unclaimed Property**

Except as otherwise provided herein, in the event any claimant fails to claim any distribution within four (4) months from the date of such distribution, such claimant shall forfeit all rights thereto and to any and all future payments, and thereafter the Claim for which such cash was distributed shall be treated as a disallowed Claim. Distributions to claimants entitled thereto shall be sent to their last known address set forth on the most recent proof of claim filed with the Bankruptcy Court or, if no proof of claim is filed, on the Schedules filed by the Debtor or to such other address as may be later designated by a creditor in writing to the Disbursing Agent. The

Debtor shall use its best efforts to obtain current addresses for all claimants. All unclaimed cash shall be redistributed by the Debtor pro rata to Class 4 Interest holders in accordance with Article III of the Plan.

**D. Retention of Jurisdiction**

The Bankruptcy Court shall retain jurisdiction of the Chapter 11 Case:

(a) To determine all controversies relating to or concerning the allowance of and/ or distribution on account of such Claims or Interests upon objection thereto which may be filed by any party in interest;

(b) To determine requests for payment of Claims entitled to priority under Section 507(a)(2) of the Bankruptcy Code, including any and all applications for compensation for professional and similar fees

(c) To determine any and all applications, adversary proceedings, and contested or litigated matters over which the Bankruptcy Court has subject matter jurisdiction pursuant to 28 U.S.C Sections 157 and 1334;

(d) To determine all disputed, contingent or unliquidated Claims and all disputed Interests;

(e) To determine requests to modify the Plan pursuant to Section 1127 of the Bankruptcy Code or to remedy any defect or omission or reconcile any inconsistencies in this Plan or Confirmation Order to the extent authorized by the Bankruptcy Code;

(f) To make such orders as are necessary or appropriate to carry out the provisions of the Plan;

(g) To resolve controversies and disputes regarding the interpretation or enforcement of the terms of the Plan; and

(h) To enter a final decree closing the Chapter 11 Case.

**E. Post-Confirmation Fees, Reserves and Final Decree**

The reasonable compensation and out-of-pocket expenses incurred post-Confirmation by the Debtor's professionals retained in the Chapter 11 case shall be paid by the Debtor within ten (10) days upon presentation of invoices for such professional services. All disputes concerning post-confirmation fees and expenses shall be subject to Bankruptcy Court jurisdiction.

A final decree shall be entered as soon as practicable after initial distributions have commenced under the Plan.

**F. Continuation of Bankruptcy Stays**

All stays provided for in the chapter 11 case under Section 362 of the Bankruptcy Code, or otherwise, and in existence on Confirmation, shall remain in full force and effect until the Effective Date.



V. RECOMMENDATION

The Debtor believes that confirmation of the Plan is preferable to any of the alternatives described above. The Plan will provide greater recoveries than those available in liquidation to all holders of Claims. Any other alternative would cause significant delay and uncertainty, as well as substantial additional administrative costs.

Dated: Nissequogue, New York

~~March 22, 2018~~ April 18, 2018

Vincent DiCanio Qualified Personal Residence  
Trust, LLC.

By: Vincent DiCanio  
Vincent DiCanio, Managing Member

RATTET PLLC  
*Attorneys for the Debtor*  
202 Mamaroneck Avenue  
White Plains, New York 10528  
(914) 381-7400

By: /s/ Robert L. Rattet  
Robert L. Rattet

**EXHIBIT “A”**

RATTET, PLLC  
Robert L. Rattet, Esq.  
202 Mamaroneck Avenue  
White Plains, New York 10601  
(914) 381-7400

*Attorneys for Debtor*

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----	X	
In re	:	Chapter 11
	:	
VINCENT DiCANIO QUALIFIED PERSONAL RESIDENCE TRUST,	:	Case No. 17-77690 [REG]
	:	
	:	
Debtor.	:	
-----	X	

**FIRST AMENDED CHAPTER 11 PLAN OF LIQUIDATION**

VINCENT DiCANIO QUALIFIED PERSONAL RESIDENCE TRUST ("Debtor") hereby proposes the following Plan of Liquidation pursuant to the provisions of Chapter 11 of the Bankruptcy Code.

**ARTICLE I**  
**DEFINITIONS**

For the purposes of this Plan, and the Disclosure Statement simultaneously filed by the Debtor, the following terms shall have the respective meanings set forth below:

1.1 "*Administrative Claim*" shall mean, except as otherwise set forth in this Plan, all or that portion of a Claim for any cost or expense of administration in connection with the Chapter 11 Case, including, without limitation, any actual, necessary costs and expenses of preserving the Debtor's estate, and all fees and charges assessed against the Debtor's estate

pursuant to 28 U.S.C. section 1930. The term Administrative Claim does not include Fee Claims, which are treated separately in this Plan.

1.2 "*Allowed*" shall mean with respect to any Claim or Interest that portion of such Claim or Interest (i) which has been allowed by a Final Order; (ii) which is allowed under the terms of this Plan; or (iii) (a) which has been scheduled by the Debtor as not disputed, not contingent and not unliquidated, or (b) for which a proof of claim was timely filed and otherwise properly filed on or before the Bar Date, as hereinafter established by the Court (other than with respect to governmental entities on or before December 12, 2017) with the Bankruptcy Court and, with respect to Claims described in (iii) as to which no objection to the allowance thereof has been interposed within the period of time fixed by the Bankruptcy Code, the Plan in Article IX hereof, the Bankruptcy Rules or an order of the Bankruptcy Court, or as to which any objection has been determined by a Final Order of the Bankruptcy Court allowing such Claim or any portion thereof. Except as otherwise specifically set forth in this Plan, each Allowed Claim shall be net of any valid setoff exercised with respect to such Claim pursuant to the provision of the Bankruptcy Code and applicable law.

1.3 "*Allowed Administrative Claim*" shall mean all or that portion of any Administrative Claim which has become allowed by a Final Order or was incurred by the Debtor in the ordinary course of business during the Chapter 11 Case and is due and owing under the terms and conditions of any agreement and applicable law.

1.4 "*Avoidance Actions*" shall mean any cause of action assertable under sections 510, 542, 543, 544, 545, 547, 548, 549, 550 or 553 of the Bankruptcy Code or non-bankruptcy law.

1.5 “Asset Purchase Agreement” or “APA” shall mean the unexecuted copy of the purchase and sale agreement (“APA”), as amended and as annexed to the Amended Disclosure Statement as Exhibit “D”. Upon execution by the purchaser, the APA will be electronically filed as a separate exhibit.

1.51.6 “Ballot” shall mean each of the voting forms to be distributed with the Plan and the Disclosure Statement to holders of Claims or Interests in Classes that are impaired under the terms of the Plan and are entitled to vote in connection with the solicitation of acceptances of the Plan.

1.61.7 “Bankruptcy Code” shall mean title 11 of the United States Code, 11 U.S.C. §§101, et seq., as in effect on the Petition Date.

1.71.8 “Bankruptcy Court” shall mean the United States Bankruptcy Court for the Eastern District of New York, a Division.

1.81.9 “Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure, as amended from time to time, as applicable to the Chapter 11 Case, including the Local Rules of the Bankruptcy Court.

1.91.10 “Listing Broker” shall mean Classic Realty Development Corp.

1.101.11 “Selling Broker” shall mean Coach Real Estate Associates, Inc., or such broker as introduced the successful purchaser of the Property.

1.111.12 “Brokerage Commission” shall mean brokerage commission due Classic Realty Development Corp. of 6% will be assessed against the purchase price of the Property as herein defined, in the expected amount of \$96,000. The Brokerage Commission is expected to be split with the Selling Broker.

~~1.12~~1.13 *“Business Day”* shall mean any day on which commercial banks are open for business in the City of New York and County of New York, New York, other than, a Saturday, Sunday or legal holiday in the State of New York.

~~1.13~~1.14 *“Cash”* shall mean the legal tender of the United States of America.

~~1.14~~1.15 *“Causes of Action”* shall mean any claim, cause of action, controversy, demand, agreement, right (including to legal or equitable remedies), action, lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license, and franchise of any kind or character whatsoever, known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, belonging to the Debtor, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law. Cause of Action also includes: (a) any right of setoff, counterclaim, or recoupment and any claim on contracts or for breaches of duties imposed by law or in equity; (b) the right to object to Claims or Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any state law fraudulent transfer claim.

~~1.15~~1.16 *“Chapter 11 Case”* shall mean the above-captioned case commenced by the filing of a voluntary petition by the Debtor seeking relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court on the Petition Date.

~~1.16~~1.17 "*Claim*" shall mean a claim as defined in sections 101(5) and 102 of the Bankruptcy Code, including, without limitation, claims arising under section 502 of the Bankruptcy Code.

~~1.17~~1.18 "*Class*" shall mean a class of holders of Claims or Interests described in Article III of this Plan.

~~1.18~~1.19 "*Confirmation*" shall mean the date upon which the Confirmation Order is entered by the Bankruptcy Court.

~~1.19~~1.20 "*Confirmation Order*" shall mean the order of the Bankruptcy Court pursuant to section 1129 of the Bankruptcy Code confirming the Plan.

~~1.20~~1.21 "*Debtor*" shall mean Vincent DiCano Qualified Residential Residence Trust.

~~1.21~~1.22 "*Disbursing Agent*" shall mean the party that shall open and maintain a separate attorney trust bank account in which all Cash received for purposes of distribution hereunder shall be deposited in accordance with section 345 of the Bankruptcy Code and as otherwise may be required by the Local Rules of the Bankruptcy Court, by the Office of the United States Trustee, or this Plan, and shall distribute payment under the Plan, which Disbursing Agent shall be Rattet, PLLC.

~~1.22~~1.23 "*Disclosure Statement*" shall mean the Disclosure Statement filed simultaneously with this Chapter 11 Plan of Liquidation filed by the Debtor in the Chapter 11 Case.

~~1.23~~1.24 "*Disputed Claim*" shall mean any Claim (i) which is scheduled by the Debtor as disputed, contingent or unliquidated, or (ii) proof of which has been filed with the

Bankruptcy Court and an objection to the allowance has been or is interposed within the period of time set forth in Article IX hereof or by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or an order of the Bankruptcy Court extending such time for the filing of such objections, and as to which, such objection has not been determined by a Final Order of the Bankruptcy Court or withdrawn. Such Claim, or a portion thereof, shall not be deemed an Allowed Claim until and unless and to the extent it is resolved as an Allowed Claim by a Bankruptcy Court order.

~~1.24~~1.25 "*Effective Date*" shall mean the first Business Day that is one (1) Business Day after the date upon which the Confirmation Order becomes a Final Order.

~~1.25~~1.26 "*Estate*" shall mean the estate of the Debtor created by the Chapter 11 Case pursuant to Bankruptcy Code section 541.

~~1.26~~1.27 "*Exculpated Claim*" any claim related to any act or omission in connection with, relating to or arising out of the Debtor's in or out of court restructuring efforts, the Chapter 11 Case, formulation, preparation, dissemination, negotiation or filing of the Disclosure Statement or this Plan or any contract, instrument, release or other agreement or document created or entered into in connection with the Disclosure Statement or this Plan, the filing of the Chapter 11 Case, the pursuit of confirmation of this Plan, the administration and implementation of this Plan; *provided, however*, that Exculpated Claims shall not include any act or omission that is determined in a Final Order to have constituted gross negligence, willful misconduct or fraud to the extent imposed by applicable non-bankruptcy law. For the avoidance of doubt, no cause of action, obligation or liability expressly set forth in or preserved by this Plan constitutes an Exculpated Claim.



~~1.27~~1.28 “*Exculpated Party*” means, with respect to post Petition Date conduct only, the Debtor and its current and former officers, directors, members, managers, employees, attorneys and advisors, each in their respective capacities as such.

~~1.28~~1.29 “*Fee Claim*” shall mean a Claim by any Professional for compensation for legal and other services and reimbursement of expenses allowed or awarded under Bankruptcy Code sections 327, 328, 330(a), 331, 503(b) and/or 1103.

~~1.29~~1.30 “*Final Order*” shall mean an order or judgment of the Bankruptcy Court entered by the clerk of the Bankruptcy Court on the docket of the Chapter 11 Case which has not been reversed, vacated or stayed and as to which (a) the time to appeal or seek review or rehearing has expired, and a notice of appeal or request for review or rehearing is not pending, or (b) any appeal that has been taken has been finally determined or dismissed on grounds that affirm the order or judgment, it being further provided that if such appeal or request for a rehearing is pending, that if such order is not stayed pending appeal or rehearing pursuant to Fed.R.Civ.P. 62 as incorporated by Bankruptcy Rule 7062, the order shall be deemed to be a Final Order. The possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024 may be filed related to such order or judgment shall not cause such order or judgment to not be a Final Order.

~~1.30~~1.31 “*Impaired*” shall mean a Claim or class of Claims that is impaired within the meaning of section 1124 of the Bankruptcy Code.

~~1.31~~1.32 “*Interest*” shall mean the interest of any holder of an equity security of or membership interest in the Debtor, within the meaning of Bankruptcy Code sections 101(16), (17), represented by any issued and outstanding shares of common or preferred stock or other

instrument evidencing a present ownership or membership interest in the Debtor, whether or not transferable, or any option, warrant, or right, contractual or otherwise, to acquire any such interest, including a partnership, limited liability company or similar interest.

~~1.32~~1.33 “*First Mortgage Claim*” shall mean the claim held and as evidenced by the Mortgage and Note in favor of Pennymac Corp.

~~1.33~~1.34 “*Second Mortgage Claim*” shall mean the claim held and as evidenced by the Mortgage and Note in favor of People’s United.

~~1.34~~1.35 “*Net Sale Proceeds*” shall mean the proceeds of the sale of the Property net of the Brokerage Commission and the Relocation Assistance, estimated to be in the amount of \$1,404,000 and other necessary costs of closing.

~~1.35~~1.36 “*Petition Date*” shall mean December 12, 2017.

~~1.36~~1.37 “*Person*” shall mean means an individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, estate, unincorporated organization, governmental unit, government (or agency or political subdivision thereof), trust or other entity, including, without limitation, the Debtor.

~~1.37~~1.38 “*Plan*” shall mean this Chapter 11 Plan of Liquidation and any amendments hereto or modifications hereof made in accordance with the provisions of the Bankruptcy Code.

~~1.38~~1.39 “*Plan Distribution Fund*” shall mean such moneys as are advanced by or on behalf of Vincent DiCanio, trustor of the Trust to fund a distribution under the Plan.

~~1.39~~1.40 “*Priority Claim*” shall mean a Claim other than an Administrative Claim that is entitled to priority under section 507 of the Bankruptcy Code.

~~1.40~~1.41 “*Priority Tax Claim*” shall mean any Claim of a governmental unit of the kind entitled to priority in payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

~~1.41~~1.42 “*Pro Rata*” shall mean (i) regarding Claims, the ratio of the amount of an Allowed Claim in a particular Class to the aggregate amount of Allowed Claims in such Class; and (ii) regarding Interests, the ratio of the amount of the Interest to the aggregate amount of Interests.

~~1.42~~1.43 “*Professionals*” shall mean professional persons retained under section 327 or 1103 of the Bankruptcy Code pursuant to a Final Order of the Bankruptcy Court and shall specifically include, (a) Rattet PLLC; and (b) DiCanio Realty, commissioned real estate brokers, as well as any other professionals providing post-Confirmation services to the Debtor.

~~1.43~~1.44 “*Property*” shall mean the Debtor’s ownership interest as lessor to real property and improvements thereon located at 1 Pine Point, Nissequogue, New York, New York.

~~1.44~~1.45 “*Purchaser*” shall mean Craig and Andrea Fina, when determined to be the successful purchaser at the Sale (as defined below).

~~1.45~~1.46 “*Sale*” shall mean the sale of the Debtor’s fee simple interest in the Property and related assets under this Plan subject to the terms of the ~~APA Purchase and Sale Agreement dated March \_\_, 2018 (“APA”) as amended.~~

~~1.46~~1.47 “*Sale Closing Date*” shall mean the date upon which the Debtor closes on the Sale of the Property.

1.471.48 “*Sale Order*” shall mean the order of confirmation and/or such separate order approving the sale to be entered by the Bankruptcy Court approving the Sale of the Property to the Purchaser.

1.481.49 “*Sale Proceeds*” shall mean the purchase price paid by the Purchaser for the Sale of the Property, after payment of or reserve for actual and necessary closing adjustments and other closing costs or Claims permitted to be paid at the closing.

1.491.50 “*Secured Claim*” shall mean a Claim held by creditors secured by mortgages or liens on real and/or personal property owned by the Debtor in accordance with section 506(a) of the Bankruptcy Code.

1.501.51 “*Schedules*” shall mean the schedules of assets and liabilities and the statement of financial affairs filed by the Debtor as required by section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, and all amendments thereto

1.511.52 “*Relocation Assistance*” shall mean the ~~payment of~~ payment of \$100,000 payable to Vincent DiCanio for peaceful surrender of the Property agreed upon prior to the filing of the Chapter 11 proceeding.

1.521.53 “*Unimpaired*” shall mean, with respect to any Class, that such Class is not Impaired.

1.531.54 “*Unsecured Claim*” shall mean any Claim which is not an Administrative Claim, Secured Claim, Priority Claim, or Interest that arose prior to the Petition Date and includes, without limitation, Claims based upon pre-petition trade accounts payable or Claims based upon the rejection of an executory contract during the pendency of the Chapter 11 Case.

Unless otherwise specified, all section or exhibit references in this Plan are to the respective section in, or exhibit to, the Plan, as the same may be amended, waived, or modified from time to time. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause contained therein. A term used herein that is not defined herein shall have the meaning assigned to that term in the Bankruptcy Code. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the Plan. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Unless otherwise provided, any reference in this Plan to an existing document, exhibit or schedule means such document, exhibit or schedule as it may have been amended, restated, revised, supplemented or otherwise modified. If a time or date is specified for any payments or other distribution under the Plan, it shall mean on or as soon as reasonably practicable thereafter. Further, where appropriate from a contextual reading of a term, each term includes the singular and plural form of the term regardless of how the term is stated and each stated pronoun is gender neutral.

**ARTICLE II**  
**DESIGNATION AND TREATMENT OF UNCLASSIFIED CLAIMS**

2.1 Allowed Administrative Claims other than Claims of Professionals. Administrative expenses are costs or expenses of administration in connection with the Chapter 11 Case, including, without limitation, any actual, necessary costs and expenses of preserving the Debtor’s estate, and all fees and charges assessed against the Debtor’s estate pursuant to 28 U.S.C. section 1930. The term Administrative Claim does not include Fee Claims and quarterly fees owed to the Office of the U.S. Trustee, which are treated separately in this Plan. These

Allowed Claims shall be paid in Cash on the later of the Effective Date or the Sale Closing Date, or as soon as is practicable thereafter.

2.2 Allowed Administrative Claims of Professionals. These are Claims by any Professionals for compensation for legal and other services and reimbursement of expenses allowed or awarded under Bankruptcy Code sections 327, 328, 330(a), 331, 503(b) and/or 1103. The Allowed Administrative Claims of the Professionals shall be paid in full, in Cash, upon the later of (i) allowance by the Court pursuant to 11 U.S.C. § 330, (ii) the Effective Date, or (iii) the Sale Closing Date, unless waived or otherwise agreed by the administrative claimant.

2.3 United States Trustee's Fees. These are claims for United States Trustee statutory fees arising under 28 U.S.C. § 1930 and 31 U.S.C. §3717. The Debtor shall pay outstanding United States Trustee statutory fees in full, in Cash, on the later of the Effective Date or the Sale Closing Date, or as soon as is practicable thereafter. Thereafter, such fees shall be paid in full, in Cash, in such amount as incurred in the ordinary course of business by the Debtor or by Mr. DiCanio personally. The Debtor shall be responsible to effectuate payment of United States Trustee quarterly fees through the entry of a final decree closing the Chapter 11 Case.

Allowed Priority Tax Claims. Priority tax claims are unsecured income, employment, sales and other taxes described by §507(a)(8) of the Bankruptcy Code. The Debtor shall pay all Allowed Priority Tax claims in full, in Cash, on the later of the Effective Date or the Sale Closing Date, or as soon as is practicable thereafter. Priority tax claims are unsecured income, employment, sales, and other taxes described by §507(a)(8) of the Bankruptcy Code. The Debtor shall pay all Allowed Priority Tax claims in full, in Cash, on the later of the Effective Date or the Sale Closing Date, or as soon as is practicable

thereafter. The Debtor estimates these Claims to total approximately \$0. The IRS has filed a claim for an estimated tax relating to a previously unfiled return. The return has since been filed, showing no tax due. If the IRS does not withdraw the claim the Debtor will file a motion to expunge it.

**ARTICLE III**  
**DESIGNATION OF CLAIMS AND INTERESTS**

3.1 Classification of Claims. All Claims against the Debtor, of whatever nature, whether or not scheduled or liquidated, absolute or contingent, and all Interests arising from the ownership of the Debtor whether resulting in an Allowed Claim or an Allowed Interest or not, shall be bound by the provisions of the Plan, except those described in Article II of this Plan, are classified in Section 3.2 hereof.

A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of the Class and is classified in a different Class or Classes to the extent any remainder of the Claim or Interest qualifies within the description of that different Class or Classes. Unless otherwise provided, to the extent a Claim or Interest qualifies for inclusion in a more specifically defined Class and a more generally defined Class, it shall be included in the more specifically defined Class.

3.2 Classes. For purposes of the Plan, those persons holding Claims against, or Interests in, the Debtor are grouped in accordance with section 1122 of the Bankruptcy Code.

**Class 1: Allowed Non-Tax Priority Claims:** Class 1 consists of Allowed Priority Claims, excluding Allowed Priority Tax Claims, entitled to priority pursuant to any subsections of Bankruptcy Code section 507(a)(3) through (a)(7).

**Class 2: Allowed Secured Claim (Pennymac):** Class 2 consists of the Allowed Secured Claim of consists of the Allowed Secured Claim of Pennymac, scheduled by the Debtor in the amount of \$2,660,516.25.

**Class 3: Allowed Secured Claim (People's United Bank)**

Class 3 consists of the Allowed Secured Claim of People's United scheduled by the Debtor in the amount of \$850,000. People's United has filed a claim in the amount of \$1,291,299.58.

**Class 4: Allowed Priority claims:** Class 4 consists of the priority unsecured claims.

**Class 5 Unsecured nonpriority claim** – Class 5 consists of the nonpriority unsecured claims.

**Class 6: Interests:** Class 6 consists of all Interests in the Debtor. Said interests are deemed cancelled and they are deemed to reject the Plan.

**ARTICLE IV**  
**TREATMENT OF CLASSES UNDER THE PLAN**

**Treatment of Claims and Interests.** The treatment of and consideration to be received by holders of Allowed Claims and Interests pursuant to Article IV of the Plan shall be in full satisfaction, release and discharge of their respective Claims or Interests against the Debtor or, whether or not a holder of a Claim or Interest receives a distribution under the Plan.

4.1 **Class 1:** The Debtor shall pay to the holders of Allowed Class 1 Non-Tax Priority Claims the amount of their Allowed Claim in full and in Cash on the later of the Effective Date or the Sale Closing Date from the Plan Distribution Fund, in full and final satisfaction of such



Claims as against the Debtor. Class 1 Claims are not Impaired under the Plan and are deemed to accept the Plan.

4.2 Class 2: The Class 2 Claim held by Pennymac shall be paid \$1,500,000.00 less a 6% brokerage commission on closing. Class 2 Claims are Impaired. However they have previously agreed to accept this treatment and are deemed to accept the Plan as a consenting senior class.

4.3 Class 3: The Class 3 Claim held by People's United shall receive no distribution under the Plan. Class 3 Claims are deemed to reject the Plan. However the plan will be confirmed pursuant to 11 U.S.C. §1129(b)(2)(B) based upon the acceptance of the Plan by the Class 2 creditor.

4.4 Class 4: Class 4 consists of allowed priority unsecured creditors. The Debtor does not believe there are such claims. If there are they shall be paid in full on confirmation. See 11 U.S.C. §1129(a)(9)(C).

4.5 Class 5. Class 5 consists of allowed general, nonpriority unsecured creditors. The Debtor does not believe there are such claims. receive no distribution under the Plan. Class 5 Claims are deemed to reject the Plan. However the plan will be confirmed pursuant to 11 U.S.C. §1129(b)(2)(B) based upon the acceptance of the Plan by the Class 2 creditor..

4.6 Class 6: Class 6 iinterests shall receive no property on account of their claims and interest and, as such, are deemed to reject the Plan. However the plan will be confirmed pursuant to 11 U.S.C. §1129(b)(2)(B) based upon the acceptance of the Plan by the Class 2 creditor.

**ARTICLE V**  
**ACCEPTANCE OR REJECTION OF THE PLAN**

5.1 Impaired Classes Vote. In accordance with section 1126(c) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted this Plan if this Plan is accepted by the holders of at least two-thirds ( $\frac{2}{3}$ ) in dollar amount and more than one-half ( $\frac{1}{2}$ ) in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject this Plan.

5.2 Presumed Acceptance of the Plan. Classes 1 and 4 are not Impaired under the Plan and are, therefore, conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code.

5.3 Voting Class. Class 2 is Impaired, and the holders of Allowed Claims in Class 2 are entitled to vote on the Plan.

5.4 Deemed Rejecting Classes. Classes 3 and 5 claim holders and Class 6 Interest Holders are deemed to reject the Plan. If the Plan is to be confirmed, the Plan must be confirmed pursuant to 11 U.S.C. §1129(b)

**ARTICLE VI**  
**MEANS FOR EXECUTION**

6.1 Distribution of Cash. Upon sale of the Property, the proceeds shall be distributed to the Class 2 Creditor net of (a) \$100,000 for peacefully vacating the Property; and (b) a 6% brokerage commission to DiCanio Realty.

6.2 Means For Implementation. The Plan will be implemented through the sale of the Property.

**(a) Free and Clear of all Liens, Claims and Encumbrances.** The Purchaser shall acquire upon

the Sale, and the Debtor shall convey, all of the right, title and interest that the Debtor possesses as of the closing in and to the Property and Lease free and clear of all pre-closing liens, Claims, encumbrances, other interests, debts, causes of action, Interests, obligations, liabilities, and charges of any kind, nature or description whatsoever, whether fixed or contingent, legal or equitable, perfected or unperfected except as expressly provided in the APA pursuant to Sections 363(b), (f), (k) and (m) and 1123(b)(4) and 1129 of the Bankruptcy Code (collectively, the “Liens and Claims”). All persons and entities asserting Liens and Claims of any kind or nature whatsoever against or in Debtor or the Property or the Lease, including but not limited to the Class 1 and Class 2 and Class 3 Claim holders and Class 4 Interest holders, arising under or out of, in connection with, or in any way relating to, the Debtor, the Property, the Lease, or the transfer of the Property and the Lease to the Purchaser, shall be forever barred, estopped, and permanently enjoined from asserting such Liens and Claims against the Purchaser, its successors or assigns, its property, or the Property or Lease.

6.1 **(b) Tax Exemption.** This Plan expressly contemplates the Sale of the Property on or after the Effective Date. The post-Effective Date Sale shall therefore not be taxed under any law imposing a stamp or similar tax as provided for in Section 1146(a) of the Bankruptcy Code including (a) the transfer of the Property; (b) the assignment of the Lease; (b) the creation of any mortgage, deed of trust, lien, pledge or other security interest by the Debtor; or (c) the making or delivery of any deed or other instrument or transfer under, in furtherance of, or in connection with the Plan. All such transfers, assignments and sales will not be subject to any stamp tax, or other similar tax held to be a stamp tax or other similar tax by applicable law..

6.2 Continuing Existence. All matters provided under this Plan, including all corporate action to be taken or required to be taken by the Debtor, and the execution of all necessary documents shall be deemed to have occurred and be effective as provided herein, and shall be authorized and approved in all respects without any requirement or further action by members of the Debtor. From and after the Effective Date, the Debtor shall continue in existence for the sole purposes of (i) winding up its affairs as expeditiously as reasonably possible, (ii) resolving disputed Claims, if any, (iii) administering this Plan, and (vi) filing appropriate tax returns. Following the Effective Date, the Debtor shall not engage in any business activities or take any actions, except those necessary to consummate this Plan and wind up the affairs of the Debtor.

6.3 Vesting of Assets. As of the Effective Date, and except as otherwise provided in the Plan, all Estate assets shall vest in the Debtor with the Property to be transferred to the Purchaser, free and clear of all liens, claims and interests of any kind or nature whatsoever (except as expressly provided in the APA). Except as otherwise set forth in the Plan, all Causes of Action shall survive Confirmation, and the commencement and/or prosecution of Causes of Action shall not be barred or limited by any estoppel, whether judicial, equitable or otherwise.

6.4 Payment of Professionals for Post-Confirmation Date Services and Reimbursement of Expenses. The reasonable compensation and out-of-pocket expenses incurred post-Confirmation by the Disbursing Agent and Professionals retained in the Chapter 11 Case for post-Confirmation services (other than services related to Avoidance Actions, compensation for which is exclusively governed by Article IX of this Plan) shall be paid on behalf of the Debtor and/or waived by tsuch Professionals.

**ARTICLE VII**  
**EXECUTORY CONTRACTS**

7.1 The Debtor has no executory contracts to assume or reject other than the Lease. The Lease shall be assumed by the Debtor and assigned to Purchaser under the terms of this Plan.

**ARTICLE VIII**  
**GENERAL AND MISCELLANEOUS PROVISIONS**

8.1 Modification of the Plan. The Debtor reserves the right, in accordance with section 1127(a) of the Bankruptcy Code, to amend or modify the Plan prior to Confirmation. After the Confirmation Date, the Debtor may, upon order of the Bankruptcy Court, in accordance with section 1127(b) of the Bankruptcy Code, remedy any defect or omission or reconcile and inconsistencies in the Plan in such manner as may be necessary to carry out the purposes and intent of the Plan.

8.2 Payment Dates. If any payment or act under the Plan is required to be made or falls on a date which shall be a Saturday, Sunday or a legal holiday, then the making of such payment or performance of such act may be completed on the next succeeding Business Day, and shall be deemed to have been completed timely.

8.3 Notices. Any notices to be forwarded under the Plan shall be in writing and sent by certified mail, return receipt requested, postage pre-paid; or by overnight mail or hand delivery, addressed as follows:

VINCENT DiCANIO QUALIFIED PERSONAL RESIDENCE TRUST  
c/o RATTET PLLC  
Robert L. Rattet, Esq.  
202 Mamaroneck Avenue  
Suite 300  
White Plains, New York 10601

The above notice parties may designate in writing any other address for purposes of this section, which designation shall be effective upon receipt. Any payment required under the Plan shall be deemed to have been paid on the date when such payment is received.

8.4 Enforceability. Should any provision in the Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability or operative effect of any and all other provisions of the Plan.

8.5 Applicable Law. Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the law of the State of New York.

8.6 Successors and Assigns. The rights and obligations of any entity named or referred to in the Plan shall be binding upon and inure to the benefit of the successors and assigns of such entity.

8.7 Reservation of Rights. Neither the filing of this Plan, nor any statement or provision contained herein, shall be or be deemed to be an admission against interest. In the event that the Effective Date does not occur, neither this Plan nor any statement contained herein may be used or relied upon in any manner in any suit, action, proceeding or controversy within or outside of the Chapter 11 Case.

8.8 U.S. Trustee Fees and Monthly Operating Reports. After Confirmation, the Debtor will pay or cause the payment of fees, and any applicable interest, incurred pursuant to 28 U.S.C. § 1930(a)(6) and 31 U.S.C. section 3717 and will file or cause the filing with the Bankruptcy Court and serve or cause service on the U.S. Trustee of monthly operating reports while the Chapter 11 Case remains open, unless the Bankruptcy Court orders otherwise.

**ARTICLE IX**  
**RESOLUTION OF DISPUTED CLAIMS & RESERVES**

9.1 Objections. An objection to either the allowance of a Claim, the cure amount due to the Landlord under 11 U.S.C. § 365(b) or an amendment to the Debtor's Schedules shall be in writing and may either be filed with the Bankruptcy Court or pursued and resolved by other means by the Debtor, at any time on or before the Effective Date, and for a period of 30 days thereafter, or within such other time period as may be fixed by the Bankruptcy Court for cause. The Debtor will object to and settle any Claims and shall settle, compromise or prosecute all Claims objections.

9.2 Amendment of Claims. A Claim may be amended prior to the Effective Date only as agreed upon by the Debtor and the holder of such Claim and as approved by the Bankruptcy Court or as otherwise permitted by the Bankruptcy Code and Bankruptcy Rules. After the Effective Date, a Claim may be amended as agreed upon by the holder thereof and the Debtor to decrease, but not increase, the face amount thereof.

9.3 Distributions to Holders of Subsequently Allowed Claims. Unless another date is agreed on by the Debtor and the holder of a particular subsequently Allowed Claim, the

Debtor shall, on the first Business Day to occur after the fourteenth (14th) day after the Allowed amount of such theretofore Disputed Claim is determined, distribute to such holder with respect to such subsequently Allowed Claim the amount of distribution required under the Plan for such Allowed Claims at that time, in Cash. The holder of a subsequently Allowed Claim shall not be entitled to any interest on the Allowed amount of its Claim, regardless of when distribution thereon is made to or received by such holder.

**ARTICLE X**  
**AVOIDANCE ACTIONS**

The Debtor's estate will pursue all Avoidance Actions that should be pursued. The Debtor believes there are no such avoidance claims.

**ARTICLE XI**  
**EFFECT OF CONFIRMATION, DISCHARGE,**  
**SURRENDER AND CANCELLATION OF CLAIMS**

11.1 No Discharge Under the Plan. Since the Plan provides for the liquidation of the Debtor's assets, the Confirmation Order shall not include a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

11.2 Exculpation. *Except as otherwise specifically provided in this Plan, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any Exculpated Claim, or obligation, cause of action or liability for any Exculpated Claim, and shall be entitled to reasonably rely on the advice of counsel with respect to their duties and responsibilities pursuant to this Plan. Each Exculpated Party and their respective affiliates, agents, directors, members, officers, officials, employees, advisors*



*and attorneys have, and upon the Effective Date shall be deemed to have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code and applicable non-bankruptcy law and shall not be liable at any time for the violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of this Plan or distributions made pursuant to this Plan. From and after the Effective Date, a copy of the Confirmation Order and the Plan shall constitute and may be submitted as a complete defense to any claim or liability satisfied, enjoined or subject to exculpation pursuant to Article XI of the Plan; provided, however, that nothing in the Plan shall, or shall be deemed to, release Debtor, the members of the Debtor, or exculpate the Debtor, the members of the Debtor with respect to, its obligations or covenants arising from bad faith, willful misconduct, gross negligence, breach of fiduciary duty, malpractice, fraud, criminal conduct, unauthorized use of confidential information that causes damages, and/or ultra vires acts. Upon Confirmation, Creditors will be unable to pursue any claims that are satisfied, enjoined or subject to exculpation under the Plan, but creditors may pursue claims against the Debtor that may arise in the future, or pursuant to the Plan. Any such liability against the Debtor's professionals will not be limited to their respective clients contrary to the requirement of DR 6-102 of the Code of Professional Responsibility.*

11.3 Confirmation Injunction. Effective on Confirmation, all persons who have held, hold or may hold Claims, with regard to all Classes of Claims are enjoined from taking any of the following actions against or affecting the Debtor or assets of the Debtor with respect to such Claims, except as otherwise set forth in the Plan, and other than actions brought to enforce any rights or obligations under the Plan or appeals, if any, from the Confirmation Order:

- (i) Commencing, conducting or continuing in any manner, directly or indirectly, any suit, action, arbitration, or other proceeding of any kind against the Debtor;
- (ii) Enforcing, levying, attaching, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtor;
- (iii) Creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor or the Purchaser, the assets of the Debtor; and
- (iv) Proceeding in any manner and any place whatsoever that does not conform to or comply with the provisions of the Plan.

11.4 Nothing herein shall effect the terms and conditions of any separate order approving the sale of the Property, the Sale Order and all such terms and conditions shall be preserved and remain in full force and effect.

**ARTICLE XII**  
**DUTIES AND RIGHTS OF THE DISBURSING AGENT**

12.1 If the Debtor funds a confirmation fund, the Disbursing Agent shall be Rattet, PLLC.

12.2 The Disbursing Agent shall make and effectuate all distributions required under the Plan and be responsible for the liquidation of the Debtor's remaining assets and administration of the Plan.

12.3 The Disbursing Agent shall open and maintain, in accordance with this Plan, an interest bearing bank account in which all Cash received for purposes of distribution shall be deposited in accordance with section 345 of the Bankruptcy Code and as provided herein. The Disbursing Agent shall not be liable for any distributions made in accordance with this Plan.

Unless otherwise ordered by a Final Order of the Bankruptcy Court or otherwise provided in this Plan, the record date for distributions shall be the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Case.

12.4 To the extent that the Disbursing Agent shall maintain the Plan Distribution Funds in an attorney escrow account, there is no need for the Disbursing Agent to obtain a bond.

12.5 The Disbursing Agent shall not be liable to the Debtor, the Buyer, any creditor or any other person, firm or corporation, for any error of judgment or for any mistake of law or fact or any act done, caused to be done, or omitted to be done, by the Disbursing Agent or any of its agents. The Disbursing Agent shall be liable only for acts of willful misconduct, gross negligence or breach of fiduciary duty by itself or such agents.

**ARTICLE XIII**  
**DISTRIBUTIONS AND UNCLAIMED PAYMENTS**

9.1 Distributions to holders of Allowed Claims shall be sent to their last known address set forth on a proof of claim filed with the Bankruptcy Court, or, if no proof of claim is filed, on the Schedules, or to such other address as may be designated by such Creditor in writing to the Debtor or the Disbursing Agent. A payment is to be deemed unclaimed if the payment on the distribution is not negotiated by the particular claimholder within 120 days of it being sent by the Debtor.

9.2 If, after thirty (30) days additional attempted notice to the claimholder such distribution remains unclaimed or unnegotiated, then and in that event such holder's Claim shall thereupon be deemed canceled and any such holder shall not be entitled to any payments under

the Plan, and such unclaimed distributions shall be distributed in accordance with Article III of this Plan unless and until such unclaimed distributions total less than \$5,000, at such time will be deemed available for post-Effective Date Professional Fees., with the balance to be paid to holders of Class 4 Interests.

**ARTICLE X**  
**CONDITIONS PRECEDENT TO CONFIRMATION OF PLAN**  
**AND EFFECTIVE DATE**

10.1 Conditions to the Occurrence of Confirmation. The occurrence of Confirmation shall be subject to the entry of the Confirmation Order.

10.2 Conditions to the Occurrence of the Effective Date. The Plan may not be effective until the entry of the Confirmation Order as a Final Order that remains in full force and effect and shall not have been stayed or reversed.

10.3 Non-Occurrence of the Effective Date; Non-Waiver of Conditions. In the event that the Debtor determines that the conditions to the Effective Date set forth in the immediately foregoing paragraph of this Plan cannot be satisfied, the Debtor may propose a new plan, may modify this Plan as permitted by law, or may request other appropriate relief.

**ARTICLE XI**  
**EVENTS OF DEFAULT**

11.1 Events of Default. The occurrence of any of the following events shall constitute an event of default under the Plan (“Event of Default”):

(a) The failure of the Debtor, after receipt of fourteen (14) business days written notice, to make any payment required to be made under the Plan, which failure, prior to the receipt of the fourteen (14) days written notice, shall have remained uncured for a period of thirty (30) days after the date such payment is required to be made, unless the time for such payment has been extended in accordance with the Plan.

(b) The failure of the Debtor to comply with any of the other covenants contained in the Plan, which failure shall remain uncured for a period of thirty (30) days after the Debtor has received fourteen (14) days written notice of such failure.

(c) The failure to close on the Sale on or before June 30, 2018.

16.2 Effect of Default. In the event that the Debtor defaults under the provisions of the Plan, and such default is not cured, then, at the option of any creditor or the United States Trustee, a motion may be filed with the Bankruptcy Court seeking an Order of the Bankruptcy Court compelling the Debtor to make such payment or act in a manner consistent with the provisions of the Plan or seeking the conversion of the Chapter 11 Case to a Chapter 7 proceeding.

**ARTICLE XII**  
**VOTING**

12.1 Blank Ballots. Any ballot which is executed by the holder of an Allowed Claim or Interest but which does not indicate an acceptance or rejection of the Plan shall be deemed to be an acceptance of the Plan.

12.2 Deemed Acceptance. Any Impaired Class which fails to vote either to accept or reject the Plan shall be deemed to accept the Plan.

**ARTICLE XIII**  
**POST-CONFIRMATION REPORTS**

13.1 The Debtor, through the Disbursing agent, shall be responsible for filing post-Confirmation reports with the Bankruptcy Court and shall pay all quarterly fees required under 28 U.S.C. section 1930 until the earlier of (a) conversion or dismissal of the Chapter 11 Case or (b) entry of a final decree closing the Chapter 11 Case.

**ARTICLE XIV**  
**RETENTION OF JURISDICTION**

14.1 The Bankruptcy Court shall retain jurisdiction of the Chapter 11 case:

(a) To determine all controversies relating to or concerning the allowance of Claims upon objection to such Claims by the Debtor;

(b) To determine requests for payment of Claims entitled to priority under section 507(a)(1) of the Bankruptcy Code, including any and all applications for compensation for professional and similar fees;

(c) To determine any and all applications, adversary proceedings, and contested or

litigated matters over which the Bankruptcy Court has subject matter jurisdiction pursuant to 28 U.S.C. sections 157 and 1334;

- (d) To determine all Disputed Claims and amendments to the Debtor's Schedules;
- (e) To adjudicate controversies or interpretations pursuant to any order or stipulation entered by the Bankruptcy Court prior to Confirmation;
- (f) To modify this Plan pursuant to section 1127 of the Bankruptcy Code or to remedy any defect or omission or reconcile any inconsistencies in this Plan or Confirmation Order to the extent authorized by the Code;
- (g) To make such orders as are necessary or appropriate to carry out the provisions of this Plan;
- (h) To resolve controversies and disputes regarding the interpretation or enforcement of the terms of this Plan;
- (i) To determine any issues concerning the APA and to issue and enforce injunctions or take other actions necessary to implement the APA, this Plan, and the transfers of the Assets to the Buyer free and clear of all liens, claims, encumbrances and other interests; and

(j) To enter a final decree closing the Chapter 11 Case.

Dated: Nissequogue, New York  
April 18, 2018

VINCENT DICANIO QUALIFIED PERSONAL  
RESIDENTIAL TRUST

By: Vincent DiCanio  
Vincent DiCanio, Managing Member

RATTET, PLLC  
*Attorneys for the Debtor*  
202 Mamaroneck Avenue  
White Plains, New York 10601  
(914) 381-7400

By: /s/ Robert L. Rattet  
Robert L. Rattet



**EXHIBIT “B”**

**EXHIBIT "B" DISTRIBUTION ANALYSIS**

Brokerage Commission to Listing Broker<sup>1</sup> - \$96,000

~~Surrender Fee~~ Relocation Assistance Payment - \$100,000

Net Sale Proceeds of \$1,404,000 paid to Pennymac

TOTAL Distributed under Plan - \$1,600,000

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<sup>1</sup> Not more than 50% will be shared with Selling Broker

EXHIBIT “C”



## COACH REAL ESTATE ASSOCIATES, INC.

255 West Main Street, Smithtown, NY 11787 • Telephone: (631) 360-1900 • Fax: (631) 360-0282

March 14, 2018

Mr. Vincent Di Canio  
1 Pine Point  
Nissequogue, New York 11780

Enclosed please find offer on your home along with Pre Approval from Valley National Bank, for my buyers, Craig and Andrea Fina of 3 Friends Way, St. James, New York 11780.

Please let me know the acceptance of this offer at your earliest convenience, and how we may proceed to contract, with an anticipated closing date of June 30, 2018.

Thank you very much.

Sincerely,

A handwritten signature in cursive script that reads "Bonnie Glenn".

Bonnie Glenn  
Broker Associate  
Coach Realtors

Tel: 631 584 3950  
Cell: 631 921 1494

Proposed Transaction



MLS# \_\_\_\_\_

Address of Property: 1 Pine Point  
Nissequogue  
11760

Listing Broker Di CAVIO REALTY  
Realtor Coach REALTOR

Real Estate Broker Contact Info: Bonnie Blum, Coach Realtors  
631-584-3950 631-921-1494

Vincent Di CAVIO  
Seller's Full Name  
1 Pine Point  
Address  
Nissequogue, NY 11760  
City, State, Zip Code

+ Craig + Andrea FINA  
Purchaser's Full Name  
3 Friends Way  
Address  
Head of Harbor, NY  
City, State, Zip Code

Robert Rattet, Esq.  
Seller's Attorney  
202 Mamaroneck Ave.  
Address  
Mamaroneck, 10601  
City, State, Zip Code  
914-381-7400  
Phone

Daniel Gobetz, Esq.  
Purchaser's Attorney  
2 Brookside Dr.  
Address  
Smithtown, NY 11780  
City, State, Zip Code  
631-584-4500  
Phone  
631-584-4348

Fax  
rattet@rattetlaw.com  
Email

Fax  
danielgobetzlaw.com  
Email

Total Purchase Price: 4,600,000  
Contract Amount: 40,000  
Mortgage Amount: 2,100,000  
Cash on Closing: 560,000

Contracts to Be Signed: 10 days  
Proposed Closing Date: 6-30-18  
Exclusions: furniture

Additional Information: Offer by purchaser and acceptance by seller subject to the following: Purchaser obtaining a mortgage. Purchaser having a home and termite inspection completed.

[Signature]  
Purchaser

3/14/18  
Date

[Signature]  
Seller

3/14/18  
Date



- Commack Office: 212 Commack Rd/Commack, NY 11725 / 516/499-1000
- East Northport Office: 35 Laurel Rd./East Northport, NY 11731 / 516/757-7272
- Northport Office: 66 Gilbert St. (Rte. 25A & Gilbert St.)/Northport, NY 11768 / 516/757-4000
- Smithtown Office: 255 West Main Street/Smithtown, NY 11787 / 516/360-1900
- Dix Hills Office: Coach Plaza, 805 E. Jericho Tpk./Huntington, NY 11746 / 516/427-9100
- Huntington Office: 147 East Main Street/Huntington, NY 11743 / 516/427-1200
- Syosset Office: 2 Muttontown Road/Syosset, NY 11791 / 516/364-1900
- Setauket Office: 15 Bennetts Rd., Suite 3/Setauket, NY 11733 / 516/689-2654

**COMMISSION AGREEMENT**

Re: 1 Pine Point, Nissequogue, NY 11780

The undersigned seller and brokers agree as follows: 6% total commission

1. COACH REAL ESTATE ASSOCIATES, INC. and DiCarlo Realty (Listing Broker) are the brokers who brought about the above captioned sale.
2. That commission will be paid to the above named brokers by certified check, cashier's check or bank check in the following amounts.  
 COACH REAL ESTATE ASSOCIATES, INC. 3% of purchase price (DiCarlo)

**TOTAL COMMISSION PAYABLE**

3. This commission is due and payable to the above named brokers only if, as and when title passes, except that if title passing is prevented by a willful act of default on the part of the seller, that then and in such an event the commission shall be payable on demand.
4. The seller, directly or through his attorney agrees to notify the selling broker and the listing broker of the time and place of closing forty-eight (48) hours prior to said closing.

ACCEPTED

[Signature]  
SELLER

COACH REAL ESTATE ASSOCIATES, INC.

\_\_\_\_\_  
SELLER

BY: [Signature]  
AUTHORIZED REPRESENTATIVE

DATE: \$ 3/14/18



*Your actual rate, payment and costs could be higher.  
Get an official Loan Estimate before choosing a loan.*

**CONGRATULATIONS.  
YOU'VE BEEN PRE-QUALIFIED FOR A VALLEY HOME MORTGAGE**

3/12/2018

Craig and Andrea Fina  
3 Friends Way  
St. James NY 11780

Dear Craig and Andrea:

We are pleased to let you know that you have just taken an important step toward homeownership as you have been pre-qualified for a Valley Mortgage, based on the information that appears below:

Borrower Name	Craig and Andrea Fina
Property Address	TBD
Loan Type	30 Year Fixed Rate
Approximate Purchase Price	\$1,600,000.00
Approximate Loan Amount	\$1,000,000.00
Estimated Rate	4.375%

This pre-qualification is valid for 60 days from the date of issuance. Our decision was based largely on the stated accuracy of the information which you provided us -- including, but not limited to, your credit score, household income, assets and debts. While this prequalification is not a commitment to lend under any terms or conditions, it can be shared with your realtor and potential sellers to give them a good idea of what you can afford.

Once you make an offer on a home, we will look forward to working with you. Valley may then issue a commitment to lend in writing based on a review of a fully completed application with all necessary documentation in accordance with our credit, collateral and underwriting standards, together with payment of all applicable fees.

This is a great start to the homebuying process, and we wish you success in your search. Please call us if you have any questions along the way. Our goal is to help you find the right financing for your home.

Sincerely,

James Garvey  
631-521-4566



Mortgage Loan Department – 1720 Route 23 North – Wayne, NJ 07470 – Tel: 888.235.4980  
©2017 Valley National Bank. Member FDIC. Equal Opportunity Lender.

**Buyers Rights Regarding  
Property Condition Disclosure**

As the buyer of residential real property, you are entitled by law to receive from the seller, a signed property condition disclosure statement as prescribed by Real Property Law 462(2), prior to your signing a binding contract of sale.

A copy of the Property Condition Disclosure Statement containing the signatures of both the buyer and the seller must be attached to the real estate purchase contract. You are also entitled to receive a revised Property Condition Disclosure Statement, as soon as practicable, in the event that the seller acquires knowledge which renders materially inaccurate a Property Condition Disclosure Statement previously provided to you. You will not be entitled to receive a revised Property condition Disclosure Statement after the transfer of title from the seller to you or after you have commenced occupancy of the property.

In the event the seller fails to deliver a Property Condition Disclosure Statement to you prior to your signing a binding contract of sale, you are entitled to receive a credit in the amount of \$500.00 against the purchase price of the property upon the transfer of title.

I have received and read this disclosure notice.

Dated: 3/14/18

Buyer: [Signature]

Dated: 3/14/18

Buyer: + [Signature]

Property Address: 1 Pine Point  
Missequogue, NY 11780



**EXHIBIT “D”**

**RESIDENTIAL CONTRACT OF SALE 11-2000**

Jointly prepared by the Real Property Section of the New York State Bar Association, the New York State Land Title Association, the Committee on Real Property Law of the Association of the Bar of the City of New York and the Committee on Real Property Law of the New York County Lawyers' Association

**WARNING: NO REPRESENTATION IS MADE THAT THIS FORM OF CONTRACT FOR THE SALE AND PURCHASE OF REAL ESTATE COMPLIES WITH SECTION 5-702 OF THE GENERAL OBLIGATIONS LAW ("PLAIN LANGUAGE").**

**CONSULT YOUR LAWYER BEFORE SIGNING THIS AGREEMENT****NOTE: FIRE AND CASUALTY LOSSES AND CONDEMNATION**

This contract form does not provide for what happens in the event of fire, or other casualty loss or condemnation before the title closing. Unless different provision is made in this contract, Section 5-1311 of the General Obligations Law will apply. One part of that law makes a Purchaser responsible for fire and casualty loss upon taking possession of the Premises before the title closing.

**Residential Contract of Sale**

**Contract of Sale** made as of March 16, 2018

**BETWEEN**

Vincent DiCanio, as Trustee of the Vincent DiCanio Qualified Personal Residence Trust ("QPRT")

Address: 1 Pine Point, Nissequogue, NY 11780

Social Security Number/Fed. I.D. No.(s): 27-6333077

hereinafter called "Seller" and

Craig Fina and Andrea Fina

Address: 3 Friends Way, St. James, NY 11780

Social Security Number/Fed. I.D. No.(s):

hereinafter called "Purchaser"

**The parties hereby agree as follows:**

**1. Premises.** Seller shall sell and convey and Purchaser shall purchase the property, together with all buildings and improvements thereon (collectively the "Premises"), more fully described on a separate page marked "Schedule A", annexed hereto and made a part hereof and also known as: 1 Pine Point, Nissequogue, NY 11780  
Street Address: 1 Pine Point, Nissequogue, NY 11780  
Tax Map Designation:

Excluded from this sale are furniture and household furnishings and

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

**2. Personal Property.** This sale also includes all fixtures and articles of personal property now attached or appurtenant to the Premises, unless specifically excluded below. Seller represents and warrants that at Closing they will be paid for and owned by Seller, free and clear of all liens and encumbrances, except any existing mortgage to which this sale may be subject. They include, but are not limited to, plumbing, heating, lighting and cooking fixtures, chandeliers, bathroom and kitchen cabinets and counters, mantels, door mirrors, switch plates and door hardware, venetian blinds, window treatments, shades, screens, awnings, storm windows, storm doors, window boxes, mail box, TV aerials, weather vane, flagpole, pumps, shrubbery, fencing, outdoor statuary, tool shed, dishwasher, washing machine, clothes dryer, garbage disposal unit, range, oven, built-in-microwave oven, refrigerator, freezer, air conditioning equipment and installations, wall to wall carpeting and built-ins not excluded below (*strike out inapplicable items*).

**3. Purchase Price.** The purchase price is \$1,600,000.00 payable as follows:

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

\$160,000.00

- (b) By allowance for the principal amount unpaid on the existing mortgage on the date hereof, payment of which Purchaser shall assume by joinder in the deed: \$

- (c) By a purchase money note and mortgage from Purchaser to Seller:

\$

- (d) Balance at Closing in accordance with paragraph 7:

\$1,440,000.00

**4. Existing Mortgage.** (*Delete if inapplicable*) If this sale is subject to an existing mortgage as indicated in paragraph 3(b) above:

- (a) The Premises shall be conveyed subject to the continuing lien of the existing mortgage, which is presently payable, with interest at the rate of \_\_\_\_\_ percent per annum, in monthly installments of \$ \_\_\_\_\_ which include principal, interest and escrow amounts, if any, and with any balance of principal being due and payable on

- (b) To the extent that any required payments are made on the existing mortgage between the date hereof and Closing which reduce the unpaid principal amount thereof below the amount shown in paragraph 3(b), then the balance of the price payable at Closing under paragraph 3(d) shall be increased by the amount of the

payments of principal. Seller represents and warrants that the amount shown in paragraph 3(b) is substantially correct and agrees that only payments required by the existing mortgage will be made between the date hereof and Closing.

- (c) If there is a mortgagee escrow account, Seller shall assign it to Purchaser, if it can be assigned, and in that case Purchaser shall pay the amount in the escrow account to Seller at Closing.
- (d) Seller shall deliver to Purchaser at Closing a certificate dated not more than 30 days before Closing signed by the holder of the existing mortgage, in form for recording, certifying the amount of the unpaid principal, the date to which interest has been paid and the amounts, if any, claimed to be unpaid for principal and interest, itemizing the same. Seller shall pay the fees for recording such certificate. If the holder of the existing mortgage is a bank or other institution as defined in Section 274-a of the Real Property Law it may, instead of the certificate, furnish a letter signed by a duly authorized officer, employee or agent, dated not more than 30 days before Closing, containing the same information.
- (e) Seller represents and warrants that (i) Seller has delivered to Purchaser true and complete copies of the existing mortgage, the note secured thereby and any extensions and modifications thereof, (ii) the existing mortgage is not now, and at the time of Closing will not be, in default, and (iii) the existing mortgage does not contain any provision that permits the holder of the mortgage to require its immediate payment in full or to change any other term thereof by reason of the sale or conveyance of the Premises.

**5. Purchase Money Mortgage.** (*Delete if inapplicable*) If there is to be a purchase money mortgage as indicated in paragraph 3(c) above:

- (a) The purchase money note and mortgage shall be drawn by the attorney for Seller in the form attached or, if not, in the standard form adopted by the New York State Land Title Association. Purchaser shall pay at Closing the mortgage recording tax, recording fees and the attorney's fees in the amount of \$ \_\_\_\_\_ for its preparation.
- (b) The purchase money note and mortgage shall also provide that it is subject and subordinate to the lien of the existing mortgage and any extensions, modifications, replacements or consolidations of the existing mortgage, provided that (i) the interest rate thereof shall not be greater than \_\_\_\_\_ percent per annum and the total debt service thereunder shall not be greater than \$ \_\_\_\_\_ per annum, and (ii) if the principal amount thereof shall exceed the amount of principal owing and unpaid on the existing mortgage at the time of placing such new mortgage or consolidated mortgage, the excess is to be paid to the holder of such purchase money mortgage in reduction of the principal thereof. The purchase money mortgage shall also provide that such payment to the holder thereof shall not alter or affect the regular installments, if any, of principal payable thereunder and that the holder thereof will, on demand and without charge therefore, execute, acknowledge and deliver any agreement or agreements further to effectuate such subordination.

**6. Downpayment in Escrow.**

- (a) Seller's attorney ("Escrowee") shall hold the Downpayment in escrow in a segregated bank account at: Signature Bank  
address 1c Quaker Ridge Road, New Rochelle, NY 10804

until Closing or sooner termination of this contract shall pay over or apply the Downpayment in accordance with the terms of this paragraph. Escrowee shall hold the Downpayment in a(n)

interest-bearing account for the benefit of the parties. If interest is held for the benefit of the parties, it shall be paid to the party entitled to the Downpayment and the party receiving the interest shall pay any income taxes thereon. If interest is not held for the benefit of the parties, the Downpayment shall be placed in an IOLA account or as otherwise permitted or required by law. The Social Security or Federal Identification numbers of the parties shall be furnished to Escrowee upon request. At Closing, the Downpayment shall be paid by Escrowee to Seller. If for any reason Closing does not occur and either party gives Notice (as defined in paragraph 25) to Escrowee demanding payment of the Downpayment, Escrowee shall give prompt Notice to the other party of such demand. If Escrowee does not receive Notice of objection from such other party to the proposed payment within 10 business days after the giving of such Notice, Escrowee is hereby authorized and directed to make such payment. If Escrowee does receive such Notice of objection within such 10 day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by Notice from the parties to this contract or a final, non-appealable judgment, order or decree of a court. However, Escrowee shall have the right at any time to deposit the Downpayment and the interest thereon with the clerk of a court in the county in which the Premises are located and shall give Notice of such deposit to Seller and Purchaser. Upon such deposit or other disbursement in accordance with the terms of this paragraph, Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

- (b) The parties acknowledge that Escrowee is acting solely as a stakeholder at their request and for their convenience and that Escrowee shall not be liable to either party for any act or omission on its part unless taken or suffered in bad faith or in willful disregard of this contract or involving gross negligence on the part of Escrowee. Seller and Purchaser jointly and severally (with right of contribution) agree to defend (by attorneys selected by Escrowee), indemnify and hold Escrowee harmless from and against all costs, claims and expenses (including reasonable attorneys' fees) incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith or in willful disregard of this contract or involving gross negligence on the part of Escrowee.
- (c) Escrowee may act or refrain from acting in respect of any matter referred to herein in full reliance upon and with the advice of counsel which may be selected by it (including any member of its firm) and shall be fully protected in so acting or refraining from action upon the advice of such counsel.
- (d) Escrowee acknowledges receipt of the Downpayment by check subject to collection and Escrowee's agreement to the provisions of this paragraph by signing in the place indicated on the signature page of this contract.
- (e) Escrowee or any member of its firm shall be permitted to act as counsel for Seller in any dispute as to the disbursement of the Downpayment or any other dispute between the parties whether or not Escrowee is in possession of the Downpayment and continues to act as Escrowee.
- (f) The party whose attorney is Escrowee shall be liable for loss of the Downpayment.

**7. Acceptable Funds.** All money payable under this contract unless otherwise specified, shall be paid by:

- (a) Cash, but not over \$1,000.00

- (b) Good certified check of Purchaser drawn on or official check issued by any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York unendorsed and payable to the order of Seller, or as Seller may otherwise direct upon reasonable prior notice (by telephone or otherwise) to Purchaser.
- (c) As to money other than the purchase price payable to Seller at Closing, uncertified check of Purchaser up to the amount of \$ 1000.00 ; and
- (d) As otherwise agreed to in writing by Seller or Seller's attorney.

**8. Mortgage Commitment Contingency.** *(Delete paragraph if inapplicable. For explanation, see: NOTES ON MORTGAGE COMMITMENT CONTINGENCY CLAUSE.)*

- (a) The obligation of Purchaser to purchase under this contract is conditioned upon issuance, on or before \_\_\_\_\_ days after a fully executed copy of this contract is given to Purchaser or Purchaser's attorney in the manner set forth in paragraph 25 or subparagraph 8(j) (the "Commitment Date"), of a written commitment from an Institutional Lender pursuant to which such Institutional Lender agrees to make a first mortgage loan, other than a VA, FHA or other governmentally insured loan, to Purchaser, at Purchaser's sole cost and expense, of \$ \_\_\_\_\_ for a term of at least \_\_\_\_\_ years (or such lesser sum or shorter term as Purchaser shall be willing to accept) at the prevailing fixed or adjustable rate of interest and on other customary commitment terms (the "Commitment"). To the extent a Commitment is conditioned on the sale of Purchaser's current home, payment of any outstanding debt, no material adverse change in Purchaser's financial condition or any other customary conditions, Purchaser accepts the risk that such conditions may not be met; however, a commitment conditioned on the Institutional Lender's approval of an appraisal shall not be deemed a "Commitment" hereunder until an appraisal is approved (and if that does not occur before the Commitment Date Purchaser may cancel under subparagraph 8(e) unless the Commitment Date is extended). Purchaser's obligations hereunder are conditioned only on issuance of a Commitment. Once a Commitment is issued, Purchaser is bound under this contract even if the lender fails or refuses to fund the loan for any reason.
- (b) Purchaser shall (i) make prompt application to one or, at Purchaser's election, more than one Institutional Lender for such mortgage loan, (ii) furnish accurate and complete information regarding Purchaser and members of Purchaser's family, as required, (iii) pay all fees, points and charges required in connection with such application and loan, (iv) pursue such application with diligence, and (v) cooperate in good faith with such Institutional Lender(s) to obtain a Commitment. Purchaser shall accept a Commitment meeting the terms set forth in subparagraph 8(a) and shall comply with all requirements of such Commitment (or any other commitment accepted by Purchaser). Purchaser shall furnish Seller with a copy of the Commitment promptly after receipt thereof.
- (c) *(Delete this subparagraph if inapplicable)* Prompt submission by Purchaser of an application to a mortgage broker registered pursuant to Article 12-D of the New York Banking Law ("Mortgage Broker") shall constitute full compliance with the terms and conditions set forth in subparagraph 8(b)(i), provided that such Mortgage Broker promptly submits such application to such Institutional Lender(s). Purchaser shall cooperate in good faith with such Mortgage Broker to obtain a Commitment from such Institutional Lender(s).
- (d) If all Institutional Lenders to whom applications were made deny such applications in writing prior to the Commitment Date, Purchaser may cancel this contract by giving Notice thereof to Seller, with a copy of such denials, provided that Purchaser has complied with all its obligations under this paragraph 8.
- (e) If no Commitment is issued by an Institutional Lender on or before the Commitment Date, then, unless Purchaser has accepted a written commitment from an Institutional Lender that does not conform to the terms set forth in subparagraph 8(a), Purchaser may cancel this contract by giving Notice to Seller within 5 business days after the Commitment Date, provided that such Notice includes the name and address of the Institutional Lender(s) to whom application was made and that Purchaser has complied with all its obligations under this paragraph 8.
- (f) If this contract is canceled by Purchaser pursuant to subparagraphs 8(d) or (e), neither party shall thereafter have any further rights against, or obligations or liabilities to, the other by reason of this contract, except that the Downpayment shall be promptly refunded to Purchaser and except as set forth in paragraph 27.
- (g) If Purchaser fails to give timely Notice of cancellation or if Purchaser accepts a written commitment from an Institutional Lender that does not conform to the terms set forth in subparagraph 8(a), then Purchaser shall be deemed to have waived Purchaser's right to cancel this contract and to receive a refund of the Downpayment by reason of the contingency contained in this paragraph 8.
- (h) If Seller has not received a copy of a commitment from an Institutional Lender accepted by Purchaser by the Commitment Date, Seller may cancel this contract by giving Notice to Purchaser within 5 business days after the Commitment Date, which cancellation shall become effective unless Purchaser delivers a copy of such commitment to Seller within 10 business days after the Commitment Date. After such cancellation neither party shall have any further rights against, or obligations or liabilities to, the other by reason of this contract, except that the Downpayment shall be promptly refunded to Purchaser (provided Purchaser has complied with all its obligations under this paragraph 8) and except as set forth in paragraph 27.
- (i) For purposes of this contract, the term "Institutional Lender" shall mean any bank, savings bank, private banker, trust company, savings and loan association, credit union or similar banking institution whether organized under the laws of this state, the United States or any other state, foreign banking corporation licensed by the Superintendent of Banks of New York or regulated by the Comptroller of the Currency to transact business in New York State; insurance company duly organized or licensed to do business in New York State; mortgage banker licensed pursuant to Article 12-D of the Banking Law; and any instrumentality created by the United States or any state with the power to make mortgage loans.
- (j) For purposes of subparagraph 8(a), Purchaser shall be deemed to have been given a fully executed copy of this contract on the third business day following the date of ordinary or regular mailing, postage prepaid.

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

- (a) Zoning and subdivision laws and regulations, and landmark, historic or wetlands designation, provided that they are not violated by the existing buildings and improvements erected on the property or their use;
- (b) Consents for the erection of any structures on, under or above any streets on which the Premises abut;
- (c) Encroachments of stoops, areas, cellar steps, trim and cornices, if any, upon any street or highway;
- (d) Real estate taxes that are a lien, but are not yet due and payable; and
- (e) The other matters, if any, including a survey exception, set forth in a Rider attached.

**10. Governmental Violations and Orders.**

- (a) Seller shall comply with all notes or notices of violations of law or municipal ordinances, orders or requirements noted or issued as of the date hereof by any governmental department having authority as to lands, housing, buildings, fire, health, environmental and labor conditions affecting the Premises. The Premises shall be conveyed free of them at Closing. Seller shall furnish Purchaser with any authorizations necessary to make the searches that could disclose these matters.
- (b) *(Delete if inapplicable)* All obligations affecting the Premises pursuant to the Administrative Code of the City of New York incurred prior to Closing and payable in money shall be discharged by Seller at or prior to Closing.

**11. Seller's Representations.**

- (a) Seller represents and warrants to Purchaser that:
  - I. The Premises abut or have a right of access to a public road;
  - II. Seller is the sole owner of the Premises and has the full right, power and authority to sell, convey and transfer the same in accordance with the terms of this contract;
  - III. Seller is not a "foreign person", as that term is defined for purposes of the Foreign Investment in Real Property Tax Act. Internal Revenue Code ("IRC") Section 1445, as amended, and the regulations promulgated thereunder (collectively "FIRPTA");
  - IV. The Premises are not affected by any exemptions or abatements of taxes; and
  - V. Seller has been known by no other name for the past ten years, except: None
- (b) Seller covenants and warrants that all of the representations and warranties set forth in this contract shall be true and correct at Closing.
- (c) Except as otherwise expressly set forth in this contract, none of Seller's covenants, representations, warranties or other obligations contained in this contract shall survive Closing.

**12. Condition of Property.** Purchaser acknowledges and represents that Purchaser is fully aware of the physical condition and state of repair of the Premises and of all other property included in this sale, based on Purchaser's own inspection and investigation thereof, and that Purchaser is entering into this contract based solely upon such inspection and investigation and not upon any information, data, statements or representations, written or oral, as to the physical conditions, state of repair, use, cost of operation or any other matter related to the Premises or the other property included in the sale, given or made by Seller or its representatives, and shall accept the same "as is" in their present condition and state of repair, subject to reasonable use, wear, tear and natural deterioration between the date hereof and the date of Closing (except as otherwise set forth in paragraph 16(e)), without any reduction in the purchase price or claim of any kind for any change in such condition by reason thereof subsequent to the date of this contract. Purchaser and its authorized representatives shall have the right, at reasonable times and upon reasonable notice (by telephone or otherwise) to Seller, to inspect the Premises before Closing.

**13. Insurable Title.** Seller shall give and Purchaser shall accept such title as any reputable title company shall be willing to approve and insure in accordance with its standard form of title policy approved by the New York State Insurance Department, subject only to the matters provided for this contract.

**14. Closing, Deed and Title.**

- (a) "Closing" means the settlement of the obligations of Seller and Purchaser to each other under this contract, including the payment of the purchase price to Seller, and the delivery to Purchaser of a Bargain and sale deed with covenants against grantor's acts deed in proper statutory short form for record, duly executed and acknowledged, so as to convey to Purchaser fee simple title to the Premises, free of all encumbrances, except as otherwise herein stated. The deed shall contain a covenant by Seller as required by subd. 5 of Section 13 of the Lien Law.
- (b) If Seller is a corporation, it shall deliver to Purchaser at the time of Closing (i) a resolution of its Board of Directors authorizing the sale and delivery of the deed, and (ii) a certificate by the Secretary or Assistant Secretary of the corporation certifying such resolution and setting forth facts showing that the transfer is in conformity with the requirements of Section 909 of the Business Corporation Law. The deed in such case shall contain a recital sufficient to establish compliance with that Section.

**15. Closing Date and Place.** Closing shall take place at the office of \_\_\_\_\_ to be determined in Suffolk County at \_\_\_\_\_ o'clock on or about \_\_\_\_\_ or upon reasonable notice (by \_\_\_\_\_ telephone or otherwise) by Purchaser, at the office of Lenders Attorney \_\_\_\_\_

**16. Conditions to Closing.** This contract and Purchaser's obligation to purchase the Premises are also subject to and conditioned upon the fulfillment of the following conditions precedent:

- (a) The accuracy, as of the date of Closing, of the representations and warranties of Seller made in this contract.
- (b) The delivery by Seller to Purchaser of a valid and subsisting Certificate of Occupancy or other required certificate of compliance, or evidence that none was required, covering the building(s) and all of the other improvements located on the property authorizing their use as a One (1) family dwelling at the date of Closing.
- (c) The delivery by Seller to Purchaser of a certificate stating that Seller is not a foreign person, which certificate shall be in the form then required by FIRPTA or a withholding certificate from I.R.S. If Seller fails to deliver the aforesaid certificate or if Purchaser is not entitled under FIRPTA to rely on such certificate, Purchaser shall deduct and withhold from the purchase price a sum equal to 10% thereof (or any lesser amount permitted by law) and shall at Closing remit the withheld amount with the required forms to the Internal Revenue Service.
- (d) The delivery of the Premises and all building(s) and improvements comprising a part thereof in broom clean condition, vacant and free of leases or tenancies, together with keys to the Premises.
- (e) All plumbing (including water supply and septic systems, if any), heating and air conditioning, if any, electrical and mechanical systems, equipment, and machinery in the building(s) located on the property and all appliances which are included in this sale being in working order as of the date of Closing.
- (f) If the Premises are a one or two family house, delivery by the parties at Closing of affidavits in compliance with state and local law requirements to the effect that there is installed in the Premises a smoke detecting alarm device or devices.
- (g) The delivery by the parties of any other affidavits required as a condition of recording the deed.

**17. Deed Transfer and Recording Taxes.** At Closing, certified or official bank checks payable to the order of the appropriate State, City or County officer in the amount of any applicable transfer and/or recording tax payable by reason of the delivery or recording of the deed or mortgage, if any, shall be delivered by the party required by law or by this contract to pay such transfer and/or recording tax, together with any required tax returns duly executed and sworn to, and such party shall cause any such checks and returns to be delivered to the appropriate officer promptly after Closing. The obligation to pay any additional tax or deficiency and any interest or penalties thereon shall survive Closing.

**18. Apportionments and Other Adjustments; Water Meter and Installment Assessments.**

- (a) To the extent applicable, the following shall be apportioned as of midnight of the day before the day of Closing:
  - (i) taxes, water charges and sewer rents, on the basis of the fiscal period for which assessed; (ii) fuel; (iii) interest on the existing mortgage; (iv) premiums on existing transferable insurance policies and renewals of those expiring prior to Closing; (v) vault charges; (vi) rents as and when collected.
- (b) If Closing shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis of the tax rate for the immediately preceding fiscal period applied to the latest assessed valuation.
- (c) If there is a water meter on the Premises, Seller shall furnish a reading to a date not more than 30 days before Closing and the unfixed meter charge and sewer rent, if any, shall be apportioned on the basis of such last reading.
- (d) If at the date of Closing the Premises are affected by an assessment which is or may become payable in annual installments, and the first installment is then a lien, or has been paid, then for the purposes of this contract all the unpaid installments shall be considered due and shall be paid by Seller at or prior to Closing.
- (e) Any errors or omissions in computing apportionments or other adjustments at Closing shall be corrected within a reasonable time following Closing. This subparagraph shall survive Closing.

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

**20. Use of Purchase Price to Remove Encumbrances.** If at Closing there are other liens or encumbrances that Seller is obligated to pay or discharge, Seller may use any portion of the cash balance of the purchase price to pay or discharge them, provided Seller shall simultaneously deliver to Purchaser at Closing instruments in recordable form and sufficient to satisfy such liens or encumbrances of record, together with the cost of recording or filing said instruments. As an alternative Seller may deposit sufficient monies with the title insurance company employed by Purchaser acceptable to and required by it to assure their discharge, but only if the title insurance company will insure Purchaser's title clear of the matters or insure against their enforcement out of the Premises and will insure Purchaser's Institutional Lender clear of such matters. Upon reasonable prior notice (by telephone or otherwise), Purchaser shall provide separate certified or official bank checks as requested to assist in clearing up these matters.

**21. Title Examination; Seller's Inability to Convey; Limitations of Liability.**

- (a) Purchaser shall order an examination of title in respect of the Premises from a title company licensed or authorized to issue title insurance by the New York State Insurance Department or any agent for such title company promptly after the execution of this contract or, if this contract is subject to the mortgage contingency set forth in paragraph 8, after a mortgage commitment has been accepted by Purchaser. Purchaser shall cause a copy of the title report and of any additions thereto to be delivered to the attorney(s) for Seller promptly after receipt thereof.
- (b) (i) If at the date of Closing, Seller is unable to transfer title to Purchaser in accordance with this contract, or Purchaser has other valid grounds for refusing to close, whether by reason of liens, encumbrances or other objections to title or otherwise (herein collectively called "Defects"), other than those subject to which Purchaser is obligated to accept title hereunder or which Purchaser may have waived and other than those which Seller has herein expressly agreed to remove, remedy or discharge and if Purchaser shall be unwilling to waive the same and to close title without abatement of the purchase price, then, except as hereinafter set forth, Seller shall have the right, at Seller's sole election, either to take such action as Seller may deem advisable to remove, remedy, discharge or comply with such Defects or to cancel this contract; (ii) if Seller elects to take action to remove, remedy or comply with such Defects, Seller shall be entitled from time to time, upon Notice to Purchaser, to adjourn the date for Closing hereunder for a period or periods not exceeding 60 days in the aggregate (but not extending beyond the date upon which Purchaser's mortgage commitment, if any, shall expire), and the date for Closing shall be adjourned to a date specified by Seller not beyond such period. If for any reason whatsoever, Seller shall not have succeeded in removing, remedying or complying with such Defects at the expiration of such adjournment(s), and if Purchaser shall still be unwilling to waive the same and to close title without abatement of the purchase price, then either party may cancel this contract by Notice to the other given within 10 days after such adjourned date; (iii) notwithstanding the foregoing, the existing mortgage (unless this sale is subject to the same) and any matter created by Seller after the date hereof shall be released, discharged or otherwise cured by Seller at or prior to Closing.
- (c) If this contract is cancelled pursuant to its terms, other than as a result of Purchaser's default, this contract shall terminate and come to an end, and neither party shall have any further rights, obligations or liabilities against or to the other hereunder or otherwise, except that: (i) Seller shall promptly refund or cause the Escrowee to refund the Downpayment to Purchaser and, unless cancelled as a result of Purchaser's default or pursuant to paragraph 8, to reimburse Purchaser for the net cost of examination of title, including any appropriate additional charges related thereto, and the net cost, if actually paid or incurred by Purchaser for updating the existing survey of the Premises or of a new survey, and (ii) the obligations under paragraph 27 shall survive the termination of this contract.

**22. Affidavit as to Judgments, Bankruptcies, etc.** If a title examination discloses judgments, bankruptcies or other returns against persons having names the same as or similar to that of Seller, Seller shall deliver an affidavit at Closing showing that they are not against Seller. Sale subject to U.S. Bankruptcy Court approval.

**23. Defaults and Remedies.**

- (a) If Purchaser defaults hereunder, Seller's sole remedy shall be to receive and retain the Downpayment as liquidated damages, it being agreed that Seller's damages in case of Purchaser's default might be

impossible to ascertain and the Downpayment constitutes a fair and reasonable amount of damages under the circumstances and is not a penalty.

- (b) If Seller defaults hereunder, Purchaser shall have such remedies as Purchaser shall be entitled to at law or in equity, including but not limited to, specific performance.

**24. Purchaser's Lien.** All money paid on account of this contract, and the reasonable expenses of examination of title to the Premises and of any survey and survey inspection charges are hereby made liens on the Premises, but such liens shall not continue after default by Purchaser under this contract.

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

- (a) sent by either of the parties hereto or by their respective attorneys who are hereby authorized to do so on their behalf or by the Escrowee, by registered or certified mail, postage prepaid, or
- (b) delivered in person or by overnight courier, with receipt acknowledged, to the respective addresses given in this contract for the party and the Escrowee, to whom the Notice is to be given, or to such other address as such party or Escrowee shall hereafter designate by Notice given to the other party or parties and the Escrowee pursuant in this paragraph. Each Notice mailed shall be deemed given on the third business day following the date of mailing the same, except that any Notice to Escrowee shall be deemed given only upon receipt by Escrowee and each Notice delivered in person or by overnight courier shall be deemed given when delivered, or
- (c) with respect to paragraph 7(b) or paragraph 20, sent by fax to the party's attorney. Each Notice by fax shall be deemed given when transmission is confirmed by the sender's fax machine. A copy of each Notice sent to a party shall also be sent to the party's attorney. The attorneys for the parties are hereby authorized to give and receive on behalf of their clients all Notices and deliveries. This contract may be delivered as provided above or by ordinary mail.

**26. No Assignment.** This contract may not be assigned by Purchaser without the prior written consent of Seller in each instance and any purported assignment(s) made without such consent shall be void.

**27. Broker.** Seller and Purchaser each represents and warrants to the other that it has not dealt with any broker in connection with this sale other than Coach Real Estate Associates, Inc. ("Broker"), Classic Realty Development Corp. ("Broker"), and Seller shall pay Broker any commission earned pursuant to a separate agreement between Seller and Broker. Seller and Purchaser shall indemnify and defend each other against any costs, claims and expenses, including reasonable attorney's fees arising out of the breach on their respective parts of any representation or agreement contained in this paragraph. The provisions of this paragraph shall survive Closing or, if Closing does not occur the termination of this contract.

**28. Miscellaneous.**

- (a) All prior understanding, agreements, representations and warranties, oral or written, between Seller and Purchaser are merged in this contract; it completely expresses their full agreement and has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this contract.
- (b) Neither this contract nor any provision thereof may be waived, changed or cancelled except in writing. This contract shall also apply to and bind the heirs, distributees, legal representatives, successors and permitted assigns of the respective parties. The parties hereby authorize their respective attorneys to agree in writing to any changes in dates and time periods provided for in this contract.
- (c) Any singular word or term herein shall also be read as in the plural and the neuter shall include the masculine and feminine gender, whenever the sense of this contract may require it.
- (d) The captions in this contract are for convenience of reference only and in no way define, limit or describe the scope of this contract and shall not be considered in the interpretation of this or any provisions hereof.
- (e) This contract shall not be binding or effective until duly executed and delivered by Seller and Purchaser.
- (f) Seller and Purchaser shall comply with IRC reporting requirements, if applicable. This subparagraph shall survive Closing.
- (g) Each party shall, at any time and from time to time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other in order to carry out the intent and purpose of this contract. This subparagraph shall survive Closing.
- (h) This contract is intended for the exclusive benefit of the parties hereto and except as otherwise expressly provided herein, shall not be for the benefit of, and shall not create any rights in, or be enforceable by any other person or entity.
- (i) If applicable, the complete and fully executed disclosure of information on lead-based paint and/or lead-based paint hazards is attached hereto and made a part hereof.

Continued on Rider attached hereto. *(Delete if inapplicable)*

In Witness Whereof, this contract has been duly executed by the parties hereto.

\_\_\_\_\_  
 Vincent DiCanio, as Trustee of the Vincent DiCanio  
 Qualified Personal Residence Trust ("QPRT") **Seller**

\_\_\_\_\_  
 Craig Fina **Purchaser**

\_\_\_\_\_  
**Seller**  
**Attorney for Seller:** ROBERT L. RATTET, ESQ.,  
 Address: Rattet PLLC,  
 202 Mamaroneck Avenue - Suite 300  
 White Plains, NY 10601  
 Tel.: 914.381.7400 Fax: 914.381.7406  
 Email: rattet@rattetlaw.com

\_\_\_\_\_  
 Andrea Fina **Purchaser**  
**Attorney for Purchaser:** Daniel Gobetz, Esq.  
 Address: 2 Brookside Drive  
 Smithtown, NY 11780  
 Tel.: 631.584.4500 Fax: 631.584.4348  
 Email: dan@gobetzlaw.com

Receipt of the Downpayment is acknowledged and the undersigned agrees to act in accordance with the provisions of paragraph 6 above.

**Escrowee**

**PREMISES**

**Contract of Sale**

**TITLE NO.**

TO

**Sheet**  
**Section**  
**Block**  
**Lot**  
**Plate**  
**County or Town**  
**Street Number**

**NOTES ON MORTGAGE COMMITMENT CONTINGENCY CLAUSE  
 for  
 RESIDENTIAL CONTRACT OF SALE**

1. **WARNING:** The mortgage Commitment contingency clause for the Residential Contract of Sale is a bar association form that attempts to provide a mechanism that makes the rights and obligations of the parties clear in sale of residences in ordinary circumstances. It should be reviewed carefully by Seller and Purchaser and their attorneys in each and every transaction to make sure that all the provisions are appropriate for that transaction. Negotiated modifications should be made whenever necessary.
2. Under the clause, the obligation of Purchaser to purchase under the contract of sale is contingent on Purchaser's obtaining a mortgage Commitment letter from an Institutional Lender within the number of days specified for the amount specified. This refers to calendar days. Seller's attorney should state his/her calculation of the Commitment Date in the letter delivering the executed contract to Purchaser's attorney, to prevent confusion later. Purchaser should promptly confirm or correct that date. In applying for a loan, Purchaser should inform its lender of the scheduled date of Closing in the contract and request that the expiration date of the Commitment occur after the scheduled date of Closing. Purchaser must comply with deadlines and pursue the application in good faith. The Commitment contingency is satisfied by issuance of a Commitment in the amount specified on or before the Commitment Date, unless the Commitment is conditioned on approval of an appraisal. If the Commitment is conditioned on
5. If, as has been common, the Commitment letter itself is conditioned on sale of Purchaser's home or payment of any outstanding debt or no material adverse change in Purchaser's financial condition, such a Commitment will satisfy the contract contingency nonetheless, and Purchaser will take the risk of fulfilling those Commitment conditions, including forfeiture of the Downpayment if Purchaser defaults on its obligation to close. Under New York case law, a defaulting Purchaser may not recover any part of the Downpayment, and Seller does not have to prove any damages. If Purchaser is not willing to take that risk, the clause must be modified accordingly.
6. Purchaser may submit an application to registered Mortgage Broker instead of applying directly to an Institutional Lender.
7. This clause allows Seller to cancel if a Commitment is not accepted by Purchaser by the Commitment Date, unless Purchaser timely supplies a copy of the Commitment, to allow Seller the option to avoid having to wait until the scheduled date of Closing to see if Purchaser will be able to close. Seller may prefer to cancel rather than to wait and settle for forfeiture of the Downpayment if Purchaser defaults. Because of Seller's right to cancel, Purchaser may not waive this contingency clause. This clause means that Purchaser is subject to cancellation by Seller even if Purchaser is willing to risk that he/she will obtain the Commitment after the Commitment Date. Some Purchasers may not want to be subject to such cancellation by Seller.



approval of an appraisal and such approval does not occur prior to the Commitment Date, Purchaser should either cancel the contract or obtain an extension of the Commitment Date. If the Commitment is later withdrawn or not honored, Purchaser runs the risk of being in default under the contract of sale with Seller.

3. If there are loan terms and conditions that are required or would not be acceptable to Purchaser, such as the interest rate, term of the loan, points, fees or a condition requiring sale of the current home, those terms and conditions should be specified in a rider.
4. This clause assumes that initial review and approval of Purchaser's credit will occur before the Commitment letter is issued. Purchaser should confirm with the lender that this is the case before applying for the Commitment.

8. Purchaser may want to add to paragraph 21(c) that Purchaser's reimbursement should include non-refundable financing and inspection expenses of Purchaser, which should be refunded by Seller if Seller willfully defaults under the contract of sale (alternative: If Seller is unable to transfer title under the contract of sale).

9-25-00

Joint Committee on the Mortgage Contingency Clause:  
Real Property Section of the New York State Bar Association  
Real Property Law Committee of the Association of the Bar of the  
City of New York  
Real Property Committee of the New York County Lawyers Association