

RIMON P.C.
Proposed Counsel to the Chapter 7 Trustee
Kenneth P. Silverman, Esq.
100 Jericho Quadrangle Suite 300
Jericho, New York 11753
Brian Powers
Haley Trust
Courtney M. Roman

Hearing Date: July 15, 2024
Time: 10:00 a.m.

Objections Due: July 8, 2024
Time: 4:00 p.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.

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**NOTICE OF HEARING ON CHAPTER 7 TRUSTEE’S MOTION
FOR ENTRY OF ORDER (I) (A) APPROVING BIDDING PROCEDURES
FOR THE SALE OF THE REAL PROPERTY; (B) APPROVING THE
FORM PURCHASE AGREEMENT; (C) APPROVING BID PROTECTIONS
IN FAVOR OF THE STALKING HORSE PURCHASER; (D) APPROVING
THE FORM AND MANNER OF SERVICE OF THE AUCTION NOTICE;
AND (E) SCHEDULING AN AUCTION; AND (II) APPROVING SALE OF THE
REAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES
AND OTHER INTERESTS, AND (III) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE THAT, upon the motion (the “Motion”) of Kenenth P. Silverman, the chapter 7 trustee (the “Trustee”) for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”), by his proposed counsel, Rimon P.C., will move before the Honorable David S. Jones, United States Bankruptcy Judge, for the United States Bankruptcy Court of the Southern District of New York, via Zoom for Government, on **July 15, 2024 at 10:00 a.m.** (the “Hearing”), or as soon thereafter as counsel can be heard, for entry of (I) an order, substantially in the form annexed to the Motion as **Exhibit A**, for signature (a) approving bidding procedures (“Bidding Procedures”), substantially in the form annexed hereto as **Exhibit 1**, related to the sale and proposed auction of the real property known as and located at 5036 One World Way, Wake Forest, North Carolina 27587 (the “Real Property”) pursuant to Bankruptcy Code §§ 363(b), (f), and



(m); (b) approving the proposed asset purchase agreement (the “Form Purchase Agreement”), a copy of which is annexed to the Motion as **Exhibit B**, solely to the extent of its use as a form which all bidders for the Real Property must follow; (c) approving the proposed asset purchase agreement (the “Stalking Horse Purchase Agreement”), a copy of which is annexed hereto to the Motion as **Exhibit C**, and related bid protections in favor of LREP Acquisition III LLC, the proposed stalking horse purchaser (the “Stalking Horse Purchaser”); (d) scheduling an auction (the “Auction”) and a hearing (the “Sale Confirmation Hearing”) to approve the sale of the Real Property and approving the form and manner of notice thereof, and (II) an order (the “Sale Order”) (a) authorizing and approving the sale of the Real Property pursuant to the Stalking Horse Purchase Agreement or the Modified Purchase Agreement, as applicable, free and clear of liens, claims, encumbrances and other interests, and (b) granting certain related relief and such other and further as the Court deems just and proper under the circumstances.

PLEASE TAKE FURTHER NOTICE, that prior to the Hearing, any party wishing to appear at the Hearing is required to register their appearance by 4:00 p.m. one (1) business day in advance of the Hearing using the Court’s eCourt Appearances platform: <https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl>.

PLEASE TAKE FURTHER NOTICE, that objections to the relief sought in the Motion shall be in writing, conform to the requirements of the Bankruptcy Code, Bankruptcy Rules, and the Local Rules of this Court, must set forth the name of the objecting party, the basis for the objection and the specific grounds therefore, and must be filed electronically with the Bankruptcy Court in accordance with General Order M-399 (General Order M-399 and the User’s Manual for the Electronic Case Filing System may be found at www.nysb.uscourts.gov, the official website for the Bankruptcy Court) by registered users of the Bankruptcy Court’s case filing system, and

by all other parties in interest on a disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with courtesy copies delivered directly to Chambers), and must be served upon (i) proposed counsel to the Trustee, Rimon P.C., 100 Jericho Quadrangle, Suite 300, Jericho, New York, 11753, Attn: Brian Powers, Esq. and (ii) The Office of the United States Trustee, Alexander Hamilton Custom House, One Bowling Green, Room 534, New York, New York, 10004-1408, Attn: Mark Bruh, Esq., no later than **July 8, 2024 at 4:00 p.m.**

PLEASE TAKE FURTHER NOTICE, that the Hearing may be adjourned without further notice other than the announcement of such adjournment in open Court or by the filing of such notice of adjournment on the docket sheet for the Debtor's case.

PLEASE TAKE FURTHER NOTICE, that you need not appear at the Hearing if you do not object to the relief requested in the Motion.

Dated: Jericho, New York
June 24, 2024

RIMON P.C.
Counsel to Kenneth P. Silverman, Esq.,
the Chapter 7 Trustee

By: s/ Brian Powers
Brian Powers
Partner
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753

RIMON P.C.
Counsel to the Chapter 7 Trustee
Kenneth P. Silverman, Esq.
100 Jericho Quadrangle Suite 300
Jericho, New York 11753
Brian Powers
Courtney M. Roman

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CHAPTER 7 TRUSTEE’S MOTION FOR ENTRY OF ORDER (I) (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF THE REAL PROPERTY; (B) APPROVING THE FORM PURCHASE AGREEMENT; (C) APPROVING BID PROTECTIONS IN FAVOR OF THE STALKING HORSE PURCHASER; (D) APPROVING THE FORM AND MANNER OF SERVICE OF THE AUCTION NOTICE; AND (E) SCHEDULING AN AUCTION; AND (II) APPROVING SALE OF THE REAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS, AND (III) GRANTING RELATED RELIEF

Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”), submits this motion (this “Motion”), pursuant to sections 105, 363, and 503 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 6004, 9006, and 9007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of (I) an order (the “Bidding Procedures Order”), substantially in the form annexed hereto as **Exhibit A**: (a) approving bidding procedures (“Bidding Procedures”), substantially in the form annexed as **Exhibit 1** to the proposed Bidding Procedures Order, related to the sale and proposed auction of the real property known as and located at 5036 One World Way, Wake Forest, North Carolina 27587 (the “Real Property”) pursuant to Bankruptcy Code §§ 363(b), (f), and (m); (b) approving the proposed asset purchase agreement (the “Form

Purchase Agreement”), a copy of which is annexed hereto as **Exhibit B**, solely to the extent of its use as a form which all bidders for the Real Property must follow; (c) approving the proposed asset purchase agreement (the “Stalking Horse Purchase Agreement”), a copy of which is annexed hereto as **Exhibit C**, and related bid protections in favor of LREP Acquisition III LLC, the proposed stalking horse purchaser (the “Stalking Horse Purchaser”); and (d) scheduling an auction (the “Auction”) and a hearing (the “Sale Confirmation Hearing”) to approve the sale of the Real Property and approving the form and manner of notice thereof; and (II) an order (the “Sale Order”) (a) authorizing and approving the sale of the Real Property pursuant to the Stalking Horse Purchase Agreement or the Modified Purchase Agreement, as applicable, free and clear of liens, claims, encumbrances and other interests, and (b) granting certain related relief and such other and further as the Court deems just and proper under the circumstances; and respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicates for relief requested herein are Bankruptcy Code §§ 105, 363, and 503 of the and Bankruptcy Rules 2002, 6004, 9006 and 9007.

BACKGROUND

The Bankruptcy

3. On March 8, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to chapter 7 of the Bankruptcy Code.

4. On March 9, 2024, Kenneth P. Silverman, Esq., was appointed the interim chapter 7 trustee of the Debtor's estate. On April 9, 2024, the initial section 341 First Meeting of Creditors was held and the Trustee duly qualified and has become the permanent Trustee.

5. Upon review of the Debtor's bankruptcy petition and the testimony at the Debtor's Bankruptcy Code § 341(a) First Meeting of Creditors, the Trustee learned that, among other things, the Debtor has 100% ownership interest in the Real Property.

6. Based upon information available to the Trustee and an informal liquidation analysis performed by the Trustee's proposed professionals, it appears that the Real Property has substantial value and should be administered for the benefit of the Estate and its creditors.

The Real Property and the Pre-Petition PSA

7. The Real Property is a 145,800 square foot warehouse known as a located at 5036 One World Way, Wake Forest, North Carolina 27587.

8. Prior to the Petition Date, the Debtor hired Cushman & Wakefield ("Cushman") to market and sell the Real Property. Subsequently, the Debtor entered into a purchase and sale agreement with the Stalking Horse Purchaser, which included a lease-back provision (the "Pre-Petition PSA").

9. Due to the filing of the Debtor's chapter 7 case, the Debtor could no longer perform under the terms of the Pre-Petition PSA, and on May 7, 2024 the Pre-Petition PSA was deemed rejected pursuant to Bankruptcy Code § 365(d)(1).

The License Agreement

10. On June 11, 2024, the Court entered an order (ECF Doc. No. 72) approving a license agreement (the "License Agreement") for the Real Property between the Trustee and the

Debtor's affiliate, The Body Shop Canada Limited. By its terms, the License Agreement expires on June 30, 2024, with potential extensions up to September 30, 2024.

Marketing of the Real Property

11. On June 10, 2024, the Court entered an order authorizing the Trustee's retention of Cushman as broker for the Trustee to market and sell the Real Property (ECF Doc. No. 68).

12. As a result of Cushman's extensive pre- and post-petition marketing efforts, Cushman has been in contact with numerous prospective buyers, and believes that there will be extensive interest in the Real Property.

13. After extensive negotiations, the Trustee selected the Stalking Horse Purchaser as the stalking horse purchaser for the Real Property. Among other things, the Stalking Horse Purchaser is familiar with the Real Property and had completed the necessary due diligence to consummate the Pre-Petition PSA. Accordingly, the Stalking Horse Purchaser's offer to purchase the Real Property, as embodied in Stalking Horse Purchase Agreement, has no due diligence requirements (other than a title review period) and, thus, establishes an attractive and competitive baseline bid for a successful Sale. Moreover, pursuant to the Stalking Horse Purchase Agreement, the Stalking Horse Purchaser has agreed to waive any claims which may have arisen relating to the Pre-Petition PSA or its rejection.

THE PROPOSED SALE AND RELATED PROCEDURES

14. By this Motion, the Trustee seeks this Court's approval of the Sales Procedures which as set forth below in greater detail, as well as the liquidation of the Real Property, free and clear of all Liens, if any, subject to higher or better offers, and "as is", "where is", without any warranties, guarantees and/or representatives regarding the Real Property.

A. Auction Procedures

15. To ensure that the Trustee receives the maximum value for the sale of the Real Property, the Trustee, by and through Cushman, has begun actively marketing the Real Property and soliciting bids, and based on the level of interest to date, expects to conduct an auction (the “Auction”). In connection with the Sale of the Real Property, the Trustee seeks approval of the bidding procedures (the “Bidding Procedures”) and certain bid protections, as further described below, and agreed upon with the Stalking Horse Purchaser.

16. The Bidding Procedures are attached at **Exhibit 1** to the proposed Bidding Procedures Order annexed hereto as **Exhibit A**. The following description of the Bidding Procedures are qualified in their entirety by the terms of the Bidding Procedures themselves, which parties in interest are encouraged to review.

- a. **Provisions Governing Qualifications of Bids and Bidders.** To be eligible to participate in the Auction, each offer, solicitation or proposal (each, a “Bid”), and each party submitting such a Bid (other than any party designated as the Stalking Horse Purchaser, each a “Bidder”) must be reasonably determined by the Trustee to satisfy each of the following conditions:
 - i. **Bid Deadline.** Each Bid must be delivered to the Bid Notice Parties (as defined in the Bidding Procedures) in writing on or before September 9, 2024 at 5:00 p.m.
 - ii. **Good Faith Deposit.** Each Bid must be accompanied by a cash deposit, paid by wire transfer of immediately available funds or a certified check, in the amount of five percent (5%) of the purchase price contained in its Modified Asset Purchase Agreement (as defined below), which deposit shall be held deposit shall be held in the Trustee’s earnest monies account for the Debtor’s estate (the “Good Faith Deposit”).
 - iii. **Higher and Better Terms.** In connection with any Bid for the Real Property, such Bid must be on terms that the Trustee, in his business judgment determines is higher and better for the Estate on a cash (or cash equivalent) basis than the terms of the Stalking Horse Agreement.

- iv. Executed Agreement. Each Bid must be based on the Form Purchase Agreement or the Stalking Horse Agreement for the Real Property, and such Bid must include binding, executed, irrevocable transaction documents, signed by an authorized representative of such Bidder, pursuant to which the Bidder proposes to effectuate an Alternate Transaction (a “Modified Asset Purchase Agreement”). A Bid must also include a copy of the Modified Asset Purchase Agreement (including all exhibits thereto) marked against the Form Purchase Agreement to show all changes requested by the Bidder (including those related to purchase price). Both the Modified Asset Purchase Agreement and the marked copy thereof must be provided in both Microsoft Word and PDF format.
- v. Minimum Bid. A Bid must have a purchase price that exceeds the purchase price in the Stalking Horse Purchase Agreement by at least the amount of the Bid Protections and Minimum Overbid Increment (each as hereinafter defined).
- vi. Corporate Authority. A Bid must include written evidence reasonably acceptable to the Trustee demonstrating appropriate corporate authorization to consummate the proposed Alternate Transaction; provided that, if the Bidder is an entity specially formed for the purpose of effectuating the Alternate Transaction then the Bidder must furnish written evidence reasonably acceptable to the Trustee of the approval of the Alternate Transaction by the equity holder(s) of such Bidder.
- vii. Disclosure of Identity of Bidder. A Bid must fully disclose the identity of each entity and principal that will be bidding for or purchasing the Real Property, including any equity holders in the case of a Bidder which is an entity specially formed for the purpose of effectuating the contemplated transaction, or otherwise participating in connection with such Bid, and the complete terms of any such participation. A Bid must also fully disclose any connections or agreements with the Trustee, the Stalking Horse Purchaser or any other known, potential, prospective Bidder or Qualified Bidder.
- viii. Proof of Financial Ability to Perform. A Bid must include detailed, written evidence that the Trustee and its advisors may conclude that the Bidder has and will continue to have the necessary financial ability to close the Alternate Transaction. Such information must include, *inter alia*, the following:
 - 1. contact names and telephone numbers for verification of financing sources;

2. evidence of the Bidder's internal resources and proof of funding commitments in an aggregate amount equal to the cash portion of such Bid as are needed to close the Alternate Transaction;
 3. the Bidder's current financial statements (audited if they exist) or other similar financial information reasonably acceptable to the Trustee;
 4. a description of the Bidder's pro forma capital structure; and
 5. any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Trustee, demonstrating that such Bidder has the ability to close the Alternate Transaction.
- ix. Contact Information and Affiliates. A Bid must provide the identity and contact information for the Bidder and full disclosure of any affiliates of the Bidder.
- x. Contingencies. Each Bid (a) may not contain representations and warranties, covenants, or termination rights of any kind except and solely to the extent expressly set forth in the Stalking Horse Agreement, and (b) may not be conditioned on (i) obtaining financing, (ii) any internal approvals or credit committee approvals, or (iii) the outcome or review of due diligence.
- xi. Irrevocable. Each Bid must be irrevocable until the earlier of (i) sixty (60) days following entry of the final Sale Order, (ii) closing of the Sale with the Successful Bidder(s), or (iii) the date the Bid is otherwise rejected under these Bidding Procedures.
- xii. Compliance with Diligence Requests. The Bidder submitting the Bid must have complied with reasonable requests for additional information and due diligence access from the Trustee to the reasonable satisfaction of the Trustee.
- xiii. As-Is, Where-Is. Each Bid must include a written acknowledgement and representation that the Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Real Property prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Real Property in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Real Property or the

completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Stalking Horse Agreement.

- xiv. Adherence to Bid Procedures. By submitting its Bid, each Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction.
- xv. No Late Bids. Unless otherwise ordered by the Court, the Trustee shall not consider any Bids submitted after the conclusion of the Auction, and any and all such bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

- b. Auction, Auction Procedures and Overbids. If multiple Qualified Bids (including the Stalking Horse Agreement) with respect to the Real Property are submitted by the Bid Deadline, the Trustee will conduct the Auction to determine the highest and otherwise best Qualified Bid with respect to the Real Property.
 - i. Participation. Only the Trustee, the Stalking Horse Purchaser and any other Qualified Bidder, in each case, along with their respective representatives and counsel, may attend the Auction (such attendance to be in person) and only the Stalking Horse Purchaser and any such other Qualified Bidders will be entitled to make any Bids at the Auction
 - ii. The Trustee Shall Conduct the Auction. The Trustee and his advisors shall direct and preside over the Auction. The Trustee may conduct the Auction and may augment or modify the procedures described herein in any manner he reasonably determines will result in the highest and otherwise best Qualified Bid(s), including, without limitation, by establishing rules at any Auction that include, without limitation, a single or multiple rounds of bidding, the use of sealed bidding, open outcry, or any other form of Bid submission. Any rules developed by the Trustee will provide that each Qualified Bidder will be permitted what the Trustee determines to be an appropriate amount of time to respond to the previous bid at the Auction.
 - iii. Auction Baseline Bids. Prior to commencement of the Auction, the Trustee may provide each Qualified Bidder participating in the Auction with a copy of the Modified Asset Purchase Agreement(s) that are the highest and otherwise best Qualified Bid for the Real Property as determined by the Trustee (such highest and otherwise best Qualified Bid(s), the "Auction Baseline Bid"). In addition, at the start of the Auction, the Trustee may describe the terms of the Auction Baseline Bids.

- iv. Anti-Collusion Representations. Each Qualified Bidder participating in the Auction must confirm that it (1) has not engaged in any collusion with respect to the bidding or Sale, (2) has reviewed, understands and accepts the Bidding Procedures and (3) has consented to the core jurisdiction of the Court.
- v. Terms of Overbids. The Trustee will accept Overbids, as further described below. An “Overbid” is any bid made at the Auction subsequent to the Trustee’s announcement of the Auction Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:
 1. Initial Overbid. The initial Overbid after and above the Auction Baseline Bid (the “Initial Overbid”) shall be in an amount of: (a) if the Auction Baseline Bid is that of the Stalking Horse Purchaser, then not less than \$100,000 in excess of the Auction Baseline Bid plus the amount of any Bid Protections, or (b) if the Auction Baseline Bid is that of any other Qualified Bidder, not less than \$50,000 in excess of the Auction Baseline Bid.
 2. Minimum Overbid Increments. Any Overbid after and above the Initial Overbid shall be made in increments (the “Minimum Overbid Increment”) valued at not less than \$50,000, in cash or in cash equivalents or, once the cash (or cash equivalent) amount of such Overbid exceeds the cash (or cash equivalent) amount of the next highest Bid, other forms of consideration acceptable to the Trustee. The Trustee reserves the right to modify the Minimum Overbid Increment during the Auction.
 3. Remaining Terms Are the Same as for Qualified Bids. Except as modified herein, an Overbid at the Auction must comply with the conditions for a Qualified Bid set forth above, provided, however, that the Bid Deadline shall not apply. Any Overbid must include, in addition to the amount and the form of consideration of the Overbid, a description of all changes requested by the Bidder to the Stalking Horse Agreement or Modified Asset Purchase Agreement, as the case may be, in connection therewith. Any Overbid must remain open and binding on the Bidder as provided herein.
- vi. Jurisdiction of the Court. All Qualified Bidders (including the Stalking Horse Purchaser) at the Auction shall be deemed to have consented to the core jurisdiction of the Court and waive any right to a jury trial in connection with any disputes relating to the marketing process, the determination of what constitutes a Qualified Bid and the procedures used

to make that determination, the Auction, and the construction and enforcement of the Qualified Bidder's fully executed sale and transaction documents, as applicable.

- vii. Additional Bids; Modifications. All Qualified Bidders, including the Stalking Horse Purchaser, shall have the right to submit additional Bids and make additional modifications to the Stalking Horse Agreement or Modified Asset Purchase Agreement at the Auction, as applicable, provided that any such modifications to such Stalking Horse Agreement or Modified Asset Purchase Agreement on an aggregate basis and viewed in whole, shall not, in the Trustee's business judgment be less favorable to the Trustee than the terms of such original agreement.
- viii. Subsequent Bids. Each Qualified Bidder must submit a subsequent Bid that satisfies the Minimum Overbid Increment in each round of bidding in order to continue participating in the Auction. Unless approved by the Trustee, Qualified Bidders shall not be allowed to skip rounds of bidding for the Real Property once they participate in the Auction for Real Property.
- ix. Continuance/Adjournment of Auction. Subject to the deadlines set forth herein, the Trustee reserves the right, in his reasonable business judgment to make one or more continuances of the Auction to, among other things: facilitate discussions between the Trustee and individual Qualified Bidders, allow individual Qualified Bidders to consider how they wish to proceed, modify or supplement any or all of the Auction procedures or rules, or give Qualified Bidders the opportunity to provide the Trustee with such additional evidence as the Trustee, in his reasonable business judgment, may require that the Qualified Bidder has sufficient internal resources, or has received sufficient funding commitments, to consummate the proposed Alternate Transaction at the prevailing Overbid amount.
- x. Additional Procedures. The Trustee may announce at the Auction other or additional procedural rules for conducting the Auction or may modify the rules specified in these Bidding Procedures in any manner the Trustee reasonably determines will result in the highest and otherwise best Qualified Bid(s). Any Auction rules adopted by the Trustee that would modify any of the terms of the Stalking Horse Agreement or the rights of the Stalking Horse Purchaser to Bid Protections (as may be consensually modified at the Auction) requires the consent of the Stalking Horse Purchaser.
- xi. Sale Is As Is/Where Is. Except as otherwise may be provided in the Stalking Horse Agreement, any Modified Asset Purchase Agreement,

or any order by the Court approving any Sale as contemplated hereunder, the property sold pursuant to the Bidding Procedures, shall be conveyed at the closing of the purchase and sale in its then-present condition, **“AS IS, WHERE IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.”**

- c. **Closing the Auction:** The Auction will continue until the Trustee selects the Bid(s) that represent the highest and otherwise best offer(s) for the Real Property (a **“Successful Bid,”** and the Bidder(s) submitting such Successful Bid(s), a **“Successful Bidder”**). The Successful Bidder(s) shall have the rights and responsibilities of the purchaser as set forth in the Stalking Horse Agreement or Modified Asset Purchase Agreement. In selecting each Successful Bid, the Trustee will consider the Bid Assessment Criteria.

The Trustee will announce that the Auction is closed upon receipt of fully executed sale and transaction documents memorializing the terms of the Successful Bid from the Successful Bidder. Within one (1) business day after the conclusion of the Auction, the Successful Bidder shall supplement its Good Faith Deposit by wire transfer or other immediately available funds so that, to the extent necessary, such Good Faith Deposit equals ten (10%) percent of the Successful Bid.

- d. **Backup Bidder:** Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next highest and otherwise best Bid at the Auction as determined by the Trustee, in the exercise of his business judgment will be designated as a backup bidder (a **“Backup Bidder”**). A Backup Bidder shall be required to keep its last submitted Bid (the **“Backup Bid”**) open and irrevocable until the earlier of (i) ninety (90) days following entry of the final Sale Order, and (ii) closing of the Sale.

Following the Sale Hearing, if a Successful Bidder fails to consummate the purchase of the Real Property, the Trustee may deem the Backup Bidder to have the new Successful Bid, and the Trustee will be authorized, without further order of the Court, to consummate the transaction with such Backup Bidder at the price of its last bid. Such Backup Bidder will be deemed to be the Successful Bidder and the Trustee will be authorized, but not directed, to effectuate a sale to such Backup Bidder subject to the terms of the Backup Bid without further order of the Court. All Qualified Bids (other than the Successful Bid and the Backup Bid) shall be deemed rejected by the Trustee on and as of the date that the Court approves the Successful Bid. The Trustee, on behalf of the Debtor’s estate, specifically reserves the right to seek all available damages, including specific performance, from any defaulting

Successful Bidder (including any Backup Bidder designated as a Successful Bidder) in accordance with the terms of the Bidding Procedures.

For the avoidance of doubt, in the event that there is a Successful Bidder (other than a Stalking Horse Purchaser), and the Stalking Horse Purchaser is the Backup Bidder, the Stalking Horse Purchaser will be deemed to be the Backup Bidder at the price of its last overbid with respect to such property and will be subject to the terms contained in the immediately preceding paragraph.

17. Subject to the execution of an acceptable confidentiality agreement, the Trustee will permit potential parties to receive access to due diligence materials with respect to the sale of the Real Property.

B. Proposed Bid Protections

18. To provide an incentive and to compensate the Stalking Horse Purchaser for negotiating the Stalking Horse Agreement, including the waiver of any claims it may have arising from the rejection of the Pre-Petition PSA, the Trustee has agreed to a breakup fee in an amount equal to \$300,000 plus a reimbursement of reasonable, documented expenses in an amount not to exceed \$100,000 (the "Break-Up Fee").

19. By this Motion, the Trustee is seeking approval to provide the Break-Up Fee to the Stalking Horse Purchaser in accordance with the Stalking Horse Agreement. The Trustee believes that offering the Break-Up Fee to the Stalking Horse Purchaser, and thus securing its bid and the waiver of its claims relating to the Pre-Petition PSA, will benefit the Debtor's estate by establishing a floor and promoting more competitive bidding. The availability of the Break-Up Fee is necessary in order to provide the Stalking Horse Purchaser with some assurance of compensation for the time and expense spent in putting together an offer for the Real Property.

C. The Purchase Agreement

20. The Successful Bidder for the Real Property, other than the Stalking Horse Purchaser, will be party to the proposed Form Purchase Agreement with the Trustee, as modified to incorporate the terms of the Successful Bid. The Form Purchase Agreement is derived from the terms of the Stalking Horse Purchase Agreement, and is largely identical with respect to material terms except those that are solely relevant to the Stalking Horse Purchaser. A redline comparison showing the differences between the Stalking Horse Purchase Agreement and the Form Purchase Agreement is annexed hereto as **Exhibit D**.

21. The principal terms of the Form Purchase Agreement are summarized and highlighted as follows:

Summary of Purchase Agreement	
Parties	Seller: Kenneth P. Silverman, Esq., the chapter 7 trustee of the bankruptcy estate of Buth-Na-Bodhaige, Inc. Purchaser: TBD
Asset	The Real Property, including all fixtures and improvements located on the Real Property
Purchase Price	TBD
Conditions to Closing	Entry of Sale Order and other criteria set forth in Section 4.04 of the Purchase Agreement
Closing Date	On or about thirty (30) days following the entry of Sale Order

The terms and conditions of the proposed transaction are set forth in the Form Purchase Agreement annexed hereto as **Exhibit B** and reference should be made to the Form Purchase Agreement for additional terms.

D. Proposed Notices

22. To ensure that all parties-in-interest receive adequate notice of the Sale, not later than three (3) days after the entry of this Bidding Procedures Order, the Trustee will cause a copy of this Bidding Procedures Order, including the annexed Bidding Procedures, to be sent by electronic mail or, if no electronic mail address is available, via first-class mail, (i) the Office of the United States Trustee; (ii) the Debtor’s counsel; (iii) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002; (vi) all parties who are known to assert a lien, claim, encumbrance or other interest on the Real Property, if any; and (vii) all parties identified by the Trustee and his professionals as potentially having an interest in acquiring the Real Property (collectively, the “Notice Parties”).

23. Copies of these documents will also be available at no charge on the website maintained by the Trustee’s claims and noticing agent at <https://www.kccllc.net/thebodyshop>.

E. Request to Set Dates for the Auction and Bid Deadline

24. As set forth below, the Trustee has formulated the following timeline to effectuate the Sale contemplated herein, and seek hearings and deadlines to be set as follows:

Date	Activity/Deadline
July 8, 2024	<ul style="list-style-type: none"> • Objections due to bid procedures
July 15, 2024	<ul style="list-style-type: none"> • Hearing on bid procedures
Seven (7) days prior to the Sale Hearing	<ul style="list-style-type: none"> • Last day to object to sale
September 9, 2024	<ul style="list-style-type: none"> • Bid Deadline
September 12, 2024	<ul style="list-style-type: none"> • Auction
September 17, 2024, or as soon as possible thereafter subject to the Court’s calendar	<ul style="list-style-type: none"> • Sale Hearing
Thirty (30) days following entry of the Sale Order	<ul style="list-style-type: none"> • Last day to close sale

25. The Trustee believes that the hearings and deadlines set forth above will permit the Trustee to maximize the value of the Real Property, and ensure an efficient and successful sale process.

RELIEF REQUESTED

26. By this Motion, the Trustee requests the entry of the Bidding Procedures Order: (a) approving the Bidding Procedures related to the Sale and proposed Auction of the Real Property pursuant to sections 363(b), (f), and (m) of the Bankruptcy Code; (b) approving the Form Purchase Agreement; (c) approving Stalking Horse Purchase Agreement, including the proposed bid protections in favor of the Stalking Horse Purchaser; (d) scheduling an Auction, if necessary, and the Sale Hearing to approve the Sale of the Real Property and approving the form and manner of notice thereof; and (e) granting related relief.

27. The Trustee further requests that at the Sale Hearing, subject to the results of the Auction and the Bidding Procedures set forth herein, this Court enter the Sale Order (a) approving and authorizing the Sale, free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon, pursuant to the Stalking Horse Purchase Agreement and the Form Purchase Agreement, as modified to incorporate the terms of any Successful Bid and (b) granting related relief.

BASIS FOR RELIEF REQUESTED

I. The Bidding Procedures Are Consistent and Appropriate in the Context of Bankruptcy Sales and Should be Approved

28. The Bidding Procedures, which are standard for the sale of assets in large chapter 7 cases, will ensure that the Debtor's estate receives the greatest benefit available from the sale of the Real Property. The Bidding Procedures have been structured to attract the maximum number

of Qualified Bids for the Real Property while allowing the Trustee the flexibility to select the bid or bids that provide the greatest overall value to the Debtor's estate. Finally, the Bidding Procedures set out a time frame that will allow potential purchasers sufficient time to construct and submit informed Qualified Bids, while still providing for the expeditious sale of the Real Property, which is appropriate under the circumstances. The Trustee believes that the time frame proposed herein and in the Bidding Procedures is appropriate to facilitate the final round of interest without overly saturating the marketplace.

29. Section 363(b)(1) provides, in relevant part, that the Trustee may, after notice and hearing, "use, sell or lease, other than in the ordinary course of business, property of the estate." *See* 11 U.S.C. § 363 (b)(1). The terms of such use, sale, and/or lease are generally within the sound discretion of the Trustee's business judgment. *See In re Eastman Kodak Company, et al.*, No. 12-10202 (ALG), 2013 WL 588965 (Bankr. S.D.N.Y. June 7, 2013) As recognized by the Second Circuit in *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d. Cir. 1983), a court may approve a section 363 application after expressly determining from the evidence presented at the hearing that a good business reason exists to grant such application.

30. In furtherance of maximizing the value of the assets sold, bidding procedures, such as those proposed here, may be used in court-supervised sales because they streamline the acquisition process and "help to provide an adequate basis by which to compare offers." *Integrated Res.*, 147 B.R. at 659 (bidding procedures and bid protections "are important tools to encourage bidding and to maximize the value of the debtor's assets"). In overseeing a sale subject to an auction process, a bankruptcy court must weigh "on the one hand, providing for an orderly bidding process, recognizing the danger that absent such a fixed and fair process bidders may decline to

participate in the auction; and, on the other hand, retaining the liberty to respond to differing circumstances so as to obtain the greatest return for the bankrupt estate.” *In re Fin. News Network, Inc.*, 980 F.2d 165, 166 (2d Cir. 1992).

31. The Trustee submits that the Bidding Procedures are reasonably designed to ensure that the Debtor’s estate receives the maximum benefit available from the sale of the Real Property, and therefore warrant Court approval.

II. The Break-Up Fee is Appropriate

32. To compensate the Stalking Horse Purchaser for serving as a “stalking horse” whose bid will be subject to higher or better offers, the Trustee seeks approval of: (i) payment, in the event that the Stalking Horse Purchaser is not the Successful Bidder at the Auction, of the Break-Up Fee, (ii) the Trustee’s release of any potential claims of the Debtor’s estate against the Stalking Horse Purchaser and its affiliates arising out of or relating to the Pre-Petition PSA (the “Trustee Release”). The Trustee submits that, under the circumstances of this case, a Break-Up Fee equal to \$300,000 plus a reimbursement of reasonable, documented expenses in an amount not to exceed \$100,000 is appropriate.¹

33. As noted above, approval of the Break-Up Fee and Trustee Release is an integral part of securing the Stalking Horse Purchaser, as well as the waiver of the Stalking Horse Purchaser’s claims relating to the rejection of the Pre-Petition PSA. The Trustee submits that the Break-Up Fee is reasonable under the circumstances and in relation to the Stalking Horse Purchaser’s efforts and to the magnitude of the transaction. Moreover, the Trustee does not believe

¹ Based upon the purchase price in the Stalking Horse Purchase Agreement of \$10 million, the proposed Break-Up Fee would amount to between 3% and 4% of the purchase price.

that the estate has any viable claims to be released under the Trustee Release, as the Debtor was in breach of the Pre-Petition PSA by virtue of its bankruptcy filing and inability to perform under the Pre-Petition PSA.

34. Bid incentives such as the Break-Up Fee encourage a potential purchaser to invest the time, money and effort required to negotiate with the trustee, and perform the necessary due diligence attendant to the acquisition, despite the inherent risks and uncertainties of the chapter 7 process. Historically, bankruptcy courts in this Circuit have approved bidding incentives similar to the Break-Up Fee under the “business judgment rule,” which, as set forth above, proscribes judicial second-guessing of the actions of a trustee, provided that such actions are taken in good faith and in the exercise of honest judgment. *See, e.g., In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (bidding incentives may “be legitimately necessary to convince a ‘white knight’ to enter the bidding by providing some form of compensation for the risks of its undertaking”); *see also Integrated Res., Inc.*, 147 B.R. at 657-58 (addressing the validity of break-up fees pursuant to a sale under section 363 of the Bankruptcy Code by considering the following three factors: (i) whether the relationship of the parties who negotiated the break-up fee was tainted by self-dealing or manipulation; (ii) whether the fee hampers, rather than encourages bidding; and (iii) whether the amount of the fee is unreasonable relative to the proposed purchase price).

35. In the instant case, the Break-Up Fee will provide a material benefit to the estate by enabling the Trustee to obtain a commitment from the Stalking Horse Purchaser, notwithstanding the fact that the Stalking Horse Agreement will be subject to higher or better offers. In the Trustee’s business judgment, the proposed Break-Up Fee is fair and reasonable when considering the

potential amount of time, effort, cost, and expense that the Stalking Horse Purchaser incurred in negotiating the Stalking Horse Agreement, and necessary to compensate the Stalking Horse Purchaser for its time in the event an Alternate Transaction is thereafter consummated.

36. Moreover, the Break-Up Fee does not hamper any other party's ability to offer a higher or better bid for the Real Property. Given the size of the Break-Up Fee relative to the expected range of purchase prices and the "overbid" requirements set forth in the Bidding Procedures, the Trustee submits that the fee is not so large as to have a "chilling effect" on other prospective bidders' interest in the Real Property. Because the Stalking Horse Agreement will create a floor for any additional bids, the Stalking Horse Purchaser will have provided significant value to the Debtor's estate.

37. The Trustee submits that the approval of the Break-Up Fee is in the best interest of the Debtor's estate and its creditors and is the exercise of independent and prudent business judgment.

III. The Sale of the Real Property Pursuant to the Purchase Agreement is Authorized by Section 363(b) of the Bankruptcy Code

38. Section 363(b)(1) of the Bankruptcy Code provides that a trustee, "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate" 11 U.S.C. § 363(b)(1). The terms of such sale are generally within the sound discretion of the Trustee. *See In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 679 (Bankr. S.D.N.Y. 1989).

39. Courts have uniformly held that approval of a proposed use of property pursuant to section 363(b) of the Bankruptcy Code is appropriate if a court finds that the transaction represents a reasonable business judgment on the part of the trustee. *See e.g., In re Chrysler LLC*, 405 B.R. 84, 97–100 (Bankr. S.D.N.Y. 2009), *aff'd*, 576 F.3d 108 (2d Cir. 2009); *In re General Motors*

Corp., 407 B.R. 463 (S.D.N.Y. 2009); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *Ionosphere Clubs, Inc.*, 100 B.R. at 675; *In re Apex Oil Co.*, 92 B.R. 847, 867 (Bankr. E.D. Mo. 1988).

40. Once the trustee articulates a valid business justification, “[t]he business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action was in the best interests of the company.’” *Integrated Resources, Inc.*, 147 B.R. at 656 (quoting *Smith v. Van Gorkam*, 488 A.2d 858, 872 (Del. 1985)).

41. The Second Circuit has indicated that the following factors should be considered during the sale approval process: (i) the proportionate value of the asset to the estate as a whole; (ii) the amount of elapsed time since the filing; (iii) the likelihood that a plan of reorganization will be proposed and confirmed in the near future; (iv) the effect of the proposed disposition on future plans of reorganization; (v) the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property; (vi) which of the alternatives of use, sale or lease the proposal envisions; and (vii) whether the asset is increasing or decreasing in value. *See Lionel Corp.*, 722 F.2d at 1071. The factors highlighted by the *Lionel* decision are often cited and applied by other courts when determining requests to approve a sale of all or substantially all of the assets of a debtor’s estate. *See, e.g., In re GSC, Inc.*, 453 B.R. 132, 156 (Bankr. S.D.N.Y. 2011); *In re CPJFK, LLC*, 496 B.R. 290, 303-04 (Bankr. E.D.N.Y. 2011); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991); *In re Thomson McKinnon Sec., Inc.*, 120 B.R. 301, 307-08 (Bankr. S.D.N.Y. 1990).

42. Based on the foregoing, the Sale of the Real Property is justified by sound business reasons and in the best interests of the Debtor's estate. Accordingly, pursuant to section 363(b) of the Bankruptcy Code, the Trustee requests approval of the Sale to the Successful Bidder.

IV. The Sale of the Real Property Free and Clear of Liens, Claims and Interests is Authorized Under 363(f) of the Bankruptcy Code

43. Section 363(f) of the Bankruptcy Code provides:

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

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

11 U.S.C. § 363(f).

44. As quoted above, section 363(f) of the Bankruptcy Code provides for the sale of assets "free and clear of any interests." Section 363(f) is drafted in the disjunctive. Thus, satisfaction of any of the requirements enumerated therein will suffice to warrant the Sale of the Real Property free and clear of all interests. *In re Dundee Equity Corp.*, No. 89-B-10233, 1992 Bankr. LEXIS 436, at *12 (Bankr. S.D.N.Y. Mar. 6, 1992) ("Section 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met."); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same); *Mich. Employment Sec. Comm'n v. Wolverine Radio Co., Inc. (In re Wolverine Radio Co., Inc.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) written in disjunctive; holding that court may approve sale "free and clear" provided at least one of

subsections of Bankruptcy Code section 363(f) is met).

45. In accordance with the provisions of the Purchase Agreement and section 363(f) of the Bankruptcy Code, the Trustee requests that he be authorized to conduct the Sale free and clear of all Liens, other than the Permitted Exceptions (as set forth in the Stalking Horse Purchase Agreement and Form Purchase Agreement). Although the Trustee does not believe any party has a lien on the Real Property, all of the Debtor's creditors will be provided notice of the proposed Sale and shall be granted an opportunity to object to the relief requested in the instant Motion, and any such entity that does not object to the Sale shall be deemed to have consented. *See, e.g., Futuresource LLC v. Reuters Ltd.*, 312 F.3d 281, 285-86 (7th Cir. 2002) (standing for the proposition that the lack of an objection to a proposed sale of assets counts as consent); *Hargrave v. Township of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)); *In re Elliot*, 94 B.R. 343, 345-46 (E.D. Pa. 1988) citing *In re Gabel*, 61 B.R. 661, 667 (Bankr. W.D. La. 1985); *see also In re Enron Corp.*, No. 01-16034 (AJG), 2003 WL 21755006 at *2 (AJG) (Bankr. S.D.N.Y. July 28, 2003) (order deeming all parties who did not object to proposed sale to have consented under section 363(f)(2)).

46. Thus, to the extent any parties holding a lien on the Real Property fail to object to the relief requested in this Motion, or otherwise consents, a Sale of the Real Property free and clear of all Liens, with the exception of the Permitted Exceptions, satisfies section 363(f)(2) of the Bankruptcy Code.

V. The Purchaser is a Good Faith Purchaser and is Entitled to the Full Protections of Section 363(m) of the Bankruptcy Code

47. Section 363(m) of the Bankruptcy Code provides:
The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

48. The Second Circuit has indicated that a party would have to show fraud or collusion between the buyer and the debtor-in-possession or trustee or other bidders in order to demonstrate a lack of good faith. *See In re Colony Hill Assocs.*, 111 F.3d 269, 276 (2d Cir. 1997) (“Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders”).

49. The Trustee intends to make an appropriate showing at the Sale Hearing that the Form Purchase Agreement with the Successful Bidder is the result of a negotiated, arm’s-length transaction, in which such Successful Bidder at all times acted in good faith. The Trustee thus requests that the Court find that the Successful Bidder will be purchasing the Real Property in good faith within the meaning of section 363(m) of the Bankruptcy Code.

VI. The Proposed Notice Procedures With Respect to the Auction and Sale Hearing Should be Approved

50. Pursuant to Bankruptcy Rules 2002(c) and 6004, the Trustee is required to give 21 days’ notice of any proposed sale of property not in the ordinary course of business. Bankruptcy Rule 2002(c) further provides that such notice must include the time and place of any auction, a sale hearing, and the time fixed for objections to the sale. The proposed Bidding Procedures Order

sets forth all the information a Potential Bidder and any other party in interest should require about the bidding process for the Real Property, including: a copy of the Bidding Procedures; the Bid Deadline; the time, date, and location of the Auction; and the time, date and location of the Sale Hearing.

51. Not later than three (3) days after the entry of the Bidding Procedures Order, the Trustee will cause the Bidding Procedures Order, including the annexed Bidding Procedures, to be sent by electronic mail or, if no electronic mail address is available, via first-class mail, to the Notice Parties. The Trustee submits that the foregoing notice is reasonably calculated to provide timely and adequate notice to the Debtor's creditors and those persons potentially interested in bidding on the Real Property and, thus, that such notice is sufficient for entry of the Bidding Procedures Order and the Sale Order.

NO PRIOR REQUESTS

52. No prior request for the relief sought in this Motion has been made to this or any other court.

CONCLUSION

53. The Trustee's proposed Sale of the Real Property as described in this Motion and the Purchase Agreement is supported by sound business reasons, as set forth herein. The proposed Sale is proper and necessary, and serves the best interests of the Debtor's estate, and its creditors. The Trustee thus requests that the Court approve the proposed Sale of the Real Property free and clear of all liens, claims, encumbrances, and interests, as requested.

NOTICE

54. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) the Debtor's counsel; (iii) all of the Debtor's creditors having filed proofs of claim in this case; (iv) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002; and (v) any other government agency, to the extent required by the Bankruptcy Rules or the Local Bankruptcy Rules for the Southern District of New York; and (vi) all parties who are known to assert a lien, claim, encumbrance or other interest on the Real Property, if any. The Trustee submits that, under the circumstances, no other or further notice is required.

WHEREFORE, the Trustee respectfully requests that the Court grant the relief requested herein and grant the Trustee such other and further relief as this Court deems just and proper.

Dated: Jericho, New York
June 24, 2024

RIMON P.C.
Counsel to Kenneth P. Silverman, Esq.,
the Chapter 7 Trustee

By: s/ Brian Powers
 Brian Powers
Partner
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753

Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.
-----x

**ORDER (I) (A) APPROVING BIDDING PROCEDURES FOR
THE SALE OF THE REAL PROPERTY; (B) APPROVING THE
FORM OF PURCHASE AGREEMENT; (C) APPROVING BID PROTECTIONS
IN FAVOR OF THE STALKING HORSE PURCHASER; (D) APPROVING THE
FORM AND MANNER OF SERVICE OF THE AUCTION NOTICE; AND
(E) SCHEDULING AN AUCTION; AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)¹ filed by Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”) for entry of an order (this “Bidding Procedures Order”), pursuant to sections 105, 363, and 503 of chapter 11 of title 11, United States Code (the “Bankruptcy Code”), and Rules 2002, 6004, 9006 and 9007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (a) approving bidding procedures (“Bidding Procedures”), substantially in the form annexed hereto as **Exhibit 1** related to the sale and proposed auction of the real property known as and located at 5036 One World Way, Wake Forest, North Carolina 27587 (the “Real Property”) pursuant to Bankruptcy Code §§ 363(b), (f), and (m); (b) approving the proposed asset purchase agreement (the “Form Purchase Agreement”), a copy of which is annexed to the Motion as Exhibit B, solely to the extent of its use as a form which all bidders for the Real Property must follow; (c) approving proposed asset purchase agreement (the “Stalking Horse Purchase Agreement”), a copy of which is annexed to the Motion as Exhibit C, and related bid protections in favor of LREP Acquisition III LLC, the proposed stalking horse purchaser (the “Stalking Horse Purchaser”); and (d) scheduling an auction (the “Auction”) and a hearing (the “Sale Confirmation Hearing”) to approve the sale of the Real Property; and upon

¹ A copy of the Motion and all supporting documentation can be found free of charge at the case website maintained by the Trustee’s appointed claims agent, located at <https://veritaglobal.net/thebodyshop>.

the declaration of Kenneth P. Silverman filed in support of the Motion; and due and sufficient notice of the hearing on the Motion (the “Bidding Procedures Hearing”) and the relief sought therein having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and no objections to the relief requested in the Motion having been filed or interposed at the Bidding Procedures Hearing; and it appearing that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors and other parties in interest; and after due deliberation thereon and good cause appearing therefore, it is hereby:

FOUND, CONCLUDED AND DETERMINED THAT:

1. This Court has jurisdiction over the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The relief granted herein is in the best interests of the Debtor’s estate and creditors, and other parties in interest.

3. Due, sufficient and adequate notice of the Motion and the Bidding Procedures Hearing and the relief granted in this Bidding Procedures Order has been given, and such notice is appropriate in light of the circumstances and the nature of the relief requested, and no other or further notice thereof is required.

4. Service of this Bidding Procedures Order shall constitute good and sufficient notice of the Auction and the proposed sale if served, pursuant to the terms of this Bidding Procedures Order, by electronic mail or, if no electronic mail address is available, via first-class mail, upon (i) the Office of the United States Trustee; (ii) the Debtor’s counsel; (iii) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002; (vi) all parties who are known to assert a lien, claim, encumbrance or other interest on the Real Property, if any; and (vii) all parties identified by

the Trustee and his professionals as potentially having an interest in acquiring the Real Property (collectively, the “Notice Parties”).

5. The Trustee has articulated good and sufficient reasons for this Court to grant the relief requested in the Motion, including this Court’s (i) approval of the Bidding Procedures, attached hereto as Exhibit 1, (ii) approval of the Form Purchase Agreement, and (iii) approval of the Stalking Horse Purchase Agreement and payment to the Stalking Horse Purchaser of the Break-Up Fee (as defined in the Stalking Horse Purchase Agreement) in the event that the Stalking Horse Purchaser is not the successful bidder at the Auction.

6. The Trustee has articulated good and sufficient reasons for, and the best interests of the Debtor’s estate will be served by, this Court scheduling a Sale Hearing to consider whether to grant the remainder of the relief requested in the Motion, including approving an authorizing the sale of the Real Property, free and clear of any liens, security interests, encumbrances, claims, charges, options and interests thereon, pursuant to the purchase agreement executed by the successful bidder at the Auction.

7. The Break-Up Fee, to the extent payable under certain circumstances set forth in the Stalking Horse Agreement, is (i) an actual and necessary cost and expense of preserving the Debtor’s estate within the meaning of section 503(b) of the Bankruptcy Code, (ii) provides a material benefit to the estate by enabling the Trustee to obtain a commitment from the Stalking Horse Purchaser which will expend money, time and effort formulating and negotiating an offer for the Real Property, (iii) fair and reasonable when considering the potential amount of time, effort, cost, and expense that the Stalking Horse Purchaser incurred in negotiating the Stalking Horse Agreement, and (iv) necessary to induce the Stalking Horse Bidder to pursue the Sale.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. The Motion is GRANTED, to the extent set forth herein.
2. Any objections to entry of this Bidding Procedures Order or to the relief provided herein and requested in the Motion that have been withdrawn, waived, resolved, or settled are hereby denied and overruled in their entirety.
3. The Form Purchase Agreement attached to the Motion as Exhibit B is hereby approved as for the purposes of serving as the form which all bidders of the Real Property must follow, other than the Stalking Horse Purchaser.
4. The Trustee is authorized to enter into the Stalking Horse Agreement with the Stalking Horse Purchaser, and the provisions of the Stalking Horse Agreement are approved as set forth herein.

The Bidding Procedures

5. The Bidding Procedures, as set forth in Exhibit 1 hereto and incorporated herein by reference, are hereby APPROVED in all respects and shall govern all bids and bid proceedings relating to the Real Property, and the Trustee is authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures. The failure to specifically include or reference any particular provision of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such procedures, it being the intent of this Court that the Bidding Procedures be authorized and approved in their entirety.
6. As further described in the Bidding Procedures, each Bid must be delivered on or before **September 9, 2024 at 5:00 p.m. (EST)** (the "Bid Deadline").
7. The Trustee is authorized to extend the deadlines set forth in this Bidding Procedures Order and/or adjourn, continue or suspend the Auction and/or the Sale Hearing as it may reasonably determine to be in the best interest of its estate.

The Auction

8. The Auction, if necessary, shall commence at 10:00 a.m. (prevailing Eastern Time) **September 12, 2024 at 10:00 a.m.** via Zoom or similar platform with instructions to be provided by the Trustee to all qualified bidders or such other place and time as the Trustee shall notify all Qualified Bidders; provided, however, in the event that the only Qualified Bid is the Bid of the Stalking Horse Purchaser, then the Stalking Horse Agreement shall be the Successful Bid for the Real Property and the Trustee shall not be required to conduct an Auction, and in such event the Trustee shall proceed with the approval of the Stalking Horse Agreement with the Stalking Horse Purchaser as the Successful Bidder.

The Break-Up Fee

9. The Trustee is authorized and directed to pay the Break-Up Fee, to the extent incurred and solely in the event of the consummation of an Alternate Transaction for the Real Property, from the first proceeds of such transaction or as otherwise set forth in the Stalking Horse Purchase Agreement, without further order of the Court.

10. The terms of the Stalking Horse Purchase Agreement shall govern (i) the conditions under which the bid of the Stalking Horse Purchaser is terminable and (ii) the Break-Up Fee payable in the event of an Alternate Transaction for the Real Property.

Notice of the Bidding Procedures and Auction

11. Not later than three (3) days after the entry of this Bidding Procedures Order, the Trustee will cause a copy of this Bidding Procedures Order, including the annexed Bidding Procedures, to be sent by electronic mail or, if no electronic mail address is available, via first-class mail, to the Notice Parties.

Objections to Confirmation of the Sale

12. Objections, if any, to the entry of an order approving the sale, shall be in writing, must

be filed with the Court electronically in accordance with General Order M-399 by registered users of the Court's electronic case filing system, and by all other parties in interest, mailed to the Clerk of the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton U.S. Custom House, One Bowling Green, Courtroom 701, New York, New York 10004-1408, with a hard copy delivered directly to the Chambers of the Honorable David S. Jones, and served in accordance with General Order M-399 or other form upon: (i) attorneys for the Trustee, Rimon P.C., 100 Jericho Quadrangle, Suite 300, Jericho, New York, 11753, Attention: Brian Powers, Esq., and (ii) the U.S. Department of Justice, Office of the United States Trustee, Alexander Hamilton Custom House, One Bowling Green, Room 534, New York, New York 10004, Attn: Mark Bruh, Esq., so as to be received no later than **September 10, 2024 at 12:00 p.m.**

The Sale Hearing

13. The Sale Hearing shall be held before the Honorable David S. Jones, the United States Bankruptcy Judge on **September 17, 2024 at 10:00 a.m.** via Zoom for the Government. All parties wishing to appear at the Hearing is required to register their appearance by 4:00 p.m. one (1) business day in advance of the Hearing using the Court's eCourt Appearances platform: <https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl>.

14. The Sale Hearing may be adjourned by the Court upon request of the Trustee without further order of this Court, in which event a notice of adjournment will be filed with this Court and served on all Qualified Bidders or by announcing such adjournment on the record of the Sale Hearing.

Additional Provisions

15. The Trustee is authorized and empowered to take such steps, incur and pay such costs and expenses, and do such things as may be reasonably necessary to fulfill the requirements established by this Bidding Procedures Order.

16. Nothing contained in this Bidding Procedures Order precludes any party in interest from objecting to the confirmation of the Sale in accordance with the objection procedures set forth herein and no party shall be deemed to have consented to the confirmation of the Sale by virtue of not having objected to the entry of the Bidding Procedures Order.

17. In the event of any conflict between this Bidding Procedures Order and the Form Purchase Agreement or the Stalking Horse Purchase Agreement, this Bidding Procedures Order shall control.

18. The Trustee is hereby authorized and empowered to take such actions as may be reasonably necessary to implement and effect the terms and requirements established by this Bidding Procedures Order.

19. This Bidding Procedures Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof.

20. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7052, 9014 or otherwise, the terms and conditions of this Bidding Procedures Order shall be immediately effective and enforceable upon its entry.

21. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Bidding Procedures Order.

Dated: _____, 2024
New York, New York

United States Bankruptcy Judge
Judge David S. Jones

Exhibit 1

BIDDING PROCEDURES AND TERMS AND CONDITIONS OF SALE

These bidding procedures (the “Bidding Procedures”) set forth the process by Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee” or the “Seller”) for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”) shall conduct a sale (the “Sale”) by auction (the “Auction”) of certain real property consisting of an estimated 145,800 square foot warehouse located at 5036 One World Way, Wake Forest, North Carolina 27587 (the “Real Property”), free and clear of liens, claims and encumbrances.

The Court presides over the Debtor’s chapter 7 bankruptcy case (the “Chapter 7 Case”) captioned *In re Buth-Na-Bodhaige, Inc.*, Ch. 7 Case No. 24-10392 (Bankr. S.D.N.Y.).

On _____, 2024, the United States Bankruptcy Court for the Southern District of New York (the “Court”) entered an order (the “Bidding Procedures Order”) granting the Trustee’s motion (the “Bidding Procedures Motion”)¹ insofar as it sought approval of the Bidding Procedures and the availability of Bid Protections (as hereinafter defined) to be offered in connection with the Stalking Horse Purchaser (as hereinafter defined). The Bidding Procedures Order and the order approving the Sale are referred to herein, collectively, as the “Sale Orders.”

As referenced in the Bidding Procedures Motion, the Trustee has been in active negotiations with numerous prospective buyers that may submit, or already have submitted, letters of intent and/or indications of interest to become a stalking horse purchaser for the Real Property (collectively, the “Prospective Purchasers”). The Trustee has selected LREP Acquisition III LLC as the stalking horse purchaser (the “Stalking Horse Purchaser”).

I. PROPERTY TO BE SOLD

The Bidding Procedures Motion contemplates that a party may participate in the bidding process by submitting a Bid (as defined below) for the Real Property.

Subject to the terms of the Sale Orders, all of the Debtor’s right, title and interest in and to the Real Property shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon (collectively, the “Liens”), with such Liens to attach to the proceeds of the Sale(s) with the same validity and priority as such Liens applied against the Real Property, except as otherwise specifically provided in a Stalking Horse Agreement (as defined below) or a Modified Asset Purchase Agreement (as defined below) submitted by a Successful Bidder (as defined below) (including any exhibits or schedules thereto) and reflected in the Sale Orders.

¹ Capitalized terms used but not defined herein have the meaning ascribed to them in the Bidding Procedures Motion.

II. BIDDING PROCESS

A. Overview

The Trustee and his advisors will, subject to the other provisions of these Bidding Procedures:

1. coordinate the efforts of Potential Bidders (as defined below) in conducting their due diligence investigations;
2. receive offers from Bidders (as defined below);
3. determine whether any person is a Qualified Bidder (as defined below); and
4. conduct the Auction and further negotiate any offers made to purchase the Real Property.

B. Key Dates for Potential Competing Bidders

The Bidding Procedures provide interested parties with the opportunity to qualify for and participate in the Auction to be conducted by the Trustee and to submit competing bids for the Real Property. The Trustee will assist Potential Bidders in conducting their respective due diligence investigations and may accept Bids until **September 9, 2024 at 5:00** (the “Bid Deadline”), or such later date or time as determined by the Trustee in his sole discretion.

The key dates for the Sale process are as follows:

September 9, 2024 at 5:00 p.m. EST	<u>Bid Deadline</u> : Due date to submit a Qualified Bid and Good Faith Deposit (each as defined below)
September 12, 2024 at 10:00 a.m. EST	<u>Auction</u> : To be held via Zoom or similar platform with instructions to be provided by the Trustee to all qualified bidders.
September 17, 2024, at 10:00 a.m. EST, or as soon thereafter as is convenient for the Court	<u>Sale Hearing</u> : To be held via Zoom for the Government.

C. Access to Diligence Materials

To participate in the bidding process in an effort to effectuate an alternate sale transaction for the Real Property (an “Alternate Transaction”) and to receive access to due diligence materials (the “Diligence Materials”), a party must submit to the Trustee an executed confidentiality agreement in form and substance satisfactory to the Trustee (a “Confidentiality Agreement”).

A party who executes such a Confidentiality Agreement for access to Diligence Materials shall be a “Potential Bidder.” The Trustee will afford any Potential Bidder the time and opportunity to conduct reasonable due diligence in accordance with a diligence protocol determined by the Trustee and his advisors; provided, however, that the Trustee shall not be obligated to furnish any due diligence information after the Bid Deadline to any party that has not submitted a Qualified Bid (as defined below) on or before the Bid Deadline and may limit the amount of further due diligence available to Qualified Bidders after the Bid Deadline.

Neither the Trustee nor his representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Potential Bidder.

All due diligence requests must be directed to the Trustee’s real estate brokers, Cushman & Wakefield, Attention: David Finger (david.finger@cushwake.com).

D. Due Diligence from Bidders

Each Potential Bidder and each Bidder shall comply with all reasonable requests for additional information and due diligence access by the Trustee or his advisors regarding such Potential Bidder or Bidder, as applicable, and its contemplated transaction. Failure by a Potential Bidder or Bidder (other than the Stalking Horse Purchaser) to comply with requests for additional information and due diligence access may be a basis for the Trustee to determine that such Bidder is not a Qualified Bidder.

III. AUCTION QUALIFICATION PROCESS

A. Qualifying Bids

To be eligible to participate in the Auction, each offer, solicitation or proposal (each, a “Bid”), and each party submitting such a Bid (other than any party designated as the Stalking Horse Purchaser) (each, a “Bidder”), must be reasonably determined by the Trustee to satisfy each of the following conditions:

1. Good Faith Deposit: Each Bid must be accompanied by a cash deposit, paid by wire transfer of immediately available funds or a bank check, in the amount of five percent (5%) of the purchase price contained in the Modified Asset Purchase Agreement (as defined below), which deposit shall be held in the Trustee’s earnest monies account for the Debtor’s estate (the “Good Faith Deposit”).
2. Higher and Better Terms: In connection with any Bid for the Real Property, such Bid must be on terms that the Trustee, in his business judgment, determines is higher and better for the Trustee on a cash (or cash equivalent) basis than the terms of the stalking horse asset purchase agreement (including all exhibits, schedules and ancillary agreements related thereto, and as amended and in effect, the “Stalking Horse Agreement”).
3. Executed Agreement: Each Bid must be based on the form asset purchase agreement attached hereto (the “Form Purchase Agreement”) or the Stalking Horse Agreement for the Real Property, and such Bid must include binding, executed, irrevocable transaction documents, signed by an

authorized representative of such Bidder, pursuant to which the Bidder proposes to effectuate an Alternate Transaction (a “Modified Asset Purchase Agreement”). A Bid must also include a copy of the Modified Asset Purchase Agreement (including all exhibits thereto) marked against the Form Purchase Agreement to show all changes requested by the Bidder (including those related to purchase price). Both the Modified Asset Purchase Agreement and the marked copy thereof must be provided in both Microsoft Word and PDF format.

4. Minimum Bid: A Bid must have a purchase price that exceeds the purchase price in the Stalking Horse Purchase Agreement by at least the amount of the Bid Protections and Minimum Overbid Increment (each as hereinafter defined).
5. Corporate Authority: A Bid must include written evidence reasonably acceptable to the Trustee demonstrating appropriate corporate authorization to consummate the proposed Alternate Transaction; provided that, if the Bidder is an entity specially formed for the purpose of effectuating the Alternate Transaction then the Bidder must furnish written evidence reasonably acceptable to the Trustee of the approval of the Alternate Transaction by the equity holder(s) of such Bidder.
6. Disclosure of Identity of Bidder: A Bid must fully disclose the identity of each entity and principal that will be bidding for or purchasing the Real Property, including any equity holders in the case of a Bidder which is an entity specially formed for the purpose of effectuating the contemplated transaction, or otherwise participating in connection with such Bid, and the complete terms of any such participation. A Bid must also fully disclose any connections or agreements with the Trustee, the Stalking Horse Purchaser, or any other known, potential, prospective Bidder or Qualified Bidder.
7. Proof of Financial Ability to Perform: A Bid must include detailed, written evidence from which the Trustee and his advisors may conclude that the Bidder has and will continue to have the necessary financial ability to close the Alternate Transaction. Such information must include, *inter alia*, the following:
 - (a) contact names and telephone numbers for verification of financing sources;
 - (b) evidence of the Bidder’s internal resources and proof of funding commitments in an aggregate amount equal to the cash portion of such Bid as are needed to close the Alternate Transaction;
 - (c) the Bidder’s current financial statements (audited if they exist) or other similar financial information reasonably acceptable to the Trustee;

- (d) a description of the Bidder's pro forma capital structure; and
 - (e) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Trustee, demonstrating that such Bidder has the ability to close the Alternate Transaction.
- 8. Contact Information and Affiliates: A Bid must provide the identity and contact information for the Bidder and full disclosure of any affiliates of the Bidder.
- 9. Contingencies: Each Bid (a) may not contain representations and warranties, covenants, or termination rights of any kind except and solely to the extent expressly set forth in the Stalking Horse Agreement, and (b) may not be conditioned on (i) obtaining financing, (ii) any internal approvals or credit committee approvals, or (iii) the outcome or review of due diligence.
- 10. Irrevocable: Each Bid must be irrevocable until the earlier of (i) sixty (60) days following entry of the final Sale Order, (ii) closing of the Sale with the Successful Bidder(s), or (iii) the date the Bid is otherwise rejected under these Bidding Procedures.
- 11. Compliance with Diligence Requests: The Bidder submitting the Bid must have complied with reasonable requests for additional information and due diligence access from the Trustee to the reasonable satisfaction of the Trustee.
- 12. As-Is, Where-Is: Each Bid must include a written acknowledgement and representation that the Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Real Property prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Real Property in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Real Property or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Stalking Horse Agreement.
- 13. Termination Fees: The Bid (other than a Bid pursuant to the Stalking Horse Agreement) must not entitle the Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment or reimbursement and, by submitting the Bid, the Bidder waives the right to pursue a substantial contribution claim under 11 U S C § 503 related in any way to the submission of its Bid or participation in any Auction.
- 14. Adherence to Bid Procedures: By submitting its Bid, each Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction.
- 15. No Late Bids: Unless otherwise ordered by the Court, the Trustee shall not consider any Bids submitted after the conclusion of the Auction, and any and all such bids shall be deemed untimely and shall under no circumstances constitute

a Qualified Bid.

16. Bid Notice: The following parties (the “Bid Notice Parties”) must receive a Bid in writing, on or before the Bid Deadline:

The Trustee	Counsel to the Trustee
Kenneth P. Silverman, Esq. 100 Jericho Quadrangle, Suite 300 Jericho, New York 11753 Kenneth.Silverman@rimonlaw.com	Rimon P.C 100 Jericho Quadrangle, Suite 300 Jericho, New York 11753 Attn: Brian Powers Brian.Powers@rimonlaw.com And Attn: Courtney Roman Courtney.Roman@rimonlaw.com
Office of the United States Trustee	Real Estate Broker to the Trustee
United States Trustee U.S. Department of Justice Office of the United States Trustee – NY Office Alexander Hamilton Custom House One Bowling Green, Room 534 New York, New York 10004-1408 Attn: Mark Bruh Mark.Bruh@usdoj.gov	Cushman & Wakefield Attn: David Finger david.finger@cushwake.com

A Bid received from a Bidder before the Bid Deadline that meets all of the above requirements for the Real Property shall constitute a “Qualified Bid” and such Bidder shall constitute a “Qualified Bidder”; provided that if the Trustee receives a Bid prior to the Bid Deadline that is not a Qualified Bid, the Trustee may provide the Bidder with the opportunity to remedy any deficiencies prior to the Auction; provided, further, that, for the avoidance of doubt, if any Qualified Bidder fails to comply with reasonable requests for additional information and due diligence access from the Trustee to its satisfaction, the Trustee may disqualify any Qualified Bidder and Qualified Bid, in the Trustee’s discretion, and such Bidder shall not be entitled to attend or participate in the Auction.

Any amendments, supplements or other modifications to any Bids (including pursuant to this paragraph) shall be delivered to the Bid Notice Parties. All Qualified Bids will be considered, but the Trustee reserves the right to reject any or all Bids. Bids that are unconditional

and contemplate sales that may be consummated on or soon after the Sale Hearing are preferred. Additionally, notwithstanding anything herein to the contrary, the Stalking Horse Agreement submitted by the Stalking Horse Purchaser shall be deemed a Qualified Bid, and the Stalking Horse Purchaser shall be deemed a Qualified Bidder. The Trustee will inform any Qualified Bidders whether the Trustee considers any Bid to be a Qualified Bid as soon as practicable but in no event later than one (1) day before the Auction.

Each Qualified Bidder, by submitting a Bid, shall be deemed to acknowledge and agree that it is not relying upon any written or oral statements, representations, promises, warranties or guarantees of any kind whether expressed or implied, by operation of law or otherwise, made by any person or party, including the Trustee and his agents and representatives (other than as may be set forth in a definitive agreement executed by the Trustee), regarding the Trustee, the Real Property, the Auction, these Bidding Procedures or any information provided in connection therewith.

During the period that such Bid is required to remain irrevocable and binding, absent the consent of the Trustee a Qualified Bidder may not amend, modify or withdraw its Bid, except for proposed amendments to increase the amount or otherwise improve the terms of the Bid.

IV. AUCTION

A. Auction

If multiple Qualified Bids (including the Stalking Horse Agreement) with respect to the Real Property are submitted by the Bid Deadline, the Trustee will conduct the Auction to determine the highest and otherwise best Qualified Bid with respect to the Real Property.

B. Assessment Criteria

The Trustee's determination of the highest and otherwise best Qualified Bid with respect to the Real Property will take into account any factors the Trustee reasonably deems relevant to the value of the Qualified Bid to the estate and may include, but are not limited to, the following:

1. the amount and nature of the consideration;
2. the type and nature of any modifications to the Form Purchase Agreement or Stalking Horse Agreement, as applicable, requested by each Bidder in such Bidder's Modified Asset Purchase Agreement;
3. the extent to which such modifications are likely to delay closing of the sale of the Real Property and the cost to the Trustee of such modifications or delay;
4. the likelihood of the Bidder's ability to close a transaction and the timing thereof, including the ability to obtain, or waive, as applicable, regulatory and Court approvals;
5. the net benefit to the Debtor's estate (collectively, the "Bid Assessment Criteria").

C. Cancellation of the Auction

If multiple Qualified Bids for the Real Property have not been timely received, then the Auction will be cancelled. If the only Qualified Bid is the Bid of the Stalking Horse Purchaser, then the Stalking Horse Agreement shall be the Successful Bid for the Real Property, and the Stalking Horse Purchaser shall be the Successful Bidder.

V. **PROCEDURES FOR THE AUCTION**

If multiple Qualified Bids for the Real Property have been timely received by the Bid Deadline, then the Trustee may commence the Auction on **September 12, 2024 at 10:00 a.m.** (prevailing Eastern Time) via Zoom or similar platform with instructions to be provided by the Trustee to all qualified bidders or via such other means at such other place and time as the Trustee shall notify all Qualified Bidders.

The Auction will be conducted according to the following procedures:

A. Participation

Only the Trustee, the United States Trustee, the Stalking Horse Purchaser and any other Qualified Bidder, in each case, along with their respective representatives and counsel, may attend the Auction and only the Stalking Horse Purchaser and any such other Qualified Bidders will be entitled to make any Bids at the Auction.

B. The Trustee Shall Conduct the Auction

The Trustee and his advisors shall direct and preside over the Auction. The Trustee may conduct the Auction and may augment or modify the procedures described herein in any manner he reasonably determines will result in the highest and otherwise best Qualified Bid(s), including, without limitation, by establishing rules at any Auction that include, without limitation, a single or multiple rounds of bidding, the use of sealed bidding, open outcry, or any other form of Bid submission. Any rules developed by the Trustee will provide that each Qualified Bidder will be permitted what the Trustee determines to be an appropriate amount of time to respond to the previous bid at the Auction.

C. Auction Baseline Bids

Prior to commencement of the Auction, the Trustee may provide each Qualified Bidder participating in the Auction with a copy of the Modified Asset Purchase Agreement(s) that are the highest and otherwise best Qualified Bid for the Real Property as determined by the Trustee (such highest and otherwise best Qualified Bid(s), the "Auction Baseline Bid"). In addition, at the start of the Auction, the Trustee may describe the terms of the Auction Baseline Bids.

D. Anti-Collusion Representations

Each Qualified Bidder participating in the Auction must confirm that it (1) has not engaged in any collusion with respect to the bidding or Sale, (2) has reviewed, understands and accepts the Bidding Procedures and (3) has consented to the core jurisdiction of the Court.

E. Terms of Overbids

The Trustee will accept Overbids, as further described below. An “Overbid” is any bid made at the Auction subsequent to the Trustee’s announcement of the Auction Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

1. Initial Overbid: The initial Overbid after and above the Auction Baseline Bid (the “Initial Overbid”) shall be in an amount of: (a) if the Auction Baseline Bid is that of the Stalking Horse Purchaser, then not less than \$100,000 in excess of the Auction Baseline Bid plus the amount of any Bid Protections, or (b) if the Auction Baseline Bid is that of any other Qualified Bidder, not less than \$50,000 in excess of the Auction Baseline Bid.
2. Minimum Overbid Increments: Any Overbid after and above the Initial Overbid shall be made in increments (the “Minimum Overbid Increment”) valued at not less than \$50,000, in cash or in cash equivalents or, once the cash (or cash equivalent) amount of such Overbid exceeds the cash (or cash equivalent) amount of the next highest Bid, other forms of consideration acceptable to the Trustee. The Trustee reserves the right to modify the Minimum Overbid Increment during the Auction.
3. Remaining Terms Are the Same as for Qualified Bids: Except as modified herein, an Overbid at the Auction must comply with the conditions for a Qualified Bid set forth above, provided, however, that the Bid Deadline shall not apply. Any Overbid must include, in addition to the amount and the form of consideration of the Overbid, a description of all changes requested by the Bidder to the Stalking Horse Agreement or Modified Asset Purchase Agreement, as the case may be, in connection therewith. Any Overbid must remain open and binding on the Bidder as provided herein.

At the Trustee’s discretion to the extent not previously provided, a Qualified Bidder submitting an Overbid at the Auction must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Trustee), reasonably demonstrating such Bidder’s ability to close the Alternate Transaction proposed by such Overbid.

F. Other Procedures

1. Jurisdiction of the Court: All Qualified Bidders (including the Stalking Horse Purchaser) at the Auction shall be deemed to have consented to the core jurisdiction of the Court and waive any right to a jury trial in connection with any disputes relating to the marketing process, the determination of what constitutes a Qualified Bid and the procedures used to make that determination, the Auction, and the construction and enforcement of the Qualified Bidder’s fully executed sale and transaction documents, as applicable.
2. Additional Bids; Modifications: All Qualified Bidders, including the Stalking Horse Purchaser, shall have the right to submit additional Bids and make additional modifications to the Stalking Horse Agreement or

Modified Asset Purchase Agreement at the Auction, as applicable, provided that any such modifications to such Stalking Horse Agreement or Modified Asset Purchase Agreement on an aggregate basis and viewed in whole, shall not, in the Trustee's business judgment be less favorable to the Trustee than the terms of such original agreement.

3. Continuance/Adjournment of Auction: Subject to the deadlines set forth herein, the Trustee reserves the right, in his reasonable business judgment to make one or more continuances of the Auction to, among other things: facilitate discussions between the Trustee and individual Qualified Bidders, allow individual Qualified Bidders to consider how they wish to proceed, modify or supplement any or all of the Auction procedures or rules, or give Qualified Bidders the opportunity to provide the Trustee with such additional evidence as the Trustee, in his reasonable business judgment, may require that the Qualified Bidder has sufficient internal resources, or has received sufficient funding commitments, to consummate the proposed Alternate Transaction at the prevailing Overbid amount.

G. Additional Procedures

The Trustee may announce at the Auction other or additional procedural rules for conducting the Auction or may modify the rules specified in these Bidding Procedures in any manner the Trustee reasonably determines will result in the highest and otherwise best Qualified Bid(s). Any Auction rules adopted by the Trustee that would modify any of the terms of the Stalking Horse Agreement or the rights of the Stalking Horse Purchaser to Bid Protections (as may be consensually modified at the Auction) requires the consent of the Stalking Horse Purchaser.

H. Sale As Is/Where Is

Except as otherwise may be provided in any Stalking Horse Agreement, any Modified Asset Purchase Agreement, or any order by the Court approving any Sale as contemplated hereunder, the property sold pursuant to the Bidding Procedures shall be conveyed at the closing of the purchase and sale in its then-present condition, **"AS IS, WHERE IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED."**

I. Closing the Auction

The Auction will continue until the Trustee selects the Bid(s) that represent the highest and otherwise best offer(s) for the Real Property (a "Successful Bid," and the Bidder(s) submitting such Successful Bid(s), a "Successful Bidder"). The Successful Bidder(s) shall have the rights and responsibilities of the purchaser as set forth in the Stalking Horse Agreement or Modified Asset Purchase Agreement. In selecting each Successful Bid, the Trustee will consider the Bid Assessment Criteria.

The Trustee will announce that the Auction is closed upon receipt of fully executed sale and transaction documents memorializing the terms of the Successful Bid from the Successful Bidder. Within one (1) business day after the conclusion of the Auction, the Successful Bidder shall supplement its Good Faith Deposit by wire transfer or other immediately available funds so that, to the extent necessary, such Good Faith Deposit equals ten (10%) percent of the Successful Bid.

The Trustee shall not consider any Bids submitted after the conclusion of the Auction.

J. Backup Bidder

Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next highest and otherwise best Bid at the Auction as determined by the Trustee, in the exercise of his business judgment will be designated as a backup bidder (a “Backup Bidder”). A Backup Bidder shall be required to keep its last submitted Bid (the “Backup Bid”) open and irrevocable until the earlier of (i) ninety (90) days following entry of the final Sale Order, and (ii) closing of the Sale.

Following the Sale Hearing, if a Successful Bidder fails to consummate the purchase of the Real Property, the Trustee may deem the Backup Bidder to have the new Successful Bid, and the Trustee will be authorized, without further order of the Court, to consummate the transaction with such Backup Bidder at the price of its last bid. Such Backup Bidder will be deemed to be the Successful Bidder and the Trustee will be authorized, but not directed, to effectuate a sale to such Backup Bidder subject to the terms of the Backup Bid without further order of the Court. All Qualified Bids (other than the Successful Bid and the Backup Bid) shall be deemed rejected by the Trustee on and as of the date that the Court approves the Successful Bid. The Trustee, on behalf of the Debtor’s estate, specifically reserves the right to seek all available damages, including specific performance, from any defaulting Successful Bidder (including any Backup Bidder designated as a Successful Bidder) in accordance with the terms of the Bidding Procedures.

For the avoidance of doubt, in the event that there is a Successful Bidder (other than a Stalking Horse Purchaser), and the Stalking Horse Purchaser is the Backup Bidder, the Stalking Horse Purchaser will be deemed to be the Backup Bidder at the price of its last overbid with respect to such property and will be subject to the terms contained in the immediately preceding paragraph.

VI. BID PROTECTIONS

Pursuant to the Bidding Procedures Order, the Stalking Horse Purchaser is entitled to a breakup fee in an amount equal to \$300,000 plus a reimbursement of certain expenses in an amount not to exceed \$100,000 (the “Bid Protections”) as further set forth in, and in accordance with the terms of, any Stalking Horse Agreement and the Bidding Procedures Order. Prior to the commencement of the Auction, the Trustee shall inform all Qualified Bidders of the total amount of the Bid Protections.

Pursuant to the Bidding Procedures Order, except for the Stalking Horse Purchaser, no party submitting an offer, Bid, or Qualified Bid shall be entitled to any expense reimbursement, breakup fee, termination or similar fee or payment unless Trustee agrees in writing to provide any such bid protections.

VII. SALE HEARING

The Successful Bid and Backup Bid (or, if no Qualified Bid other than that of the Stalking Horse Purchasers is received, then the Stalking Horse Agreement) will be subject to approval by the Court. The sale hearing to approve the Successful Bids and any Backup Bids shall take place on **September 17, 2024** at 10:00 a.m. (EST) before the Court (the “Sale Hearing”).

Nothing herein or contemplated hereby constitutes, or will be deemed to constitute or otherwise result in, the consent or approval of any other party in interest to the Sale, any Sale Order, or any Bid,

or to any agreement or motion or other pleading relating thereto, or the waiver or modification of any of the terms of, or any rights under, any existing agreement, instrument or document, or any default arising thereunder or relating thereto. Any and all rights of such parties and parties in interest to object or otherwise oppose any Sale, Sale Order, or Bid, or any agreement or pleading related thereto are hereby expressly preserved and reserved.

VIII. RETURN OF GOOD FAITH DEPOSITS

The Good Faith Deposits of all Qualified Bidders shall be held in the Trustee's earnest monies account for the Debtor's estate, but shall not become property of the Debtor's estate absent further order of the Court or as expressly provided below. The Good Faith Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Backup Bidder shall be returned to such Qualified Bidder not later than five (5) business days after entry of the Sale Order. The Good Faith Deposit of a Backup Bidder, if any, shall be returned to such Backup Bidder no later than five (5) business days after the closing of the transaction with the Successful Bidder or as otherwise provided in these Bidding Procedures. If the Successful Bidder (or Backup Bidder, if applicable) timely closes on the winning transaction, its Good Faith Deposit shall be credited towards the applicable purchase price. Subject to the terms of the Stalking Horse Agreement with respect to the Stalking Horse Purchaser. If the Successful Bidder (or Backup Bidder, if applicable) fails to consummate an Alternate Transaction because of a breach or failure to perform on the part of such Successful Bidder (or Backup Bidder, if applicable), the Successful Bidder (or Backup Bidder, if applicable), shall forfeit the Good Faith Deposit as liquidated damages, Trustee will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder (or Backup Bidder, if applicable), and such Good Faith Deposit shall irrevocably become property of the Trustee.

IX. RESERVATION OF RIGHTS OF THE TRUSTEE

The Trustee further reserves the right as it may reasonably determine to be in the best interest of its estate to: determine which Bidder(s) is a Qualified Bidder(s);

- A. determine which Bid(s) is a Qualified Bid(s);
- B. determine which Qualified Bid is the highest or best proposal for the Real Property and which is the next highest or best proposal for the Real Property;
- C. reject any Bid that is (1) inadequate or insufficient, (2) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code or (3) contrary to the best interests of the Trustee and its estate;
- D. impose additional terms and conditions with respect to all potential Bidders;
- E. extend the deadlines set forth herein; and
- F. modify the Bidding Procedures and implement additional procedural rules that the Trustee determines, in its business judgment, will better promote the goals of the bidding process and discharge the Trustee's fiduciary duties.

Exhibit B

PURCHASE AND SALE AGREEMENT

between

KENNETH P. SILVERMAN, AS CHAPTER 7 TRUSTEE FOR

BUTH-NA-BODHAIGE, INC. dba THE BODY SHOP,

a Virginia corporation, Seller

and

[●],

a [●], Purchaser

dated as of

[DATE]

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PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (this “**Agreement**”), dated as of [●], 2024, is entered into between Kenneth P. Silverman, as Chapter 7 Trustee of BUTH-NA-BODHAIGE, INC. dba THE BODY SHOP, a Virginia corporation (“**Seller**”), and [●], a [●] (“**Purchaser**”), each a “**Party**” and collectively the “**Parties**”.

RECITALS

WHEREAS, on March 8, 2024 (the “**Petition Date**”), BUTH-NA-BODHAIGE, INC. dba THE BODY SHOP, a Virginia corporation (“**Debtor**”) filed a voluntary petition for relief under chapter 7 of title 11 of the United States Code, 11 U.S.C. §101 et seq. (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”), Case No. 24-10392-dsj (the “**Chapter 7 Case**”); and

WHEREAS, following the Petition Date, Kenneth P. Silverman was appointed as Chapter 7 Trustee of the Debtor’s bankruptcy estate, and is currently acting as Seller in such capacity;

WHEREAS, Seller wishes to sell to Purchaser and Purchaser wishes to acquire from Seller the Property (as hereinafter defined) on the terms and conditions set forth in this Agreement (the “**Sale**”); and

WHEREAS, the transactions contemplated by this Agreement is subject to an order of the Bankruptcy Court approving, *inter alia*, the sale of the Property to the Purchaser, consistent with terms, conditions and transactions contemplated by the Agreement; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, agreements, representations and warranties herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS

The following terms have the meanings specified or referred to in this Article I:

“**Affiliate**” means any person or entity which directly or indirectly controls, is controlled by, or is under common control with, any Person.

“**Applicable Law**” means, with respect to any Person, any foreign, federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, guidance, plan, order, injunction, judgment, decree, ruling, charge or other similar requirement, including any Labor and Employment Law and Requirements, enacted, adopted, or promulgated by a Governmental Authority that is binding upon such Person, as amended.

“**Agreement**” has the meaning set forth in the preamble.

“**Bankruptcy Code**” has the meaning set forth in the recitals.

“**Bankruptcy Court**” has the meaning set forth in the recitals.

“**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure, as prescribed by the United States Supreme Court pursuant to Section 2075 of title 28 of the United States Code and as applicable to the Chapter 7 Case.

“**Bidding Procedures Order**” has the meaning set forth in Section 12.01.

“**Board**” means the governing board of an entity, including the board of directors, board of governors, board of trustees, or board of managers, as applicable.

“**Broker**” has the meaning set forth in Section 15.01.

“**Business**” refers to the Debtor’s business prior to its cessation of operations.

“**Business Day**” has the meaning set forth in Section 16.05.

“**Chapter 7 Case**” has the meaning set forth in the recitals.

“**Claim**” has the meaning ascribed to such term in Section 101(5) of the Bankruptcy Code.

“**Closing**” has the meaning set forth in Section 4.01.

“**Closing Date**” has the meaning set forth in Section 4.01.

“**Code**” has the meaning set forth in Section 4.02(c).

“**Confidential Information**” has the meaning set forth in Section 14.01.

“**Deed**” has the meaning set forth in Section 4.02(a).

“**Deposit**” has the meaning set forth in **Error! Reference source not found.1.**

“**Escrow Agent**” has the meaning set forth in **Error! Reference source not found..**

“**Excluded Property**” has the meaning set forth in Section 2.02.

“**Final Order**” means an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction that has not been reversed, vacated, or stayed and as to which (a) the time to appeal, petition for certiorari, or move for a stay, new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for stay, new trial, reargument, or rehearing shall then be pending or (b) if an appeal, writ of certiorari, stay, new trial, reargument, or rehearing has been sought, (i) such order or judgment shall have been affirmed by the highest court to which such order was appealed, certiorari shall have been denied, or a stay, new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and (ii) the time to take any further appeal, petition for certiorari, or move for a stay, new trial, reargument, or rehearing shall have expired; provided, however, that the possibility that a motion under section 502(j) of the Bankruptcy Code, Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state court rules of civil procedure may be, but has not been, filed with respect to such order shall not cause such order not to be a Final Order.

“**Governmental Authority**” means any domestic or foreign federal, state or local governmental authority, department, court or government, commission, tribunal or organization or any regulatory, administrative or other agency, or any political or other division, subdivision, department or branch of any of the foregoing.

“**Governmental Authorizations**” means any approval, consent, license, permit, waiver, registration, accreditation or other authorization issued, granted, given, made available or otherwise required by any Governmental Authority or pursuant to Applicable Law.

“**Improvements**” has the meaning set forth in Section 2.01(b).

“**Land**” has the meaning set forth in Section 2.01(a).

“**Liens**” means “any and all liens (including mechanics’, materialmen’s and other consensual and non-consensual liens and statutory liens), security interests, encumbrances, adverse rights, trusts, and claims, rights of distraint, reclamation claims, mortgages, deeds of trust, pledges, covenants, restrictions, hypothecations, charges, indentures, loan agreements, instruments, contracts, leases, licenses, options, rights of first refusal, rights of offset, recoupment, rights of recovery, judgments, orders and decrees of any Court or foreign or domestic governmental entity, claims for reimbursement, contribution, indemnity or exoneration, assignment, debts, charges, suits, rights of recovery, interests, products liability, alter-ego, environmental, successor liability, tax and other liabilities (including probate liabilities), causes of action and claims, to the fullest extent of the law, in each case whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, or known or unknown, whether imposed by agreement, understanding, law, equity or otherwise, or any other interest of any nature whatsoever of, on or with respect to any property or property interest.

“**Notices**” has the meaning set forth in Section 9.01.

“**OFAC**” has the meaning set forth in Section 6.01(g).

“**Permitted Exceptions**” has the meaning set forth in Section 5.02.

“**Person**” has the meaning ascribed to such term in Section 101(41) of the Bankruptcy Code.

“**Property**” has the meaning set forth in Section 2.01.

“**Purchase Price**” has the meaning set forth in Section 3.01.

“**Purchaser**” has the meaning set forth in the preamble.

“**Sale**” has the meaning set forth in in the recitals.

“**Sale Motion**” has the meaning set forth in Section 12.01.

“**Sale Order**” means an order of the Bankruptcy Court in a form acceptable to the Purchaser in its sole and absolute discretion, authorizing and approving this Agreement and the sale and purchase of the Property hereunder.

“**Seller**” has the meaning set forth in the preamble.

“**Survey**” has the meaning set forth in Section 5.03(a)(ii).

“**Title Commitment**” has the meaning set forth in Section 5.03(a)(i).

“**Title Insurance Company**” shall be _____, or such other title company mutually selected by Purchaser and Seller.

“**Transaction Parties**” has the meaning set forth in Section 14.01.

“**Violations**” has the meaning set forth in Section 5.05.

ARTICLE II CONVEYANCE OF THE PROPERTY

Section 2.01 Subject of Conveyance. Seller agrees to sell and convey to Purchaser and Purchaser agrees to purchase from Seller, upon the terms and conditions hereinafter set forth, all right, title, and interest of the Debtor and its bankruptcy estate in and to the following (collectively referred to herein as the “**Property**”) free and clear of all Liens, Claims and interests in, to or against the Property, other than Liens securing the Permitted Exceptions, to the fullest extent permissible under Section 363(f) of the Bankruptcy Code:

(a) All that certain lot, piece, or parcel of land located at 5036 One World Way, Wake Forest, County of Wake, and State of North Carolina, as more particularly bounded and described in Exhibit A attached hereto and hereby made a part hereof (the “**Land**”);

(b) All buildings and improvements located on the Land and all of Debtor’s and its estate’s right, title, and interest in and to any and all fixtures attached thereto (collectively, the “**Improvements**”);

(c) All other rights of way, privileges, easements, licenses, and appurtenances relating to the Land; and

(d) All intangible property owned by Debtor arising from or used exclusively in connection with the ownership, use, operation or maintenance of the Land or the Improvements (collectively, the “**Intangible Property**”), including: all of Debtor’s right, title and interest in, to and under (to the extent assignable), any (i) assignable warranties and guaranties issued to Debtor in connection with the Property; (ii) all assignable certificates of occupancy, permits, licenses and certificates relating to the Land or the Improvements; and (iii) all assignable or deliverable surveys, drawings, plans, specifications, diagrams, space finish plans, third-party reports, environmental assessments, and other architectural or engineering work product relating to the Land or the Improvements.

Section 2.02 Excluded Property. Notwithstanding the foregoing, the sale of the Property contemplated by this Agreement shall not include the personal property and liabilities listed in Exhibit B attached hereto and made a part hereof (the “**Excluded Property**”), which Excluded Property is expressly excluded from such conveyance.

Section 2.03 AS-IS.

(a) Except as set forth in this Agreement, Purchaser acknowledges that Purchaser has made thorough inspections and investigations of the Property and Purchaser agrees to take title to the Property "AS-IS, WHERE IS, AND WITH ALL FAULTS" and in the condition existing as of the date of this Agreement, subject to reasonable use, ordinary wear and tear, and without any reduction in or abatement of the Purchase Price. Purchaser has undertaken all such investigations of the Property as Purchaser deems necessary or appropriate under the circumstances as to the status of the Property and the existence or nonexistence of curative action to be taken with respect to any hazardous or toxic substances on or discharged from the property, and based upon same, Purchaser is and will be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel, and officers.

(b) Neither party to this Agreement is relying on any statement or representation not expressly stated in this Agreement. Purchaser specifically confirms and acknowledges that in entering into this Agreement, Purchaser has not been induced by, and has not relied upon, whether express or implied, warranties, guaranties, promises, statements, inducements, representations, or information pertaining to the Property or its uses, the physical condition, environmental condition, state of title, income, expenses, or operation of the Property, or any other matter or thing with respect thereto, written or unwritten, whether made by Seller or any agent, employee, or other representative of Seller, or any broker or any other person representing (or purporting to represent) Seller, which are not expressly set forth in this Agreement. Seller shall not be liable for or bound by any written or unwritten statements, representations, warranties, brokers' statements, or other information pertaining to the Property furnished by Seller, any broker, any agent, employee, or other actual (or purported) representative of Seller, or any person, unless and only to the extent the same are expressly set forth in this Agreement.

(c) Seller makes no warranty with respect to the presence of any hazardous or toxic substances on, above, beneath, or discharged from the Property (or any adjoining or neighboring property) or in any water on or under the Property. The Closing hereunder shall be deemed to constitute an express waiver of Purchaser's right to recover from Seller, and forever releases, covenants not to sue, and discharges Seller from, any and all damages, demands, claims, losses, liabilities, penalties, fines, liens, judgments, costs, or expenses whatsoever, including attorneys' fees and costs, whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the physical condition of the Property.

(d) The provisions of this Section 2.03 shall survive the Closing and shall not be deemed to have merged into any of the documents executed or delivered at the Closing.

Section 2.04 No Assumption of Liabilities. Except for any liabilities arising out of ownership of the Property after Closing, Purchaser does not and shall not be deemed to assume any obligations or liabilities in connection with the transactions contemplated by this Agreement.

ARTICLE III PURCHASE PRICE

Section 3.01 Purchase Price and Deposit. The purchase price to be paid by Purchaser to Seller for the Property is [●]Dollars (\$[●]) (the “**Purchase Price**”). The Purchase Price shall be paid as follows:

(a) Initial Deposit. Upon the mutual execution of this Agreement, Purchaser shall make a deposit of [●] Dollars (\$[●])¹ (“**Initial Deposit**”) with the Seller, to be held in Seller’s dedicated earnest monies account for the Debtor’s estate (“**Trustee Account**”).

(b) Additional Deposit. In the event Purchaser is designated as the Successful Bidder or Backup Bidder (as defined in the Bidding Procedures Order) at the conclusion of the Auction, Purchaser shall make an additional deposit of [●] Dollars (\$[●])² to the Trustee Account (the “**Additional Deposit**,” and together with the Initial Deposit, the “**Deposit**”). Seller shall retain the Deposit as liquidated damages if this Agreement is properly terminated by Seller pursuant to Section 10.01(b) or upon the failure of Purchaser to consummate the Sale in accordance with the terms of this Agreement, provided that all conditions precedent to Closing have been satisfied and there shall not have been a material breach by Seller of any representation, warranty or covenant contained in this Agreement.

(c) Balance at Closing. The Purchase Price, less the Deposit, shall be paid to Seller on the Closing Date, subject to any credits or apportionments as provided for under this Agreement, by certified or official bank checks made payable to Seller or by one or more wire transfers of immediately available federal funds to Seller on the Closing Date. The Deposit shall be applied toward the Purchase Price on the Closing Date.

Section 3.02 No Financing. Purchaser expressly agrees and acknowledges that Purchaser’s obligations to pay the Purchase Price and otherwise consummate the transactions contemplated hereby are not in any way conditioned upon Purchaser’s ability to obtain financing of any type or nature whatsoever (that is, whether by way of debt financing, equity investment, or otherwise).

ARTICLE IV CLOSING

Section 4.01 Closing Date. The closing of the transactions contemplated herein (the “**Closing**”) shall take place within three (3) business days after satisfaction or waiver of all conditions to the obligations of Seller and Purchaser to consummate the transactions contemplated herein (other than conditions with respect to actions Seller and Purchaser will take at the Closing) or such other date as Purchaser and Seller may mutually determine in writing (the “**Closing Date**”).

¹ NTD: Per bidding procedures, initial deposit should be 5% of purchase price.

² NTD: Per bidding procedures, additional deposit should be 5% of purchase price.

Section 4.02 Seller's Closing Deliverables. At Closing, Seller shall deliver or cause to be delivered to Purchaser (or Title Insurance Company, as appropriate), the following, executed, certified, and acknowledged by Seller, as appropriate:

(a) One (1) original deed (the "**Deed**") in substantially the form attached hereto as Exhibit C, duly executed with the appropriate acknowledgment form and otherwise in proper form for recording so as to convey title to the Property as required by this Agreement. The delivery of the Deed by Seller, and the acceptance by Purchaser, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed pursuant to this Agreement, except those obligations of Seller which are expressly stated in this Agreement to survive the Closing.

(b) An assignment by Seller and an assumption by Purchaser, in the form attached hereto as Exhibit D (the "**Assignment and Assumption of Intangibles**"), duly executed and acknowledged by Seller, of all of Seller's right, title, and interest in and to all Intangible Property.

(c) A certification that Seller is not a "foreign person" as such term is defined in Section 1445 of the Internal Revenue Code, as amended and the regulations thereunder (collectively, the "**Code**"), which certification shall be signed under penalty of perjury.

(d) Originals, or copies certified by Seller as being complete, of all applicable bills, invoices, fuel readings, and other items that shall be apportioned as of the Closing Date.

(e) A counterpart of a closing statement jointly prepared by Seller and Purchaser reflecting the prorations and adjustments required under Section 4.06 of this Agreement and the balance of the Purchase Price due Seller (the "**Settlement Statement**").

(f) All keys, key cards, and access codes to any portion of the Property, to the extent in Seller's possession or control.

(g) All other documents reasonably necessary or otherwise required by the Escrow Agent and Title Insurance Company to consummate the transaction contemplated by this Agreement and such other mutually acceptable documents as may be reasonably necessary or appropriate to effect the consummation of the transaction which is the subject of this Agreement.

Section 4.03 Purchaser's Closing Deliverables. On the Closing Date, Purchaser shall deliver or cause to be delivered to Seller (or Title Insurance Company, as appropriate), the following, executed, certified, and acknowledged by Purchaser, as appropriate:

(a) The balance of the Purchase Price as set forth in Section 3.01(c).

(b) Purchaser shall, where applicable, join with Seller in the execution and delivery of the closing documents and instruments required under Section 4.02 of this Agreement.

(c) An organizational resolution of Purchaser authorizing the transaction contemplated hereby and the execution and delivery of the documents required to be executed and delivered hereunder.

(d) All other documents reasonably necessary or otherwise required by the Escrow Agent or the Title Insurance Company to consummate the transactions contemplated by this Agreement and such other mutually acceptable documents as may be reasonably necessary or appropriate to effect the consummation of the transaction which is the subject of this Agreement.

Section 4.04 Conditions to Closing. The obligations of the Purchaser hereunder are, at Purchaser's option, subject to the satisfaction, on or prior to the date of the Closing, of the following conditions:

(a) Accuracy of Representations; Performance of Obligations. Seller will have performed Seller's obligations hereunder required to have been performed before the date of the Closing in all material respects, and the representations and warranties of the Seller contained in Article VI of this Agreement will be true and correct in all material respects (except for such representations and warranties that are qualified by their terms by a reference to materiality, which representations and warranties as so qualified will be true in all respects, and representations and warranties that relate to a certain date, which shall be true and correct as of such date) on and as of the date of the Closing with the same effect as though such representations and warranties had been made on and as of such date.

(b) Free and Clear. The Property shall be free and clear of all Liens, Claims and interests in, to or against the Property, other than Liens securing the Permitted Exceptions, to the fullest extent permissible under Section 363(f) of the Bankruptcy Code.

(c) Closing Deliverables. The Seller shall have fulfilled each of its closing deliverables as set forth in section 4.02 of this Agreement.

(d) Sale Order. The Bankruptcy Court shall have entered the Sale Order, in form and substance acceptable to Purchaser in its sole discretion, which shall have become a Final Order and provide, among other things, that the Sale is (i) free and clear of all Liens, Claims, encumbrances, interests, and rights of set-off, whether known or unknown, disputed, contingent, actual, or otherwise, arising prior to closing, pursuant to Section 363(f) of the Bankruptcy Code, (ii) by a good faith purchaser entitled to the protection of Section 363(m) of the Bankruptcy Code, and (iii) with no successor liability.

(e) Vacant Property. The Property shall be fully vacant as set forth in Section 7.04 of this Agreement.

(f) Additional Documents. Purchaser will have received all such further instruments, and documents as the Purchaser may reasonably require to consummate the Sale.

Section 4.05 Closing Costs.

(a) Seller and Purchaser shall each pay the fees and expenses of its own counsel in connection with the preparation and negotiation of this Agreement. The Deed and other agreements and instruments related to the transaction contemplated by this Agreement and such legal costs shall not be part of the closing costs; provided, however, that if any legal action is instituted under this Agreement, the prevailing party in such action shall be entitled to recover

from the other party costs related to such legal action, including reasonable attorneys' fees and costs in all trial, appellate, post-judgment, and bankruptcy proceedings.

(b) Seller shall pay:

(i) The commission owed to the Broker, if any, pursuant to Article XIII of this Agreement;

(ii) All recording fees for the release of any Liens on the Property, as required pursuant to the terms of this Agreement;

(iii) Any transfer taxes and sales taxes payable in connection with the transaction contemplated by this Agreement;

(iv) All costs related to the Chapter 7 Case.

(c) Purchaser shall pay:

(i) The costs charged by the Title Insurance Company, including, without limitation, costs related to the Title Commitment, any premiums, title endorsements, and affirmative insurance;

(ii) The costs related to the Survey and any other survey or survey update;

(iii) Any other fees or costs related to Purchaser's due diligence reviews; and

(iv) All costs related to the recording fees payable in connection with the recording of the Deed and Purchaser's lender's security instruments, if any.

Section 4.06 Apportionments. The following shall be apportioned as of 11:59 p.m. Eastern of the date immediately preceding the Closing Date, unless expressly provided for otherwise:

(a) All real estate taxes based on the fiscal year for which they are assessed and any assessments. If the Closing shall occur before a new tax rate is fixed, the apportionment of real estate taxes shall be upon the basis of the tax rate for the preceding fiscal period applied to the latest assessed valuation. If the Property shall be, or has been, affected by any assessments or special assessments payable in a lump sum or which are, or may become, payable in installments, of which the first installment is then a charge or lien, or has already been paid, then at the Closing such amounts shall be paid or apportioned, as the case may be in the following manner:

(i) Any such assessments or installments, or portion thereof, payable on or after the Closing Date shall be the responsibility of Purchaser; and

(ii) Any such assessments or installments, or portion thereof, payable prior to the Closing Date shall be the responsibility of Seller.

(b) All water and sewer charges based on the fiscal year for which they are assessed, unless the meters are read on the date immediately preceding the Closing Date.

(c) Utilities, fuel, gas, and electric charges based on most recently issued bills, unless the meters are read on the date immediately preceding the Closing Date.

(d) All other items customarily apportioned in connection with sales of buildings substantially similar to the Property in the State of North Carolina.

Section 4.07 Miscellaneous. Any miscellaneous adjustments payable by either Purchaser or Seller, as the case may be, that occur at the Closing may be paid at the Closing by delivery of personal or business checks, provided, however, that such miscellaneous adjustments do not exceed One Thousand and 00/100 Dollars (\$1,000.00). Any errors in calculations or apportionments shall be corrected or adjusted as soon as practicable after the Closing Date. The provisions of this Section 4.07 and Section 4.06 shall survive the Closing.

ARTICLE V TITLE MATTERS AND VIOLATIONS

Section 5.01 Acceptable Title. Seller shall convey, and Purchaser shall accept, such title to the Property that the Title Insurance Company is willing to insure, subject to the matters set forth in this Agreement. Seller shall convey, and Purchaser shall accept, fee simple title to the Property in accordance with the terms and conditions of this Agreement, and subject to:

(a) The Permitted Exceptions; and

(b) Such other matters as any Title Insurance Company shall be willing to omit as exceptions to coverage.

Section 5.02 Permitted Exceptions. The Property shall be sold, assigned, and conveyed by Seller to Purchaser, and Purchaser shall accept and assume same, subject to the following matters (collectively, the “**Permitted Exceptions**”):

(a) Any and all present and future zoning, building, environmental and other laws, statutes, ordinances, codes, rules, regulations, requirements, or executive mandates of all Governmental Authorities having jurisdiction with respect to the Property, including, without limitation, landmark designations and all zoning variances and special exceptions, if any.

(b) Any state of facts that an accurate survey of the Property would disclose, provided such facts do not render title unmarketable.

(c) All presently existing and future liens for unpaid real estate taxes, assessments, and water and sewer charges that are not due and payable as of the Closing Date, subject to any apportionments as provided for in this Agreement.

(d) All covenants, restrictions, and rights, and all easements and agreements for the erection and/or maintenance of water, gas, steam, electric, telephone, sewer or other utility

pipelines, poles, wires, conduits, or other like facilities, and appurtenances thereto, over, across, and under the Property.

(e) Any lien or encumbrance arising out of the acts or omissions of the Purchaser.

(f) Any exceptions disclosed on Schedule B of the Title Commitment (as hereinafter defined) which will be extinguished upon the transfer of the Property.

(g) The standard conditions and exceptions to title contained in the form of title policy issued to Purchaser by the Title Insurance Company.

(h) Such other matters as any reputable title insurer licensed to do business in the State of North Carolina shall be willing, without special premium, to omit as exceptions to title insurance coverage.

Section 5.03 Title.

(a) Purchaser shall promptly order at its sole cost and expense:

(i) A commitment for title insurance from the Title Insurance Company, together with copies of any tax search, departmental or municipal searches, and all instruments giving rise to any defects or exceptions to title to the Property (collectively, the "**Title Commitment**"), which the parties shall instruct the Title Insurance Company to deliver to counsel for both Purchaser and Seller concurrently; and

(ii) Either an update of an existing survey or a new survey of the Property, prepared by a surveyor licensed in the state where the Property is located ("**Survey**"), which the parties shall instruct the surveyor to deliver the Survey to counsel for both Purchaser and Seller concurrently.

(b) No later than ten (10) Business Days after receipt of the Title Commitment and Survey, Purchaser will notify Seller of Purchaser's objections to title (other than Permitted Exceptions) including matters based on the Survey ("**Title Objection Notice**").

(c) Not later than five (5) Business Days after receipt of Purchaser's Title Objection Notice, Seller will notify Purchaser whether or not Seller will remove the title defects ("**Title Defects**") specified in the Title Objection Notice. If Seller elects to cure the Title Defects, then Seller shall be obligated to remove such Title Defects from Purchaser's Title Commitment at Seller's sole cost and expense prior to Closing. If Seller notifies Purchaser within the five (5) Business Day period that Seller does not intend to remove the Title Defects specified in the Title Objection Notice (or if Seller does not respond to Purchaser's Title Objection Notice within such five (5) Business Day period, in which case Seller shall be deemed to have elected not to remove such Title Defects, then Purchaser may, at its option, either (i) terminate this Agreement in which case Purchaser shall receive back the Deposit and the parties hereto shall have no further obligations under this Agreement, except pursuant to the provisions which expressly survive termination of this Agreement, or (ii) accept title at Closing subject to the Title Defects specified in the Title Objection Notice, without any reduction or adjustment in the Purchase Price.

(d) If Seller is unable to remove all such Title Defects which Seller has expressly agreed to remove on or before the Closing Date, subject to the terms hereof, then Purchaser may at its option: (i) waive such Title Defects and proceed to close the transaction, or (ii) terminate this Agreement by delivering written notice to Seller, in which event the Deposit shall be returned to Purchaser and the parties hereto shall have no further obligations under this Agreement, except pursuant to the provisions which expressly survive termination of this Agreement. If any supplemental or subsequent title or “run down” report issued by the Title Insurance Company discloses any liens, encumbrances, easements, restrictions, agreements, encroachments or other exceptions to title or the Survey not caused by Purchaser or its agents (other than Permitted Exceptions) (collectively, “**New Title Defects**”), Purchaser shall have the right to object to the New Title Defects by notifying Seller in writing (a “**Run Down Objection Notice**”) of any such New Title Defects within five (5) Business Days after Purchaser’s receipt of such New Title Defects. If Seller is unable or unwilling to remove any such New Title Defects in accordance with the requirements hereof, Seller shall so notify Purchaser within five (5) days of receipt of the Run Down Objection Notice and Purchaser shall have the right to accept such title as Seller shall be able to convey or to terminate this Agreement, by notice delivered to Seller within five (5) days following receipt of the New Seller Title Notice. If Purchaser elects to terminate this Agreement by delivering written notice thereof to Seller, then the Deposit shall be returned to Purchaser and the parties hereto shall have no further obligations under this Agreement, except pursuant to the provisions which expressly survive termination of this Agreement.

Section 5.04 Seller’s Inability to Convey.

(a) If, on the Closing Date, Seller fails or is unable to convey title to the Property in accordance with this Agreement, Seller shall be entitled, upon written notice delivered to Purchaser on or prior to the Closing Date, to reasonable adjournments of the Closing one or more times for a period not to exceed sixty (60) days in the aggregate to enable Seller to convey such title to the Property.

(b) If Seller does not so elect to adjourn the Closing, and on the Closing Date, fails or is unable to convey title subject to and in accordance with the provisions of this Agreement, Purchaser may either: (i) terminate this Agreement by written notice to Seller delivered on or before the Closing Date, in which event Purchaser shall be entitled to a return of the Deposit, and this Agreement shall thereupon be deemed terminated and of no further effect, and neither party hereto shall have any obligations to the other hereunder or by reason hereof, except for the provisions hereof that expressly survive termination of this Agreement; or (ii) complete the purchase (with no reduction in the Purchase Price) with such title as Seller is able to convey on the Closing Date.

(c) If Seller elects to adjourn the Closing as provided in Section 5.04(a) above, this Agreement shall remain in effect for the period or periods of adjournment, in accordance with its terms. If, on the adjourned Closing Date, Seller fails or is unable to convey title to the Property subject to and in accordance with the provisions of this Agreement, Purchaser shall make its election between clauses (i) and (ii) of Section 5.04(b) above, by written notice to Seller given not later than the adjourned Closing Date. If Purchaser shall fail to give such notice as aforesaid,

Purchase shall be deemed to have elected clause (ii) above and the Closing shall take place within three (3) Business Days following the adjourned Closing Date.

(d) Notwithstanding anything to the contrary contained in this Agreement, Seller shall not be required to take or bring any action or proceeding or any take other steps to remove any defect in or objection to title or to fulfill any condition precedent to Purchaser's obligations under this Agreement or to expend any moneys therefor, nor shall Purchaser have any right of action against Seller therefor, at law or in equity, except that Seller shall, on or prior to the Closing, pay, discharge, or remove of record or cause any Liens to be paid, discharged, or removed of record in accordance with the Sale Order, at Seller's sole cost and expense.

(e) Notwithstanding anything in this Section 5.04 above to the contrary, Purchaser may at any time accept such title as Seller can convey, without reduction of the Purchase Price or any credit or allowance on account thereof or any claim against Seller.

Section 5.05 Violations. Notwithstanding anything to the contrary in this Agreement, Purchaser shall accept title to the Property subject to any and all violations or any notes or notices of violations of law or municipal ordinances, orders, or requirements noted or issued prior to, on or after the date of this Agreement (collectively, the "**Violations**"), if any, provided the cost to cure such Violations does not exceed Twenty-Five Thousand and 00/100 Dollars (\$25,000.00). Purchaser acknowledges and accepts that Seller shall not be obligated to comply with or take any action or incur any expense in connection with any Violations. If requested by Purchaser, Seller shall furnish Purchaser with an authorization to make any required violation searches against the Property. In the event the cost to cure such Violations does exceed Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), then Purchaser shall have the right to either (i) request that Seller cure such Violations within fifteen (15) Business Days and Seller, in its sole discretion may elect to cure such Violation; provided, however, that if such Violation cannot be reasonably cured within said period, Seller may apply a credit toward the Purchase Price at Closing equal to the amount that the cost to cure such Violations exceeds Twenty-Five Thousand and 00/100 Dollars (\$25,000); if Seller does not cure the Violation or apply said credit, Purchaser shall have the option to terminate this Agreement by written notice to Seller delivered on or before the Closing Date, in which event Purchaser shall be entitled to a return of the Deposit, and this Agreement shall thereupon be deemed terminated and of no further effect, and neither party hereto shall have any obligations to the other hereunder or by reason hereof, except for the provisions hereof that expressly survive termination of this Agreement; or (ii) complete the purchase (with no reduction in the Purchase Price) on the Closing Date.

ARTICLE VI REPRESENTATIONS AND WARRANTIES

Section 6.01 Seller's Representations and Warranties. Seller represents and warrants to Purchaser on and as of the date of this Agreement as follows:

(a) Seller is the permanent chapter 7 Trustee of the Debtor's bankruptcy estate, pursuant to Bankruptcy Code sections 701 and 702(d).

(b) Except for such authorization as is required by the Bankruptcy Court, Seller has full corporate power and authority to execute and deliver this Agreement and, subject to such

authorization as is required by the Bankruptcy Court and any required approval by a Court of competent jurisdiction to perform its obligations hereunder. Without limiting the generality of the foregoing, the Board of Seller has duly authorized the execution, delivery and performance of this Agreement by Seller. This Agreement constitutes, and any and all other closing documents to be executed by Seller pursuant hereto, when executed, will constitute, the valid and legally binding obligation of Seller, enforceable in accordance with their terms and conditions, except as enforceability against Seller may be restricted, limited or delayed by applicable bankruptcy, moratorium or other Laws affecting creditors' rights generally and except as enforceability may be subject to general principles of equity..

(c) Seller is not a "foreign person" within the meaning of Section 1445 of the Code.

(d) Subject to Bankruptcy Court approval and any other required approval by a Court of competent jurisdiction, if any, neither the execution and delivery of this Agreement, the consummation of the transactions contemplated herein (including each Closing Document required to be delivered by Seller at Closing), nor the fulfillment of the terms hereof by Seller, will (i) violate any order or award of any court, administrative agency or governmental body applicable to Seller; (ii) constitute a violation by Seller of any Applicable Law; or (iii) conflict with or violate any charter document of Seller.

(e) To Seller's actual knowledge, there is no pending or threatened litigation or condemnation action against the Property or against Seller with respect to the Property as of the date of this Agreement.

(f) Seller has not entered into any service or equipment leasing contracts relating to the Property.

(g) Seller is not, and will not become, a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

(h) Seller has not received written notice from any governmental agency having jurisdiction over the Property of any uncured violation of any applicable laws, ordinances, rules and regulations, including without limitation, zoning, development, construction code and environmental laws.

Section 6.02 Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller on and as of the date of this Agreement and on and as of the Closing Date as set forth in this Section 6.02.

(a) Purchaser is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of New Jersey.

(b) Purchaser has full power and authority to execute and deliver this Agreement and, subject to such authorizations as required by the Bankruptcy Court and any other required approval by a Court of competent jurisdiction, if any, to perform its obligations hereunder. The execution, delivery and performance of this Agreement and all other agreements contemplated hereby have been duly authorized by all requisite corporate action of Purchaser. This Agreement constitutes, and any and all other closing documents to be executed by Purchaser pursuant hereto when executed will constitute, the valid and legally binding obligation of Purchaser, enforceable in accordance with their terms and conditions, except as enforceability against Purchaser may be restricted, limited or delayed by applicable bankruptcy, moratorium or other Laws affecting creditors' rights generally and except as enforceability may be subject to general principles of equity.

(c) Subject to Bankruptcy Court approval, and any other required approval by a Court of competent jurisdiction, if any, neither the execution and delivery of this Agreement, the consummation of the transactions contemplated herein (including each Closing Document required to be delivered by Purchaser at Closing), nor the fulfillment of the terms hereof by Purchaser, will (i) violate any Applicable Law to which Purchaser is subject or any provision of its charter, bylaws, or other governing documents or (ii) conflict with, violate or result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Purchaser is a party or by which it is bound or to which any of its assets are subject.

(d) Purchaser is not required to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated herein (including each Closing Document required to be delivered by Purchaser at Closing), except for such notices, consents and approvals as have already been given or obtained, those required under or in relation to those required by the Bankruptcy Court.

(e) Purchaser has not violated any contract, agreement, or other instrument to which Purchaser is a party nor any judicial order, judgment, or decree to which Purchaser is bound by: (i) entering into this Agreement; (ii) executing any of the documents Purchaser is obligated to execute and deliver on the Closing Date or (iii) performing any of its duties or obligations under this Agreement or otherwise necessary to consummate the transactions contemplated by this Agreement.

(f) To Purchaser's actual knowledge, there are no actions, lawsuits, litigation, or proceedings pending or threatened in any court or before any governmental or regulatory agency that affect Purchaser's power or authority to enter into or perform this Agreement. There are no judgments, orders, or decrees of any kind against Purchaser unpaid or unsatisfied of record, or, to the best of Purchaser's knowledge, threatened against Purchaser, which would have any material adverse effect on the business or assets or the condition, financial or otherwise, of Purchaser or the ability of Purchaser to consummate the transactions contemplated by this Agreement.

(g) Except for the express representations and warranties of Seller found in Section 6.01, Purchaser is acquiring the Property on an "AS IS, WHERE IS" basis, without any

representation or warranty of any kind or nature whatsoever, express or implied, and Purchaser acknowledges that no such representations or warranties have been made except as set forth in writing herein. In deciding whether to acquire the Property, Purchaser is relying solely on Purchaser's investigation of the Property.

(h) Purchaser is not, and will not become, a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations of OFAC (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

ARTICLE VII PRE-CLOSING COVENANTS

The parties agree as follows with respect to the period between the date of mutual execution of this Agreement and the Closing:

Section 7.01 General. Each of the Parties will use its commercially reasonable efforts to take all actions and to do all things reasonably necessary in order to consummate and make effective the transactions contemplated herein (including satisfaction, but not waiver, of the conditions to Closing set forth in this Agreement).

Section 7.02 Intentionally Omitted.

Section 7.03 Maintenance and Repairs. Seller shall cause the Property, and the Improvements, to be maintained in substantially the same manner as prior to the date of this Agreement pursuant to Seller's normal course of Business, subject to reasonable wear and Article VIII of this Agreement.

Section 7.04 Removal of Assets Prior to Closing. Except as otherwise agreed by the Parties, Seller shall deliver the Property fully vacant, including, without limitation, from any and all inventory which shall be fully removed and vacated from the Property at the Seller's sole expense.

Section 7.05 Additional Covenants of Seller Pending Closing. Seller covenants and agrees that, up to and through the Closing:

(a) Seller shall maintain its existing insurance coverage.

(b) Seller shall give Purchaser prompt notice of: (i) any actual or threatened condemnation of all or any portion of the Property of which Seller receives a written notice, (ii) any actual or threatened enforcement action by any governmental agency relating to the use, condition, or environmental condition of the Property of which Seller received a written notice, and (iii) the commencement of any action by any party seeking relief which could result in the imposition of a lien on the Property, (iv) any rezoning of the Property, (v) the filing in a court of competent jurisdiction of any action by any party seeking relief against Seller or the Property

that would result in the imposition of a lien on the Property that will be binding on the Property following Closing, (vi) any casualty to the Property, (vii) written notice from a governmental authority of violations affecting the Property, (viii) all judgments, claims, and litigation affecting Seller or any part of the Property, and (x) Seller obtaining actual knowledge that any representations or warranties made by Seller herein are not true, accurate, and/or complete.

(c) Seller shall not enter into contract affecting the Property that would bind Purchaser or run with the land, which cannot be terminated by Seller prior to Closing or upon thirty (30) days' notice without charge, cost, penalty or premium to Purchaser.

ARTICLE VIII RISK OF LOSS

Section 8.01 Risk of Loss. Seller shall maintain its current liability and casualty insurance on the Property. If prior to Closing there shall be any damage or destruction to the Property or any of them by fire or other casualty, Seller shall give prompt notice thereof to Purchaser. So long as the cost of the repairs required to complete restoration of the loss, damage or destruction is not reasonably expected to exceed \$400,000 (as determined by Seller's insurance adjuster) and does not eliminate parking, access or in respect to a material portion of the Property (an "**Immaterial Casualty**"), then Purchaser may not terminate this Agreement, and Closing shall be completed without abatement of the Purchase Price. In such event, (a) Seller and Purchaser shall jointly negotiate and resolve any all insurance claims with respect to said damage, (b) Seller shall not undertake or complete any repairs to the Property without first obtaining the Purchaser's prior written consent (which shall include the designation of the third party to complete such repair), and all such repairs shall be completed in accordance with applicable laws, regulations and ordinances, (c) at Closing, Seller shall pay over to Purchaser all insurance proceeds collected by Seller with respect to damage to the Property from such fire or other casualty (but (i) excluding all insurance proceeds payable on account of Seller's inventory, furniture, equipment and other personal property, and (ii) excluding all proceeds for so-called "contents coverage", and (iii) deducting any amount required to reimburse Seller for Seller's actual costs incurred in connection with the repair and restoration of the Property) and, to the extent such proceeds have not yet been applied to the repair and restoration of the Property as provided in this Section 8.01, or to reimburse Seller for the cost and expense therefor, and if any such proceeds have not been collected, Seller shall assign to Purchaser all its right, title and interest in and to the same, and (d) at Closing Seller shall credit against the Purchase Price the amount equal to the applicable deductibles under Seller's insurance policies for damage to the Real Property to the extent not otherwise paid or expended by Seller in connection with repair or restoration of the Property as a result of such fire or other casualty prior to the Closing. In the event the loss, damage or destruction is not an Immaterial Casualty, then Purchaser may elect in its sole discretion whether to terminate this Agreement or proceed to Closing.

Section 8.02 Condemnation. If, prior to Closing, Seller receives notice of the commencement of any condemnation proceeding or other proceeding in the nature of eminent domain in connection with any Material Portion of the Property or Improvements, Seller agrees to notify Purchaser in writing thereof. Purchaser then shall have the right, at Purchaser's option, to terminate this Agreement by giving written notice to Seller within five (5) Business Days after receipt of such notice. Upon such termination, the Deposit shall be returned to Purchaser and thereafter this Agreement shall be canceled with no further liability of either party to the other, except as specifically provided herein.

If Purchaser does not so terminate this Agreement, Purchaser shall proceed to Closing hereunder as if no such proceeding had commenced and will pay Seller the full Purchase Price in accordance with this Agreement; Seller shall assign to Purchaser all of its right, title and interest in and to any compensation for such condemnation, and Seller shall not negotiate or settle any claims for compensation prior to Closing without Purchaser's participation. For purpose of this Section 8.02, a "Material Portion" shall mean any change is made, or proposed to be made, to the current means of ingress and egress to the Property or to the roads or driveways adjoining the Property, or to change such ingress or egress or to change the grade thereof which in any such event materially impairs access to the Property, or any proposed taking of 5% or more of the total square footage of the Improvement.

ARTICLE IX NOTICES

Section 9.01 Delivery of Notices. Unless specifically stated otherwise in this Agreement, all notices, demands, consents, approvals, waivers, or other communications (for purposes of this Section 9.01 collectively referred to as "Notices") shall be in writing and delivered to Purchaser or Seller at the addresses set forth in Section 9.02, by one of the following methods:

- (a) Personal delivery, whereby delivery is deemed to have occurred at the time of delivery;
- (b) Overnight delivery by a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the Business Day following deposit with the courier; or
- (c) Electronic transmission (facsimile or email) provided that such transmission is completed no later than 5:00 pm Eastern on a Business Day and the original is also sent by personal delivery, overnight delivery, or by mail in the manner previously described, whereby delivery is deemed to have occurred at the end of the Business Day on which the electronic transmission is completed.

Section 9.02 Parties' Addresses.

(a) Unless changed in accordance with Section 9.02(b) of this Agreement, the addresses for all communications and notices shall be as follows:

If to Seller: Kenneth P. Silverman, Chapter 7 Trustee
 100 Quadrangle Suite 300
 Jericho, NY 11753
 EMAIL: kenneth.silverman@rimonlaw.com
 TEL: 516-479-6310

with copy to: Rimon PC
 100 Quadrangle Suite 300
 Jericho, NY 11753
 ATTN: Brian Powers
 EMAIL: brian.powers@rimonlaw.com

TEL: 516-479-6357

If to Purchaser: [●]

with copy to: [●]

(b) Any party may, by notice given in accordance with this Article, designate a different address or person for receipt of all communications or notices.

(c) Any notice under this Agreement may be given by the attorneys of the respective parties who are hereby authorized to do so on their behalf.

ARTICLE X TERMINATION

Section 10.01 Termination of Agreement.

(a) Termination by Purchaser. Purchaser may terminate this Agreement immediately upon written notice to Seller of the occurrence of any of the following, at which time all obligations of Purchaser hereunder shall be of no further force and effect:

(i) Purchaser is ready, willing, and able to perform and has properly served Seller with a Time is of the Essence demand and Seller has not properly rejected the same and not performed;

(ii) if there shall be a material breach by Seller of any material representation or warranty, or any material covenant or agreement contained in this Agreement, which breach cannot be cured or has not been cured within fifteen (15) days after the giving of written notice by Purchaser to Seller of such breach;

(iii)

(iv) if Seller is unable or unwilling to close within sixty (60) days following the date that the Sale Order becomes a Final Order.

(b) Termination by Seller. If Purchaser is unable or unwilling to close within sixty (60) days following the date that the Sale Order becomes a Final Order and provided that all conditions precedent to Closing have been satisfied and there shall not have been a material breach by Seller, Seller may terminate this Agreement upon written notice to Purchaser, at which time all obligations of Seller hereunder shall be of no further force and effect, except for those obligations specified in this Agreement to survive termination.

(c) Termination by Purchaser or Seller. Subject to Bankruptcy Court approval, the Parties may terminate this Agreement by mutual written consent of Seller and Purchaser.

(d) Extension of Time Periods. The time periods for termination of this Agreement set forth in this Section 10.01 may be extended upon the written agreement of the Parties without the further approval of the Bankruptcy Court.

Section 10.02 Procedure For Termination. If this Agreement is terminated by Purchaser or Seller, or both, pursuant to Section 10.01, written notice thereof shall promptly be given to the other Party, and upon the giving of such notice (or at such time as specified in the particular termination right set forth in Section 10.01), the transactions contemplated herein shall be abandoned and this Agreement shall terminate to the extent and with the effect provided by Section 10.03, without further action by the Parties.

Section 10.03 Effect of Termination. If either Seller or Purchaser terminates this Agreement pursuant to Section 10.01, all rights and obligations of the Parties hereunder shall terminate without any liability of any Party to any other Party (except for any Liability of any Party then in breach of this Agreement); provided that if such termination is the result of a breach or default hereunder by the non-terminating Party, then the non-breaching Party shall be entitled to seek any and all remedies available to the terminating Party at law or in equity.

ARTICLE XI DISPUTE RESOLUTION

Section 11.01 Dispute Resolution. The Bankruptcy Court shall retain jurisdiction to adjudicate any dispute that arises under this Agreement.

ARTICLE XII BANKRUPTCY COURT MATTERS

Section 12.01 Competing Transaction.

(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher or better competing bids (each, a “**Competing Bid**”) pursuant to the order of the Bankruptcy Court approving bidding procedures for the sale of the Property (the “**Bidding Procedures**”).

(b) If a Competing Bid is selected in conjunction with an auction (the “**Auction**”) but such bidder does not consummate the purchase of the Property and Purchaser is the second highest bidder (the “**Backup Bidder**”), Purchaser shall be subject to the rights and responsibilities of the Backup Bidder as set forth in the Bidding Procedures.

ARTICLE XIII ESCROW AGENT

Section 13.01 Escrow Terms. Title Insurance Company shall serve as the escrow agent (“**Escrow Agent**”) with regard to payment of closing costs set forth in Section 4.05 and payment of apportionments set forth in Section 4.06. Escrow Agent shall make disbursements as set forth in the Settlement Statement.

ARTICLE XIV CONFIDENTIALITY

Section 14.01 Confidential Information. Purchaser hereby agrees to hold as confidential all information disclosed to it by Seller and/or Debtor in connection with the transaction contemplated hereby and concerning the other, or otherwise gained through Purchaser's access to the Property ("**Seller Confidential Information**"). Seller hereby agrees to hold as confidential all information disclosed to it by Purchaser in connection with the transaction contemplated hereby ("**Purchaser Confidential Information**"). Seller Confidential Information and Purchaser Confidential Information may be collectively referred to as "**Confidential Information**", and expressly excludes any information that is a matter of public record in connection with the Chapter 7 Case, or was otherwise previously or is hereafter publicly disclosed (other than in violation of this Agreement or other confidentiality agreements to which such other party is a party). Each of Purchaser and Seller shall not release any such Confidential Information to third parties without the prior written consent of the other party, except (i) to its members, advisers, underwriters, analysts, employees, affiliates, officers, directors, consultants, lenders, investors, potential lenders and investors, accountants, legal counsel, governmental representatives or their agents, title companies or other advisors of any of the foregoing, provided that they are advised as to the confidential nature of such information and are instructed to maintain such confidentiality, (ii) to comply with any applicable law, rule (including, if applicable, the rules of an applicable stock exchange on which such party or its affiliates lists its securities) or regulation, and (iii) in any legal proceeding between the Seller and Purchaser in connection with this Agreement. Neither Seller nor Purchaser shall at any time issue a press release or otherwise communicate with media representatives regarding this sale and purchase unless such release or communication (x) has received the prior approval of the other party (which approval shall not be unreasonably withheld, conditioned or delayed) or (y) is required to comply with any applicable law, rule (including, if applicable, the rules of an applicable stock exchange on which such party or its affiliates lists its securities) or regulation.

Section 14.02 Return or Destruction of Confidential Information. As of the Closing Date or in the event of a termination of this Agreement, if applicable, such confidentiality shall be maintained by Purchaser and all Confidential Information in accordance with the written request of Seller shall be either promptly: (a) returned to Seller; or (b) destroyed by Purchaser, with any such destruction confirmed by Purchaser and its Transaction Parties in writing.

Section 14.03 Survival. The provisions of this Article shall survive the Closing Date or termination of this Agreement.

ARTICLE XV BROKERS

Section 15.01 Brokers. Purchaser and Seller each represent and warrant to each other that they dealt with no broker in connection with, nor has any broker had any part in bringing about, this transaction other than Cushman & Wakefield (the "**Broker**"). Seller shall pay the brokerage commission due Broker in accordance with the terms and conditions of a separate written agreement. Seller and Purchaser shall each indemnify, defend, and hold harmless the other from and against any claim of any broker or other person for any brokerage commissions, finder's fees, or other compensation in connection with this transaction if such claim is based in whole or in part by, through, or on account of,

any acts of the indemnifying party or its agents, employees, or representatives and from all losses, liabilities, costs, and expenses in connection with such claim, including without limitation, [reasonable] attorneys' fees, court costs, and interest.

Section 15.02 Survival. The provisions of this Article XV shall survive the Closing or the termination of this Agreement prior to the Closing.

ARTICLE XVI MISCELLANEOUS

Section 16.01 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina.

Section 16.02 Merger; No Representations. This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. This Agreement is entered into after full investigation, no party is relying upon any statement or representation not set forth in this Agreement, made by any other party.

Section 16.03 No Survival. Except as otherwise provided in this Agreement, no representations, warranties, covenants, or other obligations of Seller set forth in this Agreement shall survive the Closing and no action based thereon shall be commenced after the Closing.

Section 16.04 Limitation of Liability.

(a) No shareholder or agent of Seller, nor any Seller Related Party, shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement or any amendment or amendments to any of the foregoing made at any time or times, heretofore and hereafter, and Purchaser and its successors and assigns and, without limitation all other persons and entities, shall look solely to Seller's assets for the payment of any claim or for any performance and Purchaser, on behalf of itself and its successors and assigns, hereby waives any and all such personal liability.

(b) No shareholder or agent of Purchaser, nor any Purchaser Related Party shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and Seller and its successors and assigns and, without limitations, all other persons and entities, shall look solely to Purchaser's assets for the payment of any claim or for any performance, and Seller, on behalf of itself and its successors and assigns, hereby waives any and all such personal liability.

Section 16.05 Business Days. Whenever any action must be taken (including the giving of notices) under this Agreement during a certain time period (or by a particular date) that ends or occurs on a non-business day, then such period (or date) shall be extended until the next succeeding Business

Day. As used herein, the term “**Business Day**” shall mean any day other than a Saturday, a Sunday, or a legal holiday on which national banks are not open for general business in the State of New York.

Section 16.06 Modifications and Amendments. This Agreement cannot under any circumstance be modified or amended orally and no agreement shall be effective to waive, change, modify, terminate, or discharge this Agreement, in whole or in part, unless such agreement is in writing and is signed by both Seller and Purchaser.

Section 16.07 No Recording. Neither this Agreement, nor any memorandum of this Agreement, shall be recorded. The recording of this Agreement, or any memorandum of this Agreement, by Purchaser shall constitute a material default and shall entitle Seller to retain the Deposit and any interest earned thereon.

Section 16.08 Successors and Assigns; Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns. Purchaser may not assign or otherwise transfer this Agreement, or any of its rights or obligations hereunder, without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion. Any purported assignment without Seller's consent shall be void and of no force or effect. Any change in control of Purchaser or of any of the direct or indirect ownership interests in Purchaser, at any level or tier of ownership, whether in one transaction or a series of transactions, shall constitute an assignment for purposes of this Section 16.08.

Section 16.09 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect, invalidate, or render unenforceable any other term or provision of this Agreement. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

Section 16.10 Further Assurances. Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby, provided such documents are customarily delivered in real estate transactions in the State of North Carolina and do not impose any material obligations upon any party hereunder except as set forth in this Agreement.

Section 16.11 Counterparts. This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall together constitute but one and the same instrument.

Section 16.12 Headings. The captions or paragraph titles contained in this Agreement are for convenience and reference only and shall not be deemed a part of the text of this Agreement.

Section 16.13 No Waivers. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party providing the waiver. No waiver by either party of any failure or refusal to comply with any obligations under this Agreement shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

Section 16.14 No Offer. This Agreement shall not be deemed an offer or binding upon Seller or Purchaser until this Agreement is fully executed and delivered by Seller and Purchaser.

Section 16.15 Waiver of Jury Trial. SELLER AND PURCHASER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER ARISING IN TORT OR CONTRACT) BROUGHT BY SUCH PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

Section 16.16 Submission to Jurisdiction; Consent to Service of Process. Without limiting any Party's right to appeal any order of the Bankruptcy Court, (a) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any Claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated herein, and (b) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 9.02 hereof. The Parties hereby irrevocably waive, to the fullest extent permitted by Applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of the Parties hereby consents to process being served by any Party to this Agreement in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 9.02.

Section 16.17 Time of the Essence. The parties hereto acknowledge and agree that, except as otherwise expressly provided in this Agreement, TIME IS OF THE ESSENCE with respect to all time periods, dates and the payment and performance of all obligations under this Agreement (including, without limitation, the giving of Notices, the delivery of documents, and the funding of money). Whenever action must be taken by either party (including, without limitation, the giving of Notice, the delivery of documents, or the funding of money) under this Agreement, prior to the expiration of, by no later than, or on a particular date, unless otherwise expressly provided in this Agreement, such action must be completed by 5:00 p.m. Eastern on such date. However, notwithstanding anything to the contrary herein, whenever action must be taken by either party (including, without limitation, the giving of Notice, the delivery of documents, or the funding of money) under this Agreement prior to the expiration of, by no later than, or on a particular date that is not a Business Day, then such date shall be extended until the immediately following Business Day.

[SIGNATURE PAGE FOLLOWS]

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

PURCHASER:

[PURCHASER NAME], a[n] [STATE OF ORGANIZATION] [ENTITY TYPE]

By: _____

Name:

Title:

SELLER:

BUTH-NA-BODHAIGE, INC. dba THE BODY SHOP, a Delaware corporation

By: _____

Name:

Title:

SCHEDULES AND EXHIBITS

<u>Exhibit A</u>	Legal Description of Real Property
<u>Exhibit B</u>	Excluded Property
<u>Exhibit C</u>	Draft Deed
<u>Exhibit D</u>	Assignment and Assumption of Intangibles

Exhibit C

PURCHASE AND SALE AGREEMENT

between

KENNETH P. SILVERMAN, AS CHAPTER 7 TRUSTEE FOR

BUTH-NA-BODHAIGE, INC. dba THE BODY SHOP,

a Virginia corporation, Seller

and

LREP ACQUISITIONS III LLC,

a New Jersey limited liability company, Purchaser

dated as of

June 24, 2024

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PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (this “**Agreement**”), dated as of the 24 day of June, 2024, is entered into between Kenneth P. Silverman, as Chapter 7 Trustee of BUTH-NA-BODHAIGE, INC. dba THE BODY SHOP, a Virginia corporation (“**Seller**”), and LREP Acquisitions III LLC, a New Jersey limited liability company, or its assigns (“**Purchaser**”), each a “**Party**” and collectively the “**Parties**”.

RECITALS

WHEREAS, on March 8, 2024 (the “**Petition Date**”), BUTH-NA-BODHAIGE, INC. dba THE BODY SHOP, a Virginia corporation (“**Debtor**”) filed a voluntary petition for relief under chapter 7 of title 11 of the United States Code, 11 U.S.C. §101 et seq. (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”), Case No. 24-10392-dsj (the “**Chapter 7 Case**”); and

WHEREAS, prior to the Petition Date, Debtor and an affiliate of Purchaser entered into the Pre-Petition PSA (as defined below) pursuant to which Debtor agreed to sell the Property to Purchaser on terms and conditions set forth in the Pre-Petition PSA. In accordance with the Pre-Petition PSA, Purchaser deposited One Million dollars (\$1,000,000) into escrow held at Madison Title Agency, LLC (the “**Pre-Petition Escrow Agent**”) as earnest money for the sale (the “**Pre-Petition Deposit**”); and

WHEREAS, following the Petition Date, Kenneth P. Silverman was appointed as Chapter 7 Trustee of the Debtor’s bankruptcy estate, and is currently acting as Seller in such capacity;

WHEREAS, Seller wishes to sell to Purchaser and Purchaser wishes to acquire from Seller the Property (as hereinafter defined) on the terms and conditions set forth in this Agreement (the “**Sale**”); and

WHEREAS, the transactions contemplated by this Agreement is subject to an order of the Bankruptcy Court approving, *inter alia*, the sale of the Property to the Purchaser, consistent with terms, conditions and transactions contemplated by the Agreement; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, agreements, representations and warranties herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS

The following terms have the meanings specified or referred to in this Article I:

“**Affiliate**” means any person or entity which directly or indirectly controls, is controlled by, or is under common control with, any Person.

“**Alternate Transaction**” means a transaction or series of related transactions consummated by Seller pursuant to which Seller sells, transfers, leases or otherwise disposes of, directly or indirectly, all or substantially all of the Property to a party or parties other than Purchaser (or one or more designees of Purchaser).

“**Applicable Law**” means, with respect to any Person, any foreign, federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, guidance, plan, order, injunction, judgment, decree, ruling, charge or other similar requirement, including any Labor and Employment Law and Requirements, enacted, adopted, or promulgated by a Governmental Authority that is binding upon such Person, as amended.

“**Agreement**” has the meaning set forth in the preamble.

“**Bankruptcy Code**” has the meaning set forth in the recitals.

“**Bankruptcy Court**” has the meaning set forth in the recitals.

“**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure, as prescribed by the United States Supreme Court pursuant to Section 2075 of title 28 of the United States Code and as applicable to the Chapter 7 Case.

“**Bidding Procedures Order**” has the meaning set forth in Section 12.01.

“**Board**” means the governing board of an entity, including the board of directors, board of governors, board of trustees, or board of managers, as applicable.

“**Break-up Fee**” means three hundred thousand dollars and 00/100 (US \$300,000.00) plus actual and necessary expenses incurred by Purchaser in connection with this Agreement and Purchaser’s efforts, subsequent to the filing of the Chapter 7 Case, to negotiate and consummate the Sale up to one hundred thousand and 00/100 (US \$100,000.00).

“**Broker**” has the meaning set forth in Section 15.01.

“**Business**” refers to the Debtor’s business prior to its cessation of operations.

“**Business Day**” has the meaning set forth in Section 16.05.

“**Chapter 7 Case**” has the meaning set forth in the recitals.

“**Claim**” has the meaning ascribed to such term in Section 101(5) of the Bankruptcy Code.

“**Closing**” has the meaning set forth in Section 4.01.

“**Closing Date**” has the meaning set forth in Section 4.01.

“**Code**” has the meaning set forth in Section 4.02(c).

“**Confidential Information**” has the meaning set forth in Section 14.01.

“**Deed**” has the meaning set forth in Section 4.02(a).

“**Deposit**” has the meaning set forth in **Error! Reference source not found.1.**

“**Escrow Agent**” has the meaning set forth in **Error! Reference source not found..**

“**Excluded Property**” has the meaning set forth in Section 2.02.

“Final Order” means an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction that has not been reversed, vacated, or stayed and as to which (a) the time to appeal, petition for certiorari, or move for a stay, new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for stay, new trial, reargument, or rehearing shall then be pending or (b) if an appeal, writ of certiorari, stay, new trial, reargument, or rehearing has been sought, (i) such order or judgment shall have been affirmed by the highest court to which such order was appealed, certiorari shall have been denied, or a stay, new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and (ii) the time to take any further appeal, petition for certiorari, or move for a stay, new trial, reargument, or rehearing shall have expired; provided, however, that the possibility that a motion under section 502(j) of the Bankruptcy Code, Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state court rules of civil procedure may be, but has not been, filed with respect to such order shall not cause such order not to be a Final Order.

“Governmental Authority” means any domestic or foreign federal, state or local governmental authority, department, court or government, commission, tribunal or organization or any regulatory, administrative or other agency, or any political or other division, subdivision, department or branch of any of the foregoing.

“Governmental Authorizations” means any approval, consent, license, permit, waiver, registration, accreditation or other authorization issued, granted, given, made available or otherwise required by any Governmental Authority or pursuant to Applicable Law.

“Improvements” has the meaning set forth in Section 2.01(b).

“Land” has the meaning set forth in Section 2.01(a).

“Liens” means “any and all liens (including mechanics’, materialmen’s and other consensual and non-consensual liens and statutory liens), security interests, encumbrances, adverse rights, trusts, and claims, rights of distraint, reclamation claims, mortgages, deeds of trust, pledges, covenants, restrictions, hypothecations, charges, indentures, loan agreements, instruments, contracts, leases, licenses, options, rights of first refusal, rights of offset, recoupment, rights of recovery, judgments, orders and decrees of any Court or foreign or domestic governmental entity, claims for reimbursement, contribution, indemnity or exoneration, assignment, debts, charges, suits, rights of recovery, interests, products liability, alter-ego, environmental, successor liability, tax and other liabilities (including probate liabilities), causes of action and claims, to the fullest extent of the law, in each case whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, or known or unknown, whether imposed by agreement, understanding, law, equity or otherwise, or any other interest of any nature whatsoever of, on or with respect to any property or property interest.

“Notices” has the meaning set forth in Section 9.01.

“OFAC” has the meaning set forth in Section 6.01(g).

“Permitted Exceptions” has the meaning set forth in Section 5.02.

“**Person**” has the meaning ascribed to such term in Section 101(41) of the Bankruptcy Code.

“**Pre-Petition Deposit**” has the meaning set forth in the recitals.

“**Pre-Petition Escrow Agent**” has the meaning set forth in the recitals.

“**Pre-Petition PSA**” has the meaning set forth in Section 12.05.

“**Property**” has the meaning set forth in Section 2.01.

“**Purchase Price**” has the meaning set forth in Section 3.01.

“**Purchaser**” has the meaning set forth in the preamble.

“**Purchaser’s Costs**” has the meaning set forth in Section 5.04(b).

“**Sale**” has the meaning set forth in in the recitals.

“**Sale Motion**” has the meaning set forth in Section 12.01.

“**Sale Order**” means an order of the Bankruptcy Court in a form acceptable to the Purchaser in its sole and absolute discretion, authorizing and approving this Agreement and the sale and purchase of the Property hereunder.

“**Seller**” has the meaning set forth in the preamble.

“**Survey**” has the meaning set forth in Section 5.03(a)(ii).

“**Title Commitment**” has the meaning set forth in Section 5.03(a)(i).

“**Title Insurance Company**” shall be Madison Title Agency, LLC, or such other title company mutually selected by Purchaser and Seller.

“**Transaction Parties**” has the meaning set forth in Section 14.01.

“**Violations**” has the meaning set forth in Section 5.05.

ARTICLE II CONVEYANCE OF THE PROPERTY

Section 2.01 Subject of Conveyance. Seller agrees to sell and convey to Purchaser and Purchaser agrees to purchase from Seller, upon the terms and conditions hereinafter set forth, all right, title, and interest of the Debtor and its bankruptcy estate in and to the following (collectively referred to herein as the “**Property**”) free and clear of all Liens, Claims and interests in, to or against the Property, other than Liens securing the Permitted Exceptions, to the fullest extent permissible under Section 363(f) of the Bankruptcy Code:

(a) All that certain lot, piece, or parcel of land located at 5036 One World Way, Wake Forest, County of Wake, and State of North Carolina, as more particularly bounded and described in Exhibit A attached hereto and hereby made a part hereof (the “**Land**”);

(b) All buildings and improvements located on the Land and all of Debtor’s and its estate’s right, title, and interest in and to any and all fixtures attached thereto (collectively, the “**Improvements**”);

(c) All other rights of way, privileges, easements, licenses, and appurtenances relating to the Land; and

(d) All intangible property owned by Debtor arising from or used exclusively in connection with the ownership, use, operation or maintenance of the Land or the Improvements (collectively, the “**Intangible Property**”), including: all of Debtor’s right, title and interest in, to and under (to the extent assignable), any (i) assignable warranties and guaranties issued to Debtor in connection with the Property; (ii) all assignable certificates of occupancy, permits, licenses and certificates relating to the Land or the Improvements; and (iii) all assignable or deliverable surveys, drawings, plans, specifications, diagrams, space finish plans, third-party reports, environmental assessments, and other architectural or engineering work product relating to the Land or the Improvements.

Section 2.02 Excluded Property. Notwithstanding the foregoing, the sale of the Property contemplated by this Agreement shall not include the personal property and liabilities listed in Exhibit B attached hereto and made a part hereof (the “**Excluded Property**”), which Excluded Property is expressly excluded from such conveyance.

Section 2.03 AS-IS.

(a) Except as set forth in this Agreement, Purchaser acknowledges that Purchaser has made thorough inspections and investigations of the Property and Purchaser agrees to take title to the Property "AS-IS, WHERE IS, AND WITH ALL FAULTS" and in the condition existing as of the date of this Agreement, subject to reasonable use, ordinary wear and tear, and without any reduction in or abatement of the Purchase Price. Purchaser has undertaken all such investigations of the Property as Purchaser deems necessary or appropriate under the circumstances as to the status of the Property and the existence or nonexistence of curative action to be taken with respect to any hazardous or toxic substances on or discharged from the property, and based upon same, Purchaser is and will be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel, and officers.

(b) Neither party to this Agreement is relying on any statement or representation not expressly stated in this Agreement. Purchaser specifically confirms and acknowledges that in entering into this Agreement, Purchaser has not been induced by, and has not relied upon, whether express or implied, warranties, guaranties, promises, statements, inducements, representations, or information pertaining to the Property or its uses, the physical condition, environmental condition, state of title, income, expenses, or operation of the Property, or any other matter or thing with respect thereto, written or unwritten, whether made by Seller or any agent, employee, or other representative of Seller, or any broker or any other person representing

(or purporting to represent) Seller, which are not expressly set forth in this Agreement. Seller shall not be liable for or bound by any written or unwritten statements, representations, warranties, brokers' statements, or other information pertaining to the Property furnished by Seller, any broker, any agent, employee, or other actual (or purported) representative of Seller, or any person, unless and only to the extent the same are expressly set forth in this Agreement.

(c) Seller makes no warranty with respect to the presence of any hazardous or toxic substances on, above, beneath, or discharged from the Property (or any adjoining or neighboring property) or in any water on or under the Property. The Closing hereunder shall be deemed to constitute an express waiver of Purchaser's right to recover from Seller, and forever releases, covenants not to sue, and discharges Seller from, any and all damages, demands, claims, losses, liabilities, penalties, fines, liens, judgments, costs, or expenses whatsoever, including attorneys' fees and costs, whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the physical condition of the Property.

(d) The provisions of this Section 2.03 shall survive the Closing and shall not be deemed to have merged into any of the documents executed or delivered at the Closing.

Section 2.04 No Assumption of Liabilities. Except for any liabilities arising out of ownership of the Property after Closing, Purchaser does not and shall not be deemed to assume any obligations or liabilities in connection with the transactions contemplated by this Agreement.

ARTICLE III PURCHASE PRICE

Section 3.01 Purchase Price and Deposit. The purchase price to be paid by Purchaser to Seller for the Property is Ten Million and 00/100 Dollars (\$10,000,000.00) (the "**Purchase Price**"). The Purchase Price shall be paid as follows:

(a) **Initial Deposit.** Upon the mutual execution of this Agreement, the Parties shall issue a joint instruction to the Pre-Petition Escrow Agent to transfer: (i) Five Hundred Thousand and 00/100 Dollars (\$500,000.00) of the Pre-Petition Deposit the ("**Initial Deposit**") to the Seller, to be held in Seller's dedicated earnest monies account for the Debtor's estate ("**Trustee Account**"), and (ii) the remaining amount of the Pre-Petition Deposit shall be transferred to Purchaser.

(b) **Additional Deposit.** In the event Purchaser is designated as the Successful Bidder or Backup Bidder (as defined in the Bidding Procedures Order) at the conclusion of the Auction, Purchaser shall make an additional deposit of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) to the Trustee Account (the "**Additional Deposit**," and together with the Initial Deposit, the "**Deposit**"). Seller shall retain the Deposit as liquidated damages if this Agreement is properly terminated by Seller pursuant to Section 10.01(b) or upon the failure of Purchaser to consummate the Sale in accordance with the terms of this Agreement, provided that all conditions precedent to Closing have been satisfied and there shall not have been a material breach by Seller of any representation, warranty or covenant contained in this Agreement.

(c) **Balance at Closing.** The Purchase Price, less the Deposit, shall be paid to Seller on the Closing Date, subject to any credits or apportionments as provided for under this Agreement, by certified or official bank checks made payable to Seller or by one or more wire transfers of immediately available federal funds to Seller on the Closing Date. The Deposit shall be applied toward the Purchase Price on the Closing Date.

Section 3.02 No Financing. Purchaser expressly agrees and acknowledges that Purchaser's obligations to pay the Purchase Price and otherwise consummate the transactions contemplated hereby are not in any way conditioned upon Purchaser's ability to obtain financing of any type or nature whatsoever (that is, whether by way of debt financing, equity investment, or otherwise).

ARTICLE IV CLOSING

Section 4.01 Closing Date. The closing of the transactions contemplated herein (the "Closing") shall take place within three (3) business days after satisfaction or waiver of all conditions to the obligations of Seller and Purchaser to consummate the transactions contemplated herein (other than conditions with respect to actions Seller and Purchaser will take at the Closing) or such other date as Purchaser and Seller may mutually determine in writing (the "Closing Date").

Section 4.02 Seller's Closing Deliverables. At Closing, Seller shall deliver or cause to be delivered to Purchaser (or Title Insurance Company, as appropriate), the following, executed, certified, and acknowledged by Seller, as appropriate:

(a) One (1) original deed (the "Deed") in substantially the form attached hereto as Exhibit C, duly executed with the appropriate acknowledgment form and otherwise in proper form for recording so as to convey title to the Property as required by this Agreement. The delivery of the Deed by Seller, and the acceptance by Purchaser, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed pursuant to this Agreement, except those obligations of Seller which are expressly stated in this Agreement to survive the Closing.

(b) An assignment by Seller and an assumption by Purchaser, in the form attached hereto as Exhibit D (the "Assignment and Assumption of Intangibles"), duly executed and acknowledged by Seller, of all of Seller's right, title, and interest in and to all Intangible Property.

(c) A certification that Seller is not a "foreign person" as such term is defined in Section 1445 of the Internal Revenue Code, as amended and the regulations thereunder (collectively, the "Code"), which certification shall be signed under penalty of perjury.

(d) Originals, or copies certified by Seller as being complete, of all applicable bills, invoices, fuel readings, and other items that shall be apportioned as of the Closing Date.

(e) A counterpart of a closing statement jointly prepared by Seller and Purchaser reflecting the prorations and adjustments required under Section 4.06 of this Agreement and the balance of the Purchase Price due Seller (the "Settlement Statement").

(f) All keys, key cards, and access codes to any portion of the Property, to the extent in Seller's possession or control.

(g) All other documents reasonably necessary or otherwise required by the Escrow Agent and Title Insurance Company to consummate the transaction contemplated by this Agreement and such other mutually acceptable documents as may be reasonably necessary or appropriate to effect the consummation of the transaction which is the subject of this Agreement.

Section 4.03 Purchaser's Closing Deliverables. On the Closing Date, Purchaser shall deliver or cause to be delivered to Seller (or Title Insurance Company, as appropriate), the following, executed, certified, and acknowledged by Purchaser, as appropriate:

(a) The balance of the Purchase Price as set forth in Section 3.01(c).

(b) Purchaser shall, where applicable, join with Seller in the execution and delivery of the closing documents and instruments required under Section 4.02 of this Agreement.

(c) An organizational resolution of Purchaser authorizing the transaction contemplated hereby and the execution and delivery of the documents required to be executed and delivered hereunder.

(d) All other documents reasonably necessary or otherwise required by the Escrow Agent or the Title Insurance Company to consummate the transactions contemplated by this Agreement and such other mutually acceptable documents as may be reasonably necessary or appropriate to effect the consummation of the transaction which is the subject of this Agreement.

Section 4.04 Conditions to Closing. The obligations of the Purchaser hereunder are, at Purchaser's option, subject to the satisfaction, on or prior to the date of the Closing, of the following conditions:

(a) Accuracy of Representations; Performance of Obligations. Seller will have performed Seller's obligations hereunder required to have been performed before the date of the Closing in all material respects, and the representations and warranties of the Seller contained in Article VI of this Agreement will be true and correct in all material respects (except for such representations and warranties that are qualified by their terms by a reference to materiality, which representations and warranties as so qualified will be true in all respects, and representations and warranties that relate to a certain date, which shall be true and correct as of such date) on and as of the date of the Closing with the same effect as though such representations and warranties had been made on and as of such date.

(b) Free and Clear. The Property shall be free and clear of all Liens, Claims and interests in, to or against the Property, other than Liens securing the Permitted Exceptions, to the fullest extent permissible under Section 363(f) of the Bankruptcy Code.

(c) Closing Deliverables. The Seller shall have fulfilled each of its closing deliverables as set forth in section 4.02 of this Agreement.

(d) Sale Order. On or before October 31, 2024 (unless the Parties mutually agree to extend such date), the Bankruptcy Court shall have entered the Sale Order, in form and substance acceptable to Purchaser in its sole discretion, which shall have become a Final Order and provide, among other things, that the Sale is (i) free and clear of all Liens, Claims, encumbrances, interests, and rights of set-off, whether known or unknown, disputed, contingent, actual, or otherwise, arising prior to closing, pursuant to Section 363(f) of the Bankruptcy Code, (ii) by a good faith purchaser entitled to the protection of Section 363(m) of the Bankruptcy Code, and (iii) with no successor liability.

(e) Bidding Procedures Order. The Bankruptcy Court shall have entered the Bidding Procedures Order on or before September 30, 2024 (unless the Parties mutually agree to extend such date), in form and substance acceptable to Purchaser in its sole discretion.

(f) Vacant Property. The Property shall be fully vacant as set forth in Section 7.04 of this Agreement.

(g) Additional Documents. Purchaser will have received all such further instruments and documents as the Purchaser may reasonably require to consummate the Sale.

Section 4.05 Closing Costs.

(a) Seller and Purchaser shall each pay the fees and expenses of its own counsel in connection with the preparation and negotiation of this Agreement. The Deed and other agreements and instruments related to the transaction contemplated by this Agreement and such legal costs shall not be part of the closing costs; provided, however, that if any legal action is instituted under this Agreement, the prevailing party in such action shall be entitled to recover from the other party costs related to such legal action, including reasonable attorneys' fees and costs in all trial, appellate, post-judgment, and bankruptcy proceedings.

(b) Seller shall pay:

(i) The commission owed to the Broker, if any, pursuant to Article XIII of this Agreement;

(ii) All recording fees for the release of any Liens on the Property, as required pursuant to the terms of this Agreement;

(iii) Any transfer taxes and sales taxes payable in connection with the transaction contemplated by this Agreement;

(iv) All costs related to the Chapter 7 Case.

(c) Purchaser shall pay:

(i) The costs charged by the Title Insurance Company, including, without limitation, costs related to the Title Commitment, any premiums, title endorsements, and affirmative insurance;

- (ii) The costs related to the Survey and any other survey or survey update;
- (iii) Any other fees or costs related to Purchaser's due diligence reviews; and
- (iv) All costs related to the recording fees payable in connection with the recording of the Deed and Purchaser's lender's security instruments, if any.

Section 4.06 Apportionments. The following shall be apportioned as of 11:59 p.m. Eastern of the date immediately preceding the Closing Date, unless expressly provided for otherwise:

(a) All real estate taxes based on the fiscal year for which they are assessed and any assessments. If the Closing shall occur before a new tax rate is fixed, the apportionment of real estate taxes shall be upon the basis of the tax rate for the preceding fiscal period applied to the latest assessed valuation. If the Property shall be, or has been, affected by any assessments or special assessments payable in a lump sum or which are, or may become, payable in installments, of which the first installment is then a charge or lien, or has already been paid, then at the Closing such amounts shall be paid or apportioned, as the case may be in the following manner:

(i) Any such assessments or installments, or portion thereof, payable on or after the Closing Date shall be the responsibility of Purchaser; and

(ii) Any such assessments or installments, or portion thereof, payable prior to the Closing Date shall be the responsibility of Seller.

(b) All water and sewer charges based on the fiscal year for which they are assessed, unless the meters are read on the date immediately preceding the Closing Date.

(c) Utilities, fuel, gas, and electric charges based on most recently issued bills, unless the meters are read on the date immediately preceding the Closing Date.

(d) All other items customarily apportioned in connection with sales of buildings substantially similar to the Property in the State of North Carolina.

Section 4.07 Miscellaneous. Any miscellaneous adjustments payable by either Purchaser or Seller, as the case may be, that occur at the Closing may be paid at the Closing by delivery of personal or business checks, provided, however, that such miscellaneous adjustments do not exceed One Thousand and 00/100 Dollars (\$1,000.00). Any errors in calculations or apportionments shall be corrected or adjusted as soon as practicable after the Closing Date. The provisions of this Section 4.07 and Section 4.06 shall survive the Closing.

ARTICLE V TITLE MATTERS AND VIOLATIONS

Section 5.01 Acceptable Title. Seller shall convey, and Purchaser shall accept, such title to the Property that the Title Insurance Company is willing to insure, subject to the matters set forth in this Agreement. Seller shall convey, and Purchaser shall accept, fee simple title to the Property in accordance with the terms and conditions of this Agreement, and subject to:

- (a) The Permitted Exceptions; and
- (b) Such other matters as any Title Insurance Company shall be willing to omit as exceptions to coverage.

Section 5.02 Permitted Exceptions. The Property shall be sold, assigned, and conveyed by Seller to Purchaser, and Purchaser shall accept and assume same, subject to the following matters (collectively, the “**Permitted Exceptions**”):

- (a) Any and all present and future zoning, building, environmental and other laws, statutes, ordinances, codes, rules, regulations, requirements, or executive mandates of all Governmental Authorities having jurisdiction with respect to the Property, including, without limitation, landmark designations and all zoning variances and special exceptions, if any.
- (b) Any state of facts that an accurate survey of the Property would disclose, provided such facts do not render title unmarketable.
- (c) All presently existing and future liens for unpaid real estate taxes, assessments, and water and sewer charges that are not due and payable as of the Closing Date, subject to any apportionments as provided for in this Agreement.
- (d) All covenants, restrictions, and rights, and all easements and agreements for the erection and/or maintenance of water, gas, steam, electric, telephone, sewer or other utility pipelines, poles, wires, conduits, or other like facilities, and appurtenances thereto, over, across, and under the Property.
- (e) Any lien or encumbrance arising out of the acts or omissions of the Purchaser.
- (f) Any exceptions disclosed on Schedule B of the Title Commitment (as hereinafter defined) which will be extinguished upon the transfer of the Property.
- (g) The standard conditions and exceptions to title contained in the form of title policy issued to Purchaser by the Title Insurance Company.
- (h) Such other matters as any reputable title insurer licensed to do business in the State of North Carolina shall be willing, without special premium, to omit as exceptions to title insurance coverage.

Section 5.03 Title.

- (a) Purchaser shall promptly order at its sole cost and expense:
 - (i) A commitment for title insurance from the Title Insurance Company, together with copies of any tax search, departmental or municipal searches, and all instruments giving rise to any defects or exceptions to title to the Property (collectively, the “**Title Commitment**”), which the parties shall instruct the Title Insurance Company to deliver to counsel for both Purchaser and Seller concurrently; and

- (ii) Either an update of an existing survey or a new survey of the Property, prepared by a surveyor licensed in the state where the Property is located (“**Survey**”), which the parties shall instruct the surveyor to deliver the Survey to counsel for both Purchaser and Seller concurrently.
- (b) No later than ten (10) Business Days after receipt of the Title Commitment and Survey, Purchaser will notify Seller of Purchaser’s objections to title (other than Permitted Exceptions) including matters based on the Survey (“**Title Objection Notice**”).
- (c) Not later than five (5) Business Days after receipt of Purchaser’s Title Objection Notice, Seller will notify Purchaser whether or not Seller will remove the title defects (“**Title Defects**”) specified in the Title Objection Notice. If Seller elects to cure the Title Defects, then Seller shall be obligated to remove such Title Defects from Purchaser’s Title Commitment at Seller’s sole cost and expense prior to Closing. If Seller notifies Purchaser within the five (5) Business Day period that Seller does not intend to remove the Title Defects specified in the Title Objection Notice (or if Seller does not respond to Purchaser’s Title Objection Notice within such five (5) Business Day period, in which case Seller shall be deemed to have elected not to remove such Title Defects, then Purchaser may, at its option, either (i) terminate this Agreement in which case Purchaser shall receive back the Deposit and the parties hereto shall have no further obligations under this Agreement, except pursuant to the provisions which expressly survive termination of this Agreement, or (ii) accept title at Closing subject to the Title Defects specified in the Title Objection Notice, without any reduction or adjustment in the Purchase Price.
- (d) If Seller is unable to remove all such Title Defects which Seller has expressly agreed to remove on or before the Closing Date, subject to the terms hereof, then Purchaser may at its option: (i) waive such Title Defects and proceed to close the transaction, or (ii) terminate this Agreement by delivering written notice to Seller, in which event the Deposit shall be returned to Purchaser and the parties hereto shall have no further obligations under this Agreement, except pursuant to the provisions which expressly survive termination of this Agreement. If any supplemental or subsequent title or “run down” report issued by the Title Insurance Company discloses any liens, encumbrances, easements, restrictions, agreements, encroachments or other exceptions to title or the Survey not caused by Purchaser or its agents (collectively, “**New Title Defects**”), Purchaser shall have the right to object to the New Title Defects by notifying Seller in writing (a “**Run Down Objection Notice**”) of any such New Title Defects within five (5) Business Days after Purchaser’s receipt of such New Title Defects. If Seller is unable or unwilling to remove any such New Title Defects in accordance with the requirements hereof, Seller shall so notify Purchaser within five (5) days of receipt of the Run Down Objection Notice and Purchaser shall have the right to accept such title as Seller shall be able to convey or to terminate this Agreement, by notice delivered to Seller within five (5) days following receipt of the New Seller Title Notice. If Purchaser elects to terminate this Agreement by delivering written notice thereof to Seller, then the Deposit shall be returned to Purchaser and the parties hereto shall have no further obligations under this Agreement, except pursuant to the provisions which expressly survive termination of this Agreement.

Section 5.04 Seller’s Inability to Convey.

(a) If, on the Closing Date, Seller fails or is unable to convey title to the Property in accordance with this Agreement, Seller shall be entitled, upon written notice delivered to Purchaser on or prior to the Closing Date, to reasonable adjournments of the Closing one or more times for a period not to exceed sixty (60) days in the aggregate to enable Seller to convey such title to the Property.

(b) If Seller does not so elect to adjourn the Closing, and on the Closing Date, fails or is unable to convey title subject to and in accordance with the provisions of this Agreement, Purchaser may either: (i) terminate this Agreement by written notice to Seller delivered on or before the Closing Date, in which event Purchaser shall be entitled to a return of the Deposit, and this Agreement shall thereupon be deemed terminated and of no further effect, and neither party hereto shall have any obligations to the other hereunder or by reason hereof, except for the provisions hereof that expressly survive termination of this Agreement; or (ii) complete the purchase (with no reduction in the Purchase Price) with such title as Seller is able to convey on the Closing Date.

(c) If Seller elects to adjourn the Closing as provided in Section 5.04(a) above, this Agreement shall remain in effect for the period or periods of adjournment, in accordance with its terms. If, on the adjourned Closing Date, Seller fails or is unable to convey title to the Property subject to and in accordance with the provisions of this Agreement, Purchaser shall make its election between clauses (i) and (ii) of Section 5.04(b) above, by written notice to Seller given not later than the adjourned Closing Date. If Purchaser shall fail to give such notice as aforesaid, Purchase shall be deemed to have elected clause (ii) above and the Closing shall take place within three (3) Business Days following the adjourned Closing Date.

(d) Notwithstanding anything to the contrary contained in this Agreement, Seller shall not be required to take or bring any action or proceeding or any take other steps to remove any defect in or objection to title or to fulfill any condition precedent to Purchaser's obligations under this Agreement or to expend any moneys therefor, nor shall Purchaser have any right of action against Seller therefor, at law or in equity, except that Seller shall, on or prior to the Closing, pay, discharge, or remove of record or cause any Liens to be paid, discharged, or removed of record in accordance with the Sale Order, at Seller's sole cost and expense.

(e) Notwithstanding anything in this Section 5.04 above to the contrary, Purchaser may at any time accept such title as Seller can convey, without reduction of the Purchase Price or any credit or allowance on account thereof or any claim against Seller.

Section 5.05 Violations. Notwithstanding anything to the contrary in this Agreement, Purchaser shall accept title to the Property subject to any and all violations or any notes or notices of violations of law or municipal ordinances, orders, or requirements noted or issued prior to, on or after the date of this Agreement (collectively, the "**Violations**"), if any, provided the cost to cure such Violations does not exceed Twenty-Five Thousand and 00/100 Dollars (\$25,000.00). Purchaser acknowledges and accepts that Seller shall not be obligated to comply with or take any action or incur any expense in connection with any Violations. If requested by Purchaser, Seller shall furnish Purchaser with an authorization to make any required violation searches against the Property. In the event the cost to cure such Violations does exceed Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), then Purchaser shall have the right to either (i) request that Seller cure such Violations within fifteen (15)

Business Days and Seller, in its sole discretion may elect to cure such Violation; provided, however, that if such Violation cannot be reasonably cured within said period, Seller may apply a credit toward the Purchase Price at Closing equal to the amount that the cost to cure such Violations exceeds Twenty-Five Thousand and 00/100 Dollars (\$25,000); if Seller does not cure the Violation or apply said credit, Purchaser shall have the option to terminate this Agreement by written notice to Seller delivered on or before the Closing Date, in which event Purchaser shall be entitled to a return of the Deposit, and this Agreement shall thereupon be deemed terminated and of no further effect, and neither party hereto shall have any obligations to the other hereunder or by reason hereof, except for the provisions hereof that expressly survive termination of this Agreement; or (ii) complete the purchase (with no reduction in the Purchase Price) on the Closing Date.

ARTICLE VI REPRESENTATIONS AND WARRANTIES

Section 6.01 Seller's Representations and Warranties. Seller represents and warrants to Purchaser on and as of the date of this Agreement as follows:

(a) Seller is the permanent chapter 7 Trustee of the Debtor's bankruptcy estate, pursuant to Bankruptcy Code sections 701 and 702(d).

(b) Except for such authorization as is required by the Bankruptcy Court, Seller has full corporate power and authority to execute and deliver this Agreement and, subject to such authorization as is required by the Bankruptcy Court and any required approval by a Court of competent jurisdiction to perform its obligations hereunder. Without limiting the generality of the foregoing, the Board of Seller has duly authorized the execution, delivery and performance of this Agreement by Seller. This Agreement constitutes, and any and all other closing documents to be executed by Seller pursuant hereto, when executed, will constitute, the valid and legally binding obligation of Seller, enforceable in accordance with their terms and conditions, except as enforceability against Seller may be restricted, limited or delayed by applicable bankruptcy, moratorium or other Laws affecting creditors' rights generally and except as enforceability may be subject to general principles of equity..

(c) Seller is not a "foreign person" within the meaning of Section 1445 of the Code.

(d) Subject to Bankruptcy Court approval and any other required approval by a Court of competent jurisdiction, if any, neither the execution and delivery of this Agreement, the consummation of the transactions contemplated herein (including each Closing Document required to be delivered by Seller at Closing), nor the fulfillment of the terms hereof by Seller, will (i) violate any order or award of any court, administrative agency or governmental body applicable to Seller; (ii) constitute a violation by Seller of any Applicable Law; or (iii) conflict with or violate any charter document of Seller.

(e) To Seller's actual knowledge, there is no pending or threatened litigation or condemnation action against the Property or against Seller with respect to the Property as of the date of this Agreement.

(f) Seller has not entered into any service or equipment leasing contracts relating to the Property.

(g) Seller is not, and will not become, a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

(h) Seller has not received written notice from any governmental agency having jurisdiction over the Property of any uncured violation of any applicable laws, ordinances, rules and regulations, including without limitation, zoning, development, construction code and environmental laws.

(i) Except as may be disclosed in the Phase I prepared by AEI dated February 1, 2024, Seller has not received written notice from any governmental authority confirming the presence or release of any hazardous or toxic substances, in, on or under the Property, and Seller is not otherwise aware of the presence of any hazardous or toxic substances or of any releases or potential releases at the Property in violation of environmental laws that have not been remediated.

Section 6.02 Purchaser’s Representations and Warranties. Purchaser represents and warrants to Seller on and as of the date of this Agreement and on and as of the Closing Date as set forth in this Section 6.02.

(a) Purchaser is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of New Jersey.

(b) Purchaser has full power and authority to execute and deliver this Agreement and, subject to such authorizations as required by the Bankruptcy Court and any other required approval by a Court of competent jurisdiction, if any, to perform its obligations hereunder. The execution, delivery and performance of this Agreement and all other agreements contemplated hereby have been duly authorized by all requisite corporate action of Purchaser. This Agreement constitutes, and any and all other closing documents to be executed by Purchaser pursuant hereto when executed will constitute, the valid and legally binding obligation of Purchaser, enforceable in accordance with their terms and conditions, except as enforceability against Purchaser may be restricted, limited or delayed by applicable bankruptcy, moratorium or other Laws affecting creditors’ rights generally and except as enforceability may be subject to general principles of equity.

(c) Subject to Bankruptcy Court approval, and any other required approval by a Court of competent jurisdiction, if any, neither the execution and delivery of this Agreement, the consummation of the transactions contemplated herein (including each Closing Document required to be delivered by Purchaser at Closing), nor the fulfillment of the terms hereof by

Purchaser, will (i) violate any Applicable Law to which Purchaser is subject or any provision of its charter, bylaws, or other governing documents or (ii) conflict with, violate or result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Purchaser is a party or by which it is bound or to which any of its assets are subject.

(d) Purchaser is not required to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated herein (including each Closing Document required to be delivered by Purchaser at Closing), except for such notices, consents and approvals as have already been given or obtained, those required under or in relation to those required by the Bankruptcy Court.

(e) Purchaser has not violated any contract, agreement, or other instrument to which Purchaser is a party nor any judicial order, judgment, or decree to which Purchaser is bound by: (i) entering into this Agreement; (ii) executing any of the documents Purchaser is obligated to execute and deliver on the Closing Date or (iii) performing any of its duties or obligations under this Agreement or otherwise necessary to consummate the transactions contemplated by this Agreement.

(f) To Purchaser's actual knowledge, there are no actions, lawsuits, litigation, or proceedings pending or threatened in any court or before any governmental or regulatory agency that affect Purchaser's power or authority to enter into or perform this Agreement. There are no judgments, orders, or decrees of any kind against Purchaser unpaid or unsatisfied of record, or, to the best of Purchaser's knowledge, threatened against Purchaser, which would have any material adverse effect on the business or assets or the condition, financial or otherwise, of Purchaser or the ability of Purchaser to consummate the transactions contemplated by this Agreement.

(g) Except for the express representations and warranties of Seller found in Section 6.01, Purchaser is acquiring the Property on an "AS IS, WHERE IS" basis, without any representation or warranty of any kind or nature whatsoever, express or implied, and Purchaser acknowledges that no such representations or warranties have been made except as set forth in writing herein. In deciding whether to acquire the Property, Purchaser is relying solely on Purchaser's investigation of the Property.

(h) Purchaser is not, and will not become, a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations of OFAC (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

ARTICLE VII PRE-CLOSING COVENANTS

The parties agree as follows with respect to the period between the date of mutual execution of this Agreement and the Closing:

Section 7.01 General. Each of the Parties will use its commercially reasonable efforts to take all actions and to do all things reasonably necessary in order to consummate and make effective the transactions contemplated herein (including satisfaction, but not waiver, of the conditions to Closing set forth in this Agreement).

Section 7.02 Intentionally Omitted.

Section 7.03 Maintenance and Repairs. Seller shall cause the Property, and the Improvements, to be maintained in substantially the same manner as prior to the date of this Agreement pursuant to Seller's normal course of Business, subject to reasonable wear and Article VIII of this Agreement.

Section 7.04 Removal of Assets Prior to Closing. Except as otherwise agreed by the Parties, Seller shall deliver the Property fully vacant, including, without limitation, from any and all inventory and racking (if Purchaser requests, on or before August 31, 2024, that such racking be removed prior to Closing) which shall be fully removed and vacated from the Property at the Seller's sole expense. If Purchaser does not request that the racking be removed, then such racking shall remain at the Property.

Section 7.05 Additional Covenants of Seller Pending Closing. Seller covenants and agrees that, up to and through the Closing:

(a) Seller shall maintain its existing insurance coverage.

(b) Seller shall give Purchaser prompt notice of: (i) any actual or threatened condemnation of all or any portion of the Property of which Seller receives a written notice, (ii) any actual or threatened enforcement action by any governmental agency relating to the use, condition, or environmental condition of the Property of which Seller received a written notice, and (iii) the commencement of any action by any party seeking relief which could result in the imposition of a lien on the Property, (iv) any rezoning of the Property, (v) the filing in a court of competent jurisdiction of any action by any party seeking relief against Seller or the Property that would result in the imposition of a lien on the Property that will be binding on the Property following Closing, (vi) any casualty to the Property, (vii) written notice from a governmental authority of violations affecting the Property, (viii) all judgments, claims, and litigation affecting Seller or any part of the Property, and (ix) Seller obtaining actual knowledge that any representations or warranties made by Seller herein are not true, accurate, and/or complete.

(c) Seller shall not enter into contract affecting the Property that would bind Purchaser or run with the land, which cannot be terminated by Seller prior to Closing or upon thirty (30) days' notice without charge, cost, penalty or premium to Purchaser.

**ARTICLE VIII
RISK OF LOSS**

Section 8.01 Risk of Loss. Seller shall maintain its current liability and casualty insurance on the Property. If prior to Closing there shall be any damage or destruction to the Property or any of them by fire or other casualty, Seller shall give prompt notice thereof to Purchaser. So long as the cost of the repairs required to complete restoration of the loss, damage or destruction is not reasonably expected to exceed \$400,000 (as determined by Seller's insurance adjuster) and does not eliminate parking, access or in respect to a material portion of the Property (an "**Immaterial Casualty**"), then Purchaser may not terminate this Agreement, and Closing shall be completed without abatement of the Purchase Price. In such event, (a) Seller and Purchaser shall jointly negotiate and resolve any all insurance claims with respect to said damage, (b) Seller shall not undertake or complete any repairs to the Property without first obtaining the Purchaser's prior written consent (which shall include the designation of the third party to complete such repair), and all such repairs shall be completed in accordance with applicable laws, regulations and ordinances, (c) at Closing, Seller shall pay over to Purchaser all insurance proceeds collected by Seller with respect to damage to the Property from such fire or other casualty (but (i) excluding all insurance proceeds payable on account of Seller's inventory, furniture, equipment and other personal property, and (ii) excluding all proceeds for so-called "contents coverage", and (iii) deducting any amount required to reimburse Seller for Seller's actual costs incurred in connection with the repair and restoration of the Property) and, to the extent such proceeds have not yet been applied to the repair and restoration of the Property as provided in this Section 8.01, or to reimburse Seller for the cost and expense therefor, and if any such proceeds have not been collected, Seller shall assign to Purchaser all its right, title and interest in and to the same, and (d) at Closing Seller shall credit against the Purchase Price the amount equal to the applicable deductibles under Seller's insurance policies for damage to the Real Property to the extent not otherwise paid or expended by Seller in connection with repair or restoration of the Property as a result of such fire or other casualty prior to the Closing. In the event the loss, damage or destruction is not an Immaterial Casualty, then Purchaser may elect in its sole discretion whether to terminate this Agreement or proceed to Closing.

Section 8.02 If, prior to Closing, Seller receives notice of the commencement of any condemnation proceeding or other proceeding in the nature of eminent domain in connection with any Material Portion of the Property or Improvements, Seller agrees to notify Purchaser in writing thereof. Purchaser then shall have the right, at Purchaser's option, to terminate this Agreement by giving written notice to Seller within five (5) Business Days after receipt of such notice. Upon such termination, the Deposit shall be returned to Purchaser and thereafter this Agreement shall be canceled with no further liability of either party to the other, except as specifically provided herein. If Purchaser does not so terminate this Agreement, Purchaser shall proceed to Closing hereunder as if no such proceeding had commenced and will pay Seller the full Purchase Price in accordance with this Agreement; Seller shall assign to Purchaser all of its right, title and interest in and to any compensation for such condemnation, and Seller shall not negotiate or settle any claims for compensation prior to Closing without Purchaser's participation. For purpose of this Section 8.02, a "Material Portion" shall mean any change is made, or proposed to be made, to the current means of ingress and egress to the Property or to the roads or driveways adjoining the Property, or to change such ingress or egress or to change the grade thereof which in any such event materially impairs access to the Property, or any proposed taking of 5% or more of the total square footage of the Improvement.

ARTICLE IX NOTICES

Section 9.01 Delivery of Notices. Unless specifically stated otherwise in this Agreement, all notices, demands, consents, approvals, waivers, or other communications (for purposes of this Section 9.01 collectively referred to as “**Notices**”) shall be in writing and delivered to Purchaser or Seller at the addresses set forth in Section 9.02, by one of the following methods:

(a) Personal delivery, whereby delivery is deemed to have occurred at the time of delivery;

(b) Overnight delivery by a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the Business Day following deposit with the courier; or

(c) Electronic transmission (facsimile or email) provided that such transmission is completed no later than 5:00 pm Eastern on a Business Day and the original is also sent by personal delivery, overnight delivery, or by mail in the manner previously described, whereby delivery is deemed to have occurred at the end of the Business Day on which the electronic transmission is completed.

Section 9.02 Parties’ Addresses.

(a) Unless changed in accordance with Section 9.02(b) of this Agreement, the addresses for all communications and notices shall be as follows:

If to Seller: Kenneth P. Silverman, Chapter 7 Trustee
100 Quadrangle Suite 300
Jericho, NY 11753
EMAIL: kenneth.silverman@rimonlaw.com
TEL: 516-479-6310

with copy to: Rimon PC
100 Quadrangle Suite 300
Jericho, NY 11753
ATTN: Brian Powers
EMAIL: brian.powers@rimonlaw.com
TEL: 516-479-6357

If to Purchaser: LREP Acquisitions III LLC
c/o The Lightstone Group
1985 Cedar Bridge Avenue
Lakewood, NJ 08701
ATTN: Joseph E. Teichman, EVP and General Counsel
EMAIL: jteichman@lightstonegroup.com

with copy to: Cole Schotz. P.C.
1325 Avenue of the Americas, 19th Floor
New York, New York, 10019

ATTN: Rab N. Nalavala
EMAIL: malavala@coleschotz.com

(b) Any party may, by notice given in accordance with this Article, designate a different address or person for receipt of all communications or notices.

(c) Any notice under this Agreement may be given by the attorneys of the respective parties who are hereby authorized to do so on their behalf.

ARTICLE X TERMINATION

Section 10.01 Termination of Agreement.

(a) Termination by Purchaser. Purchaser may terminate this Agreement immediately upon written notice to Seller of the occurrence of any of the following, at which time all obligations of Purchaser hereunder shall be of no further force and effect:

(i) Purchaser is ready, willing, and able to perform and has properly served Seller with a Time is of the Essence demand and Seller has not properly rejected the same and not performed;

(ii) if there shall be a material breach by Seller of any material representation or warranty, or any material covenant or agreement contained in this Agreement, which breach cannot be cured or has not been cured within fifteen (15) days after the giving of written notice by Purchaser to Seller of such breach;

(iii) if the Bidding Procedures Order has not been entered by September 30, 2024, unless the Parties mutually agree to extend this date;

(iv) if the Sale Order has not been entered and become a Final Order by October 31, 2024, unless the Parties mutually agree to extend this date;

(v) if Seller is unable or unwilling to close within sixty (60) days following the date that the Sale Order becomes a Final Order.

(b) Termination by Seller. If Purchaser is unable or unwilling to close within sixty (60) days following the date that the Sale Order becomes a Final Order and provided that all conditions precedent to Closing have been satisfied and there shall not have been a material breach by Seller, Seller may terminate this Agreement upon written notice to Purchaser, at which time all obligations of Seller hereunder shall be of no further force and effect, except for those obligations specified in this Agreement to survive termination.

(c) Termination by Purchaser or Seller. Subject to Bankruptcy Court approval, the Parties may terminate this Agreement by mutual written consent of Seller and Purchaser.

(d) Extension of Time Periods. The time periods for termination of this Agreement set forth in this Section 10.01 may be extended upon the written agreement of the Parties without the further approval of the Bankruptcy Court.

Section 10.02 Procedure For Termination. If this Agreement is terminated by Purchaser or Seller, or both, pursuant to Section 10.01, written notice thereof shall promptly be given to the other Party, and upon the giving of such notice (or at such time as specified in the particular termination right set forth in Section 10.01), the transactions contemplated herein shall be abandoned and this Agreement shall terminate to the extent and with the effect provided by Section 10.03, without further action by the Parties.

Section 10.03 Effect of Termination. If either Seller or Purchaser terminates this Agreement pursuant to Section 10.01, all rights and obligations of the Parties hereunder shall terminate without any liability of any Party to any other Party (except for any Liability of any Party then in breach of this Agreement); provided that if such termination is the result of a breach or default hereunder by the non-terminating Party, then the non-breaching Party shall be entitled to seek any and all remedies available to the terminating Party at law or in equity.

ARTICLE XI DISPUTE RESOLUTION

Section 11.01 Dispute Resolution. The Bankruptcy Court shall retain jurisdiction to adjudicate any dispute that arises under this Agreement.

ARTICLE XII BANKRUPTCY COURT MATTERS

Section 12.01 Sale Motion. Promptly following mutual execution of this Agreement, Seller shall file a motion (the “**Sale Motion**”) for entry of orders, in each case subject to review by and in a form acceptable to Purchaser, respectively: (i) setting a hearing on bidding and notice procedures for the sale of the Debtor’s property pursuant to this Agreement; (ii) authorizing Seller to enter into this Agreement, subject to higher and better proposals; establishing notice, bidding and sale procedures; (iii) approving payment of the Break-up Fee as set forth in this Agreement; (iv) establishing the first minimum overbid for the Property of the Purchase Price as the sum of (1) the Purchase Price, (2) the Break-up Fee, and (3) One Hundred Thousand Dollars (\$100,000.00), and (vi) setting a sale hearing for approval of the Sale (such order, the “**Bidding Procedures Order**”); and (B) the Sale Order.

Section 12.02 Break-up Fee.

(a) In consideration for Purchaser having expended considerable time and expense in connection with this Agreement and negotiation thereof and the identification and quantification of assets of the Seller, the Seller believes that the Purchaser is entitled to certain bid protections to be approved by the Bankruptcy Court, including the Break-up Fee.

(b) If an Auction is scheduled pursuant to the Bidding Procedures Orders, upon Seller’s request, Purchaser shall provide Seller with its calculation of the Break-up Fee, along with copies of any documentation reasonably necessary to substantiate each portion thereof,

within two (2) business days following the Bid Deadline scheduled pursuant to the Bidding Procedures Order (or such later time to which Seller may agree).

(c) Subject to approval by the Bankruptcy Court, and provided the Purchaser is in all material respects in compliance with the terms hereof, if Purchaser's bid embodied in the Purchase Price as set forth in this Agreement is exceeded by a Competing Bid, or Seller enters into an Alternate Transaction, then Seller shall, or shall cause the purchaser in an Alternate Transaction, as applicable, to pay to Purchaser the Break-up Fee upon consummation of the Alternate Transaction from the proceeds of such Alternate Transaction paid at the closing thereof and seller shall promptly return the Deposit to the Purchaser.

(d) If this Agreement is terminated pursuant to Section 10.01(a)(i) (provided that the failure to close was due in whole or in part to any action or inaction by Seller), Section 10.01(a)(iii), Section 10.01(a)(iv), Section 10.01(a)(v) (except to the extent Seller enters into an Alternate Transaction), or Section 10.01(b), then the Break-up Fee shall not be payable.

Section 12.03 Competing Transaction.

(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher or better competing bids (each, a "**Competing Bid**").

(b) Notwithstanding the execution of this Agreement, Seller is permitted to cause its Representatives to further market and initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Purchaser and its Representatives) in connection with any sale or other disposition of all or any other asset of Seller. In addition, Seller shall have the responsibility and obligation to respond to any and all other acts related thereto which are required under the Bankruptcy Code or other applicable law, including supplying information relating to the assets of Seller to prospective purchasers. Prior to Seller furnishing any non-public information to any Person in connection with an offer regarding the sale or other disposition of all or any part of the Property, Seller must enter into a customary confidentiality agreement with such Person.

(c) If a Competing Bid is selected in conjunction with an auction (the "**Auction**") but such bidder does not consummate the purchase of the Property and Purchaser is the second highest bidder (the "**Backup Bidder**"), Purchaser shall be subject to the rights and responsibilities of the Backup Bidder as set forth in the Bidding Procedures.

Section 12.04 Treatment of Monetary Obligations. The Break-up Fee and Purchaser's Costs payable to Purchaser under this Agreement shall be entitled to administrative expense priority in Seller's Chapter 7 Case pursuant to Sections 503(b) and 507(a) of the Bankruptcy Code.

Section 12.05 Rejection of Pre-Petition PSA and Release of Claims in Connection Therewith.

(a) The Parties acknowledge that Purchaser entered into that certain Purchase and Sale Agreement by and between Purchaser, as purchaser, and Debtor, as seller, entered into as of June 6, 2023, as restated and amended by that certain Reinstatement of and First Amendment to Purchase and Sale Agreement dated as of July 11, 2023, and further amended by that certain

Second Amendment to Purchase and Sale Agreement dated as of August 18, 2023 (collectively, the “**Pre-Petition PSA**”). The Parties acknowledge that, pursuant to Bankruptcy Code § 365(d)(1), the Pre-Petition PSA was automatically rejected by the Trustee as of May 7, 2024.

(b) In exchange for the consideration provided herein and other good and valuable consideration:

(i) Seller, on behalf of the Debtor and its estate, hereby irrevocably and unconditionally fully and forever waives, releases, and discharges Purchaser, Purchaser’s parents, subsidiaries, affiliates, predecessors, successors, and assigns, and each of its and their respective officers, directors, employees, shareholders, and trustees, in their corporate and individual capacities (collectively, the “**Purchaser Released Parties**”), from any and all Claims, demands, actions, causes of actions, judgments, rights, fees, damages, debts, obligations, liabilities, and expenses (inclusive of attorneys’ fees) of any kind whatsoever, whether known or unknown, that Seller, on behalf of the Debtor and its estate, may have or have ever had against the Purchaser Released Parties, or any of them, arising out of, or in any way related to the Pre-Petition PSA and/or the rejection thereof.

(ii) Purchaser hereby irrevocably and unconditionally fully and forever waives, releases, and discharges Debtor, Seller and each of their parents, subsidiaries, affiliates, predecessors, successors, and assigns, and each of its and their respective officers, directors, employees, shareholders, and trustees, in their corporate and individual capacities (collectively, the “**Seller Released Parties**”), from any and all Claims, demands, actions, causes of actions, judgments, rights, fees, damages, debts, obligations, liabilities, and expenses (inclusive of attorneys’ fees) of any kind whatsoever, whether known or unknown, that Purchaser, may have or have ever had against the Seller Released Parties, or any of them, arising out of, or in any way related to the Pre-Petition PSA and/or the rejection thereof.

(c) The provisions of this Section 12.05 shall survive Closing and shall remain effective regardless of whether Seller consummates an Alternative Transaction.

ARTICLE XIII ESCROW AGENT

Section 13.01 Escrow Terms. Title Insurance Company shall serve as the escrow agent (“**Escrow Agent**”) with regard to payment of closing costs set forth in Section 4.05 and payment of apportionments set forth in Section 4.06. Escrow Agent shall make disbursements as set forth in the Settlement Statement.

ARTICLE XIV CONFIDENTIALITY

Section 14.01 Confidential Information. Purchaser hereby agrees to hold as confidential all information disclosed to it by Seller and/or Debtor in connection with the Pre-Petition PSA, the transaction contemplated hereby and concerning the other, or otherwise gained through Purchaser’s access to the Property (“**Seller Confidential Information**”). Seller hereby agrees to hold as

confidential all information disclosed to it by Purchaser in connection with the transaction contemplated hereby (“**Purchaser Confidential Information**”). Seller Confidential Information and Purchaser Confidential Information may be collectively referred to as “**Confidential Information**”, and expressly excludes any information that is a matter of public record in connection with the Chapter 7 Case, or was otherwise previously or is hereafter publicly disclosed (other than in violation of this Agreement or other confidentiality agreements to which such other party is a party). Each of Purchaser and Seller and shall not release any such Confidential Information to third parties without the prior written consent of the other party, except (i) to its members, advisers, underwriters, analysts, employees, affiliates, officers, directors, consultants, lenders, investors, potential lenders and investors, accountants, legal counsel, governmental representatives or their agents, title companies or other advisors of any of the foregoing, provided that they are advised as to the confidential nature of such information and are instructed to maintain such confidentiality, (ii) to comply with any applicable law, rule (including, if applicable, the rules of an applicable stock exchange on which such party or its affiliates lists its securities) or regulation, and (iii) in any legal proceeding between the Seller and Purchaser in connection with this Agreement. Neither Seller nor Purchaser shall at any time issue a press release or otherwise communicate with media representatives regarding this sale and purchase unless such release or communication (x) has received the prior approval of the other party (which approval shall not be unreasonably withheld, conditioned or delayed) or (y) is required to comply with any applicable law, rule (including, if applicable, the rules of an applicable stock exchange on which such party or its affiliates lists its securities) or regulation.

Section 14.02 Return or Destruction of Confidential Information. As of the Closing Date or in the event of a termination of this Agreement, if applicable, such confidentiality shall be maintained by Purchaser and all Confidential Information in accordance with the written request of Seller shall be either promptly: (a) returned to Seller; or (b) destroyed by Purchaser, with any such destruction confirmed by Purchaser and its Transaction Parties in writing.

Section 14.03 Survival. The provisions of this Article shall survive the Closing Date or termination of this Agreement.

ARTICLE XV BROKERS

Section 15.01 Brokers. Purchaser and Seller each represent and warrant to each other that they dealt with no broker in connection with, nor has any broker had any part in bringing about, this transaction other than Cushman & Wakefield (the “**Broker**”). Seller shall pay the brokerage commission due Broker in accordance with the terms and conditions of a separate written agreement. Seller and Purchaser shall each indemnify, defend, and hold harmless the other from and against any claim of any broker or other person for any brokerage commissions, finder's fees, or other compensation in connection with this transaction if such claim is based in whole or in part by, through, or on account of, any acts of the indemnifying party or its agents, employees, or representatives and from all losses, liabilities, costs, and expenses in connection with such claim, including without limitation, [reasonable] attorneys’ fees, court costs, and interest.

Section 15.02 Survival. The provisions of this Article XV shall survive the Closing or the termination of this Agreement prior to the Closing.

**ARTICLE XVI
MISCELLANEOUS**

Section 16.01 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina.

Section 16.02 Merger; No Representations. This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. This Agreement is entered into after full investigation, no party is relying upon any statement or representation not set forth in this Agreement, made by any other party.

Section 16.03 No Survival. Except as otherwise provided in this Agreement, no representations, warranties, covenants, or other obligations of Seller set forth in this Agreement shall survive the Closing and no action based thereon shall be commenced after the Closing.

Section 16.04 Limitation of Liability.

(a) No shareholder or agent of Seller, nor any Seller Related Party, shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement or any amendment or amendments to any of the foregoing made at any time or times, heretofore and hereafter, and Purchaser and its successors and assigns and, without limitation all other persons and entities, shall look solely to Seller's assets for the payment of any claim or for any performance and Purchaser, on behalf of itself and its successors and assigns, hereby waives any and all such personal liability.

(b) No shareholder or agent of Purchaser, nor any Purchaser Related Party shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and Seller and its successors and assigns and, without limitations, all other persons and entities, shall look solely to Purchaser's assets for the payment of any claim or for any performance, and Seller, on behalf of itself and its successors and assigns, hereby waives any and all such personal liability.

Section 16.05 Business Days. Whenever any action must be taken (including the giving of notices) under this Agreement during a certain time period (or by a particular date) that ends or occurs on a non-business day, then such period (or date) shall be extended until the next succeeding Business Day. As used herein, the term “**Business Day**” shall mean any day other than a Saturday, a Sunday, or a legal holiday on which national banks are not open for general business in the State of New York.

Section 16.06 Modifications and Amendments. This Agreement cannot under any circumstance be modified or amended orally and no agreement shall be effective to waive, change, modify, terminate, or discharge this Agreement, in whole or in part, unless such agreement is in writing and is signed by both Seller and Purchaser.

Section 16.07 No Recording. Neither this Agreement, nor any memorandum of this Agreement, shall be recorded. The recording of this Agreement, or any memorandum of this Agreement, by Purchaser shall constitute a material default and shall entitle Seller to retain the Deposit and any interest earned thereon.

Section 16.08 Successors and Assigns; Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns. Purchaser may not assign or otherwise transfer this Agreement, or any of its rights or obligations hereunder, without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion, except that Purchaser may assign this Agreement to an affiliate without the consent of the Seller. Any purported assignment without Seller's consent, other than an assignment to an affiliate, shall be void and of no force or effect. Any change in control of Purchaser or of any of the direct or indirect ownership interests in Purchaser, at any level or tier of ownership, whether in one transaction or a series of transactions, shall constitute an assignment for purposes of this Section 16.08.

Section 16.09 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect, invalidate, or render unenforceable any other term or provision of this Agreement. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

Section 16.10 Further Assurances. Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby, provided such documents are customarily delivered in real estate transactions in the State of North Carolina and do not impose any material obligations upon any party hereunder except as set forth in this Agreement.

Section 16.11 Counterparts. This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall together constitute but one and the same instrument.

Section 16.12 Headings. The captions or paragraph titles contained in this Agreement are for convenience and reference only and shall not be deemed a part of the text of this Agreement.

Section 16.13 No Waivers. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party providing the waiver. No waiver by either party of any failure or refusal to comply with any obligations under this Agreement shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

Section 16.14 No Offer. This Agreement shall not be deemed an offer or binding upon Seller or Purchaser until this Agreement is fully executed and delivered by Seller and Purchaser.

Section 16.15 Waiver of Jury Trial. SELLER AND PURCHASER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER ARISING IN

TORT OR CONTRACT) BROUGHT BY SUCH PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

Section 16.16 Submission to Jurisdiction; Consent to Service of Process. Without limiting any Party's right to appeal any order of the Bankruptcy Court, (a) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any Claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated herein, and (b) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 9.02 hereof. The Parties hereby irrevocably waive, to the fullest extent permitted by Applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of the Parties hereby consents to process being served by any Party to this Agreement in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 9.02.

Section 16.17 Time of the Essence. The parties hereto acknowledge and agree that, except as otherwise expressly provided in this Agreement, TIME IS OF THE ESSENCE with respect to all time periods, dates and the payment and performance of all obligations under this Agreement (including, without limitation, the giving of Notices, the delivery of documents, and the funding of money). Whenever action must be taken by either party (including, without limitation, the giving of Notice, the delivery of documents, or the funding of money) under this Agreement, prior to the expiration of, by no later than, or on a particular date, unless otherwise expressly provided in this Agreement, such action must be completed by 5:00 p.m. Eastern on such date. However, notwithstanding anything to the contrary herein, whenever action must be taken by either party (including, without limitation, the giving of Notice, the delivery of documents, or the funding of money) under this Agreement prior to the expiration of, by no later than, or on a particular date that is not a Business Day, then such date shall be extended until the immediately following Business Day.

[SIGNATURE PAGE FOLLOWS]

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

PURCHASER:

LREP ACQUISITIONS III LLC, a New Jersey
limited liability company

By: s/ Joseph E. Teichman

Name: Joseph E. Teichman

Title: Authorized Signatory

SELLER:

BUTH-NA-BODHAIGE, INC. dba THE BODY
SHOP, a Virginia corporation

By: s/ Kenneth P. Silverman

Name: Kenneth P. Silverman

Title: Chapter 7 Trustee

SCHEDULES AND EXHIBITS

<u>Exhibit A</u>	Legal Description of Real Property
<u>Exhibit B</u>	Excluded Property
<u>Exhibit C</u>	Draft Deed
<u>Exhibit D</u>	Assignment and Assumption of Intangibles

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Wake Forest, County of Wake, State of North Carolina.

Beginning at an existing iron pipe on the eastern right of way of Unicon Drive, said iron pipe being the northwestern corner of the property belonging to Thurman Kitchin and being recorded in deed book 4649 page 467 of the Wake County Registry and being the POINT OF BEGINNING the following courses and distances: N 21-46-37 E 607.38' to a point, thence N 21-46-43 E 280.89' to an existing iron pipe, thence S 67-38-03 E 1343.06' to an existing iron pipe, thence S 27-52-38 W 319.83' to an existing iron pipe, thence S 03-00-21 W 147.43' to an existing iron pipe, thence S 02-51-38 W 129.00' to an existing iron pipe, thence S 55-58-11 W 201.32' to an existing iron pipe, thence S 56-00-06 W 64.61' to an existing iron pipe, thence S 07-07-17 E 164.03' to an existing iron pipe, thence S 01-06-15 E 347.20' to an existing iron pipe, thence S 33-34-02 W 81.22' to a point, thence with a creek S 75-00-55 W 36.27' to a point, thence N 67-44-31 W 59.44' to a point, thence N 43-38-17 W 38.19' to a point, thence N 58-27-25 W 25.32' to a point, thence S 63-12-00 W 45.93' to an existing iron pipe, thence N 55-59-48 W 421.33' to an existing iron pipe, thence N 40-58-22 W 341.40' to a new iron pipe, thence N 45-40-07 W 209.61' to an existing iron pipe, thence N 41-12-00 W 300.16' to an existing iron pipe, thence N 43-58-16 W 100.41' to the point of beginning.

LESS AND EXCEPT the property conveyed to Town of Wake Forest, by North Carolina General Warranty Deed recorded on October 20, 2020 in Book 18139 Page 1755, as described as follows:

That certain Clean Water Management Trust Fund (CWMTF) Conservation area lying in the Wake Forest Township, Wake County North Carolina and being the southern portion of now or formerly Buth NA Bodhaige Inc., Parcel "A" property as found in Deed Book (DB) 11638, Page (Pg) 2248 and Book of Maps (BM) 1992, (Pg) 1487 in the Wake County Register of Deeds, having Wake County Parcel Identification Number (PIN) 1739713177, and being bounded on the north by said Buth NA Bodhaige Inc., property, on the east by now or formerly Town of Wake Forest property as found in (DB) 10748, (Pg) 324 and (BM) 2004, (Pg) 555 in the Wake County Register of Deeds; and on the south by now or formerly Lot 1, Finger Lakes Drive LLC property as found in (DB) 17639, (Pg) 2220 and (BM) 2020, (Pg) 869 in the Wake County Register of Deeds; and on the west by now or formerly Lot 3, 708 Finger Lakes Drive LLC property as found in (DB) 17810, (Pg) 341 and (BM) 2019, (Pg) 2172 in the Wake County Register of Deeds and being more particularly described as follows:

Beginning at an existing iron pipe found in northern right-of-way terminus of One World Way (variable width public right-of-way) and a common line with said Buth NA Bodhaige Inc., property having North Carolina Grid Coordinates (all coordinates are referenced to NC Grid Coordinate Reference System NAD 83 (2011) and all distances are horizontal ground unless otherwise stated) of Northing = 790,807.67, Easting = 2,137,004.96; thence leaving said right of way terminus of One World Way, South 70 degrees 04 minutes 32 seconds East, a distance of 889.61 feet to a new rebar set in a common line with said now or formerly Town of Wake Forest property; thence along said common line with now or formerly Town of Wake Forest property, South 01 degrees 02 minutes 47 seconds East, a distance of 198.14 feet to a new rebar set; thence along said common line with now or formerly Town of Wake Forest property, South 33 degrees 37 minutes 30 seconds West, a distance of 81.22 feet to a new rebar set, said point also being a common corner with said now or formerly Lot 1, Finger Lakes Drive LLC property; thence along a common line with said now or formerly Lot 1, Finger Lakes Drive LLC property the following six (6) courses and distances: South 75 degrees 04 minutes 23 seconds West, a distance of 36.12 feet to a new rebar set; thence North 67 degrees 43 minutes 50 seconds West, a distance of 59.75 feet to a new rebar set; thence North 43 degrees 37 minutes 36 seconds West, a distance of 38.19 feet to a new rebar set; thence North 58 degrees 26 minutes 44 seconds West, a distance of 25.32 feet to a new rebar set; thence South 63 degrees 12 minutes 41 seconds West, a distance of 45.93 feet to a new rebar set; thence North 55 degrees 59 minutes 07 seconds West, a distance of 231.79 feet to a point, said point being a common corner with said now or

formerly Lot 3, 708 Finger Lakes Drive LLC property; thence along a common line with said now or formerly Lot 3, 708 Finger Lakes Drive LLC property, North 55 degrees 59 minutes 07 seconds West, a distance of 189.54 feet to a new rebar set; thence along a common line with now or formerly Lot 3, 708 Finger Lakes Drive LLC property, North 40 degrees 57 minutes 41 seconds West, a distance of 341.40 feet to a new rebar set; thence along a common line with said now or formerly Lot 3, 708 Finger Lakes Drive LLC property, North 45 degrees 39 minutes 26 seconds West, a distance of 46.09 feet to a new rebar set at the southern right-of-way terminus of said One World Way; thence along said northern right-of- way terminus of One Word Way, North 45 degrees 39 minutes 26 seconds West, a distance of 13.81 feet to an existing iron pipe, the Point of Beginning.

Said (CWMTF) Conservation area is the same as shown on an exempt subdivision map entitled "Exempt Subdivision and CWMTF Conservation Area Map for the Town of Wake Forest and the Clean Water Management Trust Fund - Contract Grant 2016-089 BUTH NA BODHAIGE, INC. 5036 ONE WORLD WAY Wake Forest, North Carolina" prepared by Timothy E. Bowes, PLS with VHB Engineering NC, P.C. and dated April 2, 2020.

NOTE FOR INFORMATION: Being Parcel No(s). 1739713269 and 1739719112, of the City of Wake Forest, County of Wake.

EXHIBIT B
EXCLUDED PROPERTY

EXHIBIT C
FORM OF DEED

(attached)

NORTH CAROLINA TRUSTEE’S DEED

Excise Tax:	\$
Parcel ID:	1739713269 and 1739719112
Mail/Box To:	Grantee
Prepared By:	Grantor
Brief description for the Index:	5036 One World Way, Wake Forest, NC

THIS TRUSTEE’S DEED (“Deed”) is made on the ____ day of _____, 2024, by and between:

GRANTOR	GRANTEE
Kenneth P. Silverman, Esq., solely in his capacity as Chapter 7 Trustee of the Bankruptcy Estate of Buth-na-Bodhaige, Inc., a Virginia corporation qualified in North Carolina d/b/a The Body Shop, Case No. 24-10392 (DSJ) 100 Jericho Quadrangle, Suite 300 Jericho, NY 11753	LREP Acquisitions III LLC, a New Jersey limited liability company

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does hereby grant and release unto the Grantee, the heirs or successors and assigns of the Grantee forever, all of the Grantor’s right, title, and interest in and to all that certain lot or parcel of land situated in the City of Wake Forest, Wake County, North Carolina, and more particularly described on Exhibit A attached hereto and made a part hereof (the “Property”).

All or a portion of the Property was acquired by Buth-na-Bodhaige, Inc., a Virginia corporation qualified in North Carolina d/b/a The Body Shop, by instrument recorded in Book 11638 at Page 2248, Wake County Registry.

All or a portion of the Property does not include the primary residence of a Grantor.

TO HAVE AND TO HOLD the Property and all privileges and appurtenances thereto belonging to Grantee in fee simple.

TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to said premises; and the premises being subject to all existing leases and tenancies, if any.

Said premises being conveyed by and pursuant to the Order of the Honorable David S. Jones, United States Bankruptcy Judge for Southern District of New York, dated September ___, 2024.

EXHIBIT A

LEGAL DESCRIPTION

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Wake Forest, County of Wake, State of North Carolina.

Beginning at an existing iron pipe on the eastern right of way of Unicon Drive, said iron pipe being the northwestern corner of the property belonging to Thurman Kitchin and being recorded in deed book 4649 page 467 of the Wake County Registry and being the POINT OF BEGINNING the following courses and distances: N 21-46-37 E 607.38' to a point, thence N 21-46-43 E 280.89' to an existing iron pipe, thence S 67-38-03 E 1343.06' to an existing iron pipe, thence S 27-52-38 W 319.83' to an existing iron pipe, thence S 03-00-21 W 147.43' to an existing iron pipe, thence S 02-51-38 W 129.00' to an existing iron pipe, thence S 55-58-11 W 201.32' to an existing iron pipe, thence S 56-00-06 W 64.61' to an existing iron pipe, thence S 07-07-17 E 164.03' to an existing iron pipe, thence S 01-06-15 E 347.20' to an existing iron pipe, thence S 33-34-02 W 81.22' to a point, thence with a creek S 75-00-55 W 36.27' to a point, thence N 67-44-31 W 59.44' to a point, thence N 43-38-17 W 38.19' to a point, thence N 58-27-25 W 25.32' to a point, thence S 63-12-00 W 45.93' to an existing iron pipe, thence N 55-59-48 W 421.33' to an existing iron pipe, thence N 40-58-22 W 341.40' to a new iron pipe, thence N 45-40-07 W 209.61' to an existing iron pipe, thence N 41-12-00 W 300.16' to an existing iron pipe, thence N 43-58-16 W 100.41' to the point of beginning.

LESS AND EXCEPT the property conveyed to Town of Wake Forest, by North Carolina General Warranty Deed recorded on October 20, 2020 in [Book 18139 Page 1755](#), as described as follows:

That certain Clean Water Management Trust Fund (CWMTF) Conservation area lying in the Wake Forest Township, Wake County North Carolina and being the southern portion of now or formerly Buth NA Bodhaige Inc., Parcel "A" property as found in Deed Book (DB) 11638, Page (Pg) 2248 and Book of Maps (BM) 1992, (Pg) 1487 in the Wake County Register of Deeds, having Wake County Parcel Identification Number (PIN) 1739713177, and being bounded on the north by said Buth NA Bodhaige Inc., property, on the east by now or formerly Town of Wake Forest property as found in (DB) 10748, (Pg) 324 and (BM) 2004, (Pg) 555 in the Wake County Register of Deeds; and on the south by now or formerly Lot 1, Finger Lakes Drive LLC property as found in (DB) 17639, (Pg) 2220 and (BM) 2020, (Pg) 869 in the Wake County Register of Deeds; and on the west by now or formerly Lot 3, 708 Finger Lakes Drive LLC property as found in (DB) 17810, (Pg) 341 and (BM) 2019, (Pg) 2172 in the Wake County Register of Deeds and being more particularly described as follows:

Beginning at an existing iron pipe found in northern right-of-way terminus of One World Way (variable width public right-of-way) and a common line with said Buth NA Bodhaige Inc., property having North Carolina Grid Coordinates (all coordinates are referenced to NC Grid Coordinate Reference System NAD 83 (2011) and all distances are horizontal ground unless otherwise stated) of Northing = 790,807.67, Easting = 2,137,004.96; thence leaving said right of way terminus of One World Way, South 70 degrees 04 minutes 32 seconds East, a distance of 889.61 feet to a new rebar set in a common line with said now or formerly Town of Wake Forest property; thence along said common line with now or formerly Town of Wake Forest property, South 01 degrees 02 minutes 47 seconds East, a distance of 198.14 feet to a new rebar set; thence along said common line with now or formerly Town of Wake Forest property, South 33 degrees 37 minutes 30 seconds West, a distance of 81.22 feet to a new rebar set, said point also being a common corner with said now or formerly Lot 1, Finger Lakes Drive LLC property; thence along a common line with said now or formerly Lot 1, Finger Lakes Drive LLC property the following six (6) courses and distances: South 75 degrees 04 minutes 23 seconds West, a distance of 36.12 feet to a new rebar set; thence North 67 degrees 43 minutes 50 seconds West, a distance of 59.75 feet to a new rebar set; thence North 43 degrees 37 minutes 36 seconds West, a distance of 38.19 feet to a new rebar set; thence North 58 degrees 26 minutes 44 seconds West, a distance of 25.32 feet to a new rebar set; thence South 63 degrees 12 minutes 41 seconds West, a distance of 45.93 feet to a new rebar set; thence North 55 degrees 59 minutes 07 seconds West, a distance of 231.79 feet to a point, said point being a common corner with said now or formerly Lot 3, 708 Finger Lakes Drive LLC property; thence along a common line with said now

or formerly Lot 3, 708 Finger Lakes Drive LLC property, North 55 degrees 59 minutes 07 seconds West, a distance of 189.54 feet to a new rebar set; thence along a common line with now or formerly Lot 3, 708 Finger Lakes Drive LLC property, North 40 degrees 57 minutes 41 seconds West, a distance of 341.40 feet to a new rebar set; thence along a common line with said now or formerly Lot 3, 708 Finger Lakes Drive LLC property, North 45 degrees 39 minutes 26 seconds West, a distance of 46.09 feet to a new rebar set at the southern right-of-way terminus of said One World Way; thence along said northern right-of-way terminus of One World Way, North 45 degrees 39 minutes 26 seconds West, a distance of 13.81 feet to an existing iron pipe, the Point of Beginning.

Said (CWMTF) Conservation area is the same as shown on an exempt subdivision map entitled "Exempt Subdivision and CWMTF Conservation Area Map for the Town of Wake Forest and the Clean Water Management Trust Fund - Contract Grant 2016-089 BUTH NA BODHAIGE, INC. 5036 ONE WORLD WAY Wake Forest, North Carolina" prepared by Timothy E. Bowes, PLS with VHB Engineering NC, P.C. and dated April 2, 2020.

NOTE FOR INFORMATION: Being Parcel No(s). 1739713269 and 1739719112, of the City of Wake Forest, County of Wake.

SCHEDULE A
LEGAL DESCRIPTION
File No.: MMTNC-189095
(Continued)

or formerly Lot 3, 708 Finger Lakes Drive LLC property, North 55 degrees 59 minutes 07 seconds West, a distance of 189.54 feet to a new rebar set; thence along a common line with now or formerly Lot 3, 708 Finger Lakes Drive LLC property, North 40 degrees 57 minutes 41 seconds West, a distance of 341.40 feet to a new rebar set; thence along a common line with said now or formerly Lot 3, 708 Finger Lakes Drive LLC property, North 45 degrees 39 minutes 26 seconds West, a distance of 46.09 feet to a new rebar set at the southern right-of-way terminus of said One World Way; thence along said northern right-of-way terminus of One World Way, North 45 degrees 39 minutes 26 seconds West, a distance of 13.81 feet to an existing iron pipe, the Point of Beginning.

Said (CWMTF) Conservation area is the same as shown on an exempt subdivision map entitled "Exempt Subdivision and CWMTF Conservation Area Map for the Town of Wake Forest and the Clean Water Management Trust Fund - Contract Grant 2016-089 BUTH NA BODHAIGE, INC. 5036 ONE WORLD WAY Wake Forest, North Carolina" prepared by Timothy E. Bowes, PLS with VHB Engineering NC, P.C. and dated April 2, 2020.

NOTE FOR INFORMATION: Being Parcel No(s). 1739713269 and 1739719112, of the City of Wake Forest, County of Wake.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance Issued by Stewart Title Guaranty Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and a counter-signature by the Company or its Issuing agent that may be in electronic form.

ALTA Commitment for Title Insurance (8-1-16)

189095

EXHIBIT D
FORM OF ASSIGNMENT

Assignment and Assumption of Intangible Property

This Assignment and Assumption of Intangible Property (this "Assignment"), dated as of [●] (the "Effective Date"), is entered into by and between Kenneth P. Silverman, as Chapter 7 Trustee of BUTH-NA-BODHAIGE, INC. dba THE BODY SHOP, a Virginia corporation ("Assignor"), and [●], a [●] ("Assignee").

WHEREAS, Assignor, as seller, and Assignee, as purchaser, have entered into that certain Purchase and Sale Agreement (the "**Purchase Agreement**") dated as of [●], for the purchase and sale of that certain property having an address of 5036 One World Way, Wake Forest, North Carolina, and as more particularly described in the Purchase Agreement (the "**Property**"); and

WHEREAS, in connection with the purchase and sale of the Property, the Purchase Agreement obligates Assignor to assign to Assignee, and Assignee to assume from Assignor, the intangible property as further defined herein, subject to the terms and conditions set forth in this Assignment.

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

1. Assignment. As of the Effective Date of this Assignment, Assignor HEREBY ASSIGNS AND TRANSFERS unto Assignee all of Assignor's rights in, under and to all benefits and privileges accruing to Assignor thereunder to each of the following (collectively, the "**Assumed Intangible Property**"):

(a) Warranties and Guaranties. Any written warranty, guaranty or other obligation from any contractor, manufacturer or vendor to any improvements, furnishings, fixture or equipment located at the Property, to the extent assignable in connection with the sale of the Property (the "**Assumed Warranties and Guaranties**").

(b) Permits and Licenses. Any permit, license or other form of authorization or approval issued by a government agency or authority and legally required for the operation and use of the Property to the extent transferable with the sale of the Property (the "**Assumed Permits and Licenses**").

Assignor hereby disclaims all express or implied warranties regarding the existence or condition of, or title to, such Assumed Intangible Property, including without limitation the implied warranties of merchantability and suitability for a particular purpose.

2. Assumption.

(a) Assignee hereby assumes and agrees to perform any and all of the obligations and liabilities of Assignor under each of the Assumed Intangible Property accruing from and after the Effective Date.

(b) Assignee accepts all Assumed Intangible Property in its "AS-IS" condition and "WITH ALL FAULTS."

3. Miscellaneous.

(a) All notices and other communications required or permitted under this Assignment shall be given in the same manner as in the Purchase Agreement.

(b) This Assignment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original for all purposes, and all such counterparts shall together constitute but one and the same instrument. A signed copy of this Assignment delivered by either facsimile or e-mail shall be deemed to have the same legal effect as delivery of an original signed copy of this Assignment, provided such original signed copy is delivered within three (3) days thereafter. Notwithstanding the foregoing, each party hereto shall deliver original counterpart signatures to the other parties on or before the date hereof.

(c) This Assignment shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to conflict of law rules.

(d) This Assignment may not be modified or amended in any manner other than by a written agreement signed by the party to be charged.

(e) Assignor shall promptly execute and deliver to Assignee any additional instrument or other document which Assignee reasonably requests to evidence or better effect the assignment contained herein.

(f) This Assignment and the obligations of the parties hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed as of the date set forth above.

ASSIGNOR:
BUTH-NA-BODHAIGE, INC. dba THE BODY SHOP,
a Virginia corporation

By: _____
Name: Kenneth P. Silverman
Title: Chapter 7 Trustee

ASSIGNEE:
[●]

By: _____
Name: _____

Exhibit D

PURCHASE AND SALE AGREEMENT

between

**KENNETH P. SILVERMAN, AS CHAPTER 7 TRUSTEE FOR
BUTH-NA-BODHAIGE, INC. dba THE BODY SHOP, a
Virginia corporation, Seller**

and

~~**LREP ACQUISITIONS III LLC, [●],**~~

a ~~New Jersey limited liability company~~ [●], Purchaser
dated as of ~~June 24, 2024~~ [DATE]

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PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (this “**Agreement**”), dated as of ~~the 24 day of June~~ [●], 2024, is entered into between Kenneth P. Silverman, as Chapter 7 Trustee of BUTH-NA-BODHAIGE, INC. dba THE BODY SHOP, a Virginia corporation (“**Seller**”), and ~~LREP Acquisitions III LLC, a New Jersey limited liability company, or its assigns~~ [●], a [●] (“**Purchaser**”), each a “**Party**” and collectively the “**Parties**”.

RECITALS

WHEREAS, on March 8, 2024 (the “**Petition Date**”), BUTH-NA-BODHAIGE, INC. dba THE BODY SHOP, a Virginia corporation (“**Debtor**”) filed a voluntary petition for relief under chapter 7 of title 11 of the United States Code, 11 U.S.C. §101 et seq. (the “**Bankruptcy Code**”), in the United

States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”), Case No. 24-10392-dsj (the “**Chapter 7 Case**”); and

~~WHEREAS, prior to the Petition Date, Debtor and an affiliate of Purchaser entered into the Pre-Petition PSA (as defined below) pursuant to which Debtor agreed to sell the Property to Purchaser on terms and conditions set forth in the Pre-Petition PSA. In accordance with the Pre-Petition PSA, Purchaser deposited One Million dollars (\$1,000,000) into escrow held at Madison Title Agency, LLC (the “Pre-Petition Escrow Agent”) as earnest money for the sale (the “Pre-Petition Deposit”); and~~

WHEREAS, following the Petition Date, Kenneth P. Silverman was appointed as Chapter 7 Trustee of the Debtor’s bankruptcy estate, and is currently acting as Seller in such capacity;

WHEREAS, Seller wishes to sell to Purchaser and Purchaser wishes to acquire from Seller the Property (as hereinafter defined) on the terms and conditions set forth in this Agreement (the “**Sale**”); and

WHEREAS, the transactions contemplated by this Agreement is subject to an order of the Bankruptcy Court approving, *inter alia*, the sale of the Property to the Purchaser, consistent with terms, conditions and transactions contemplated by the Agreement; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, agreements, representations and warranties herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS

The following terms have the meanings specified or referred to in this Article I:

“**Affiliate**” means any person or entity which directly or indirectly controls, is controlled by, or is under common control with, any Person.

~~“**Alternate Transaction**” means a transaction or series of related transactions consummated by Seller pursuant to which Seller sells, transfers, leases or otherwise disposes of, directly or indirectly, all or substantially all of the Property to a party or parties other than Purchaser (or one or more designees of Purchaser).~~

“**Applicable Law**” means, with respect to any Person, any foreign, federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, guidance, plan, order, injunction, judgment, decree, ruling, charge or other similar requirement, including any Labor and Employment Law and Requirements, enacted, adopted, or promulgated by a Governmental Authority that is binding upon such Person, as amended.

“**Agreement**” has the meaning set forth in the preamble.

“**Bankruptcy Code**” has the meaning set forth in the recitals.

“**Bankruptcy Court**” has the meaning set forth in the recitals.

“**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure, as prescribed by the United States Supreme Court pursuant to Section 2075 of title 28 of the United States Code and as applicable to the Chapter 7 Case.

“**Bidding Procedures Order**” has the meaning set forth in Section 12.01.

“**Board**” means the governing board of an entity, including the board of directors, board of governors, board of trustees, or board of managers, as applicable.

~~“**Break-up Fee**” means three hundred thousand dollars and 00/100 (US \$300,000.00) plus actual and necessary expenses incurred by Purchaser in connection with this Agreement and Purchaser’s efforts, subsequent to the filing of the Chapter 7 Case, to negotiate and consummate the Sale up to one hundred thousand and 00/100 (US \$100,000.00).~~

“**Broker**” has the meaning set forth in Section 15.01.

“**Business**” refers to the Debtor’s business prior to its cessation of operations.

“**Business Day**” has the meaning set forth in Section 16.05.

“**Chapter 7 Case**” has the meaning set forth in the recitals.

“**Claim**” has the meaning ascribed to such term in Section 101(5) of the Bankruptcy Code.

“**Closing**” has the meaning set forth in Section 4.01.

“**Closing Date**” has the meaning set forth in Section 4.01.

“**Code**” has the meaning set forth in Section 4.02(c).

“**Confidential Information**” has the meaning set forth in Section 14.01.

“**Deed**” has the meaning set forth in Section 4.02(a).

“**Deposit**” has the meaning set forth in **Error! Reference source not found.1.**

“**Escrow Agent**” has the meaning set forth in **Error! Reference source not found..**

“**Excluded Property**” has the meaning set forth in Section 2.02.

“**Final Order**” means an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction that has not been reversed, vacated, or stayed and as to which (a) the time to appeal, petition for certiorari, or move for a stay, new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for stay, new trial, reargument, or rehearing shall then be pending or (b) if an appeal, writ of certiorari, stay, new trial, reargument, or rehearing has been sought, (i) such order or judgment shall have been affirmed by the highest court to which such order was appealed, certiorari shall have been denied, or a stay, new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and (ii) the time to take any further appeal, petition for certiorari, or move for a stay, new trial, reargument, or rehearing shall have expired; provided, however, that the possibility that a motion under section 502(j) of the Bankruptcy Code, Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state court rules of civil procedure may be, but has not been, filed with respect to such order shall not cause such order not to be a Final Order.

“**Governmental Authority**” means any domestic or foreign federal, state or local governmental

authority, department, court or government, commission, tribunal or organization or any regulatory, administrative or other agency, or any political or other division, subdivision, department or branch of any of the foregoing.

“**Governmental Authorizations**” means any approval, consent, license, permit, waiver, registration, accreditation or other authorization issued, granted, given, made available or otherwise required by any Governmental Authority or pursuant to Applicable Law.

“**Improvements**” has the meaning set forth in Section 2.01(b).

“**Land**” has the meaning set forth in Section 2.01(a).

“**Liens**” means “any and all liens (including mechanics’, materialmens’ and other consensual and non-consensual liens and statutory liens), security interests, encumbrances, adverse rights, trusts, and claims, rights of distraint, reclamation claims, mortgages, deeds of trust, pledges, covenants, restrictions, hypothecations, charges, indentures, loan agreements, instruments, contracts, leases, licenses, options, rights of first refusal, rights of offset, recoupment, rights of recovery, judgments, orders and decrees of any Court or foreign or domestic governmental entity, claims for reimbursement, contribution, indemnity or exoneration, assignment, debts, charges, suits, rights of recovery, interests, products liability, alter-ego, environmental, successor liability, tax and other liabilities (including probate liabilities), causes of action and claims, to the fullest extent of the law, in each case whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, or known or unknown, whether imposed by agreement, understanding, law, equity or otherwise, or any other interest of any nature whatsoever of, on or with respect to any property or property interest.

“**Notices**” has the meaning set forth in Section 9.01.

“**OFAC**” has the meaning set forth in Section 6.01(g).

“**Permitted Exceptions**” has the meaning set forth in Section 5.02.

“**Person**” has the meaning ascribed to such term in Section 101(41) of the Bankruptcy Code.

~~“**Pre-Petition Deposit**” has the meaning set forth in the recitals.~~

~~“**Pre-Petition Escrow Agent**” has the meaning set forth in the recitals. “**Pre-Petition PSA**” has the meaning set forth in Section 12.05.~~ “**Property**” has the meaning set forth in Section 2.01.

“**Purchase Price**” has the meaning set forth in Section 3.01.

“**Purchaser**” has the meaning set forth in the preamble.

~~“**Purchaser’s Costs**” has the meaning set forth in Section~~

~~5.04(b)~~—“**Sale**” has the meaning set forth in in the recitals.

“**Sale Motion**” has the meaning set forth in Section 12.01.

“**Sale Order**” means an order of the Bankruptcy Court in a form acceptable to the Purchaser in its sole and absolute discretion, authorizing and approving this Agreement and the sale and purchase of the Property hereunder.

“**Seller**” has the meaning set forth in the preamble.

“**Survey**” has the meaning set forth in Section 5.03(a)(ii).

“**Title Commitment**” has the meaning set forth in Section 5.03(a)(i).

“**Title Insurance Company**” shall be ~~Madison Title Agency, LLC~~____, or such other title company mutually selected by Purchaser and Seller.

“**Transaction Parties**” has the meaning set forth in Section 14.01.

“**Violations**” has the meaning set forth in Section 5.05.

ARTICLE II CONVEYANCE OF THE PROPERTY

Section 2.01 Subject of Conveyance. Seller agrees to sell and convey to Purchaser and Purchaser agrees to purchase from Seller, upon the terms and conditions hereinafter set forth, all right, title, and interest of the Debtor and its bankruptcy estate in and to the following (collectively referred to herein as the “**Property**”) free and clear of all Liens, Claims and interests in, to or against the Property, other than Liens securing the Permitted Exceptions, to the fullest extent permissible under Section 363(f) of the Bankruptcy Code:

(a) All that certain lot, piece, or parcel of land located at 5036 One World Way, Wake Forest, County of Wake, and State of North Carolina, as more particularly bounded and described in Exhibit A attached hereto and hereby made a part hereof (the “**Land**”);

(b) All buildings and improvements located on the Land and all of Debtor’s and its estate’s right, title, and interest in and to any and all fixtures attached thereto (collectively, the “**Improvements**”);

(c) All other rights of way, privileges, easements, licenses, and appurtenances relating to the Land; and

(d) All intangible property owned by Debtor arising from or used exclusively in connection with the ownership, use, operation or maintenance of the Land or the Improvements (collectively, the “**Intangible Property**”), including: all of Debtor’s right, title and interest in, to and under (to the extent assignable), any (i) assignable warranties and guaranties issued to Debtor in connection with the Property; (ii) all assignable certificates of occupancy, permits, licenses and certificates relating to the Land or the Improvements; and (iii) all assignable or deliverable surveys, drawings, plans, specifications, diagrams, space finish plans, third-party

reports, environmental assessments, and other architectural or engineering work product relating to the Land or the Improvements.

Section 2.02 Excluded Property. Notwithstanding the foregoing, the sale of the Property contemplated by this Agreement shall not include the personal property and liabilities listed in Exhibit B attached hereto and made a part hereof (the “**Excluded Property**”), which Excluded Property is expressly excluded from such conveyance.

Section 2.03 AS-IS.

(a) Except as set forth in this Agreement, Purchaser acknowledges that Purchaser has made thorough inspections and investigations of the Property and Purchaser agrees to take title to the Property "AS-IS, WHERE IS, AND WITH ALL FAULTS" and in the condition existing as of the date of this Agreement, subject to reasonable use, ordinary wear and tear, and without any reduction in or abatement of the Purchase Price. Purchaser has undertaken all such investigations of the Property as Purchaser deems necessary or appropriate under the circumstances as to the status of the Property and the existence or nonexistence of curative action to be taken with respect to any hazardous or toxic substances on or discharged from the property, and based upon same, Purchaser is and will be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel, and officers.

(b) Neither party to this Agreement is relying on any statement or representation not expressly stated in this Agreement. Purchaser specifically confirms and acknowledges that in entering into this Agreement, Purchaser has not been induced by, and has not relied upon, whether express or implied, warranties, guaranties, promises, statements, inducements, representations, or information pertaining to the Property or its uses, the physical condition, environmental condition, state of title, income, expenses, or operation of the Property, or any other matter or thing with respect thereto, written or unwritten, whether made by Seller or any agent, employee, or other representative of Seller, or any broker or any other person representing (or purporting to represent) Seller, which are not expressly set forth in this Agreement. Seller shall not be liable for or bound by any written or unwritten statements, representations, warranties, brokers’ statements, or other information pertaining to the Property furnished by Seller, any broker, any agent, employee, or other actual (or purported) representative of Seller, or any person, unless and only to the extent the same are expressly set forth in this Agreement.

(c) Seller makes no warranty with respect to the presence of any hazardous or toxic substances on, above, beneath, or discharged from the Property (or any adjoining or neighboring property) or in any water on or under the Property. The Closing hereunder shall be deemed to constitute an express waiver of Purchaser’s right to recover from Seller, and forever releases, covenants not to sue, and discharges Seller from, any and all damages, demands, claims, losses, liabilities, penalties, fines, liens, judgments, costs, or expenses whatsoever, including attorneys’ fees and costs, whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the physical condition of the Property.

(d) The provisions of this Section 2.03 shall survive the Closing and shall not be deemed to have merged into any of the documents executed or delivered at the Closing.

Section 2.04 No Assumption of Liabilities. Except for any liabilities arising out of

ownership of the Property after Closing, Purchaser does not and shall not be deemed to assume any obligations or liabilities in connection with the transactions contemplated by this Agreement.

ARTICLE III PURCHASE PRICE

Section 3.01 Purchase Price and Deposit. The purchase price to be paid by Purchaser to Seller for the Property is ~~Ten Million and 00/100~~ [●] Dollars (~~\$10,000,000.00~~ [●]) (the “Purchase Price”). The Purchase Price shall be paid as follows:

(a) **Initial Deposit.** Upon the mutual execution of this Agreement, ~~the Parties~~ Purchaser shall ~~issue~~ make a ~~joint instruction to the Pre-Petition Escrow Agent to transfer: (i) Five Hundred Thousand and 00/100~~ deposit of [●] Dollars (~~\$500,000.00~~) ~~of the Pre-Petition Deposit the [●]~~¹ (“Initial Deposit”) ~~to~~ with the Seller, to be held in Seller’s dedicated earnest monies account for the Debtor’s estate (“Trustee Account”), ~~and (ii) the remaining amount of the Pre-Petition Deposit shall be transferred to Purchaser.~~

(b) **Additional Deposit.** In the event Purchaser is designated as the Successful Bidder or Backup Bidder (as defined in the Bidding Procedures Order) at the conclusion of the Auction, Purchaser shall make an additional deposit of ~~Five Hundred Thousand and 00/100~~ [●] Dollars (~~\$500,000.00~~ [●])² to the Trustee Account (the “Additional Deposit,” and together with the Initial Deposit, the “Deposit”). Seller shall retain the Deposit as liquidated damages if this Agreement is properly terminated by Seller pursuant to Section 10.01(b) or upon the failure of Purchaser to consummate the Sale in accordance with the terms of this Agreement, provided that all conditions precedent to Closing have been satisfied and there shall not have been a material breach by Seller of any representation, warranty or covenant contained in this Agreement.

(c) **Balance at Closing.** The Purchase Price, less the Deposit, shall be paid to Seller on the Closing Date, subject to any credits or apportionments as provided for under this Agreement, by certified or official bank checks made payable to Seller or by one or more wire transfers of immediately available federal funds to Seller on the Closing Date. The Deposit shall be applied toward the Purchase Price on the Closing Date.

Section 3.02 No Financing. Purchaser expressly agrees and acknowledges that Purchaser’s obligations to pay the Purchase Price and otherwise consummate the transactions contemplated hereby are not in any way conditioned upon Purchaser’s ability to obtain financing of any type or nature whatsoever (that is, whether by way of debt financing, equity investment, or otherwise).

ARTICLE IV CLOSING

Section 4.01 Closing Date. The closing of the transactions contemplated herein (the “Closing”) shall take place within three (3) business days after satisfaction or waiver of all conditions to the obligations of Seller and Purchaser to consummate the transactions contemplated herein (other than conditions with respect to actions Seller and Purchaser will take at the Closing) or such other date

(a) ¹ NTD: Per bidding procedures, initial deposit should be 5% of purchase price.

(b) ² NTD: Per bidding procedures, additional deposit should be 5% of purchase price.

as Purchaser and Seller may mutually determine in writing (the “**Closing Date**”).

Section 4.02 Seller’s Closing Deliverables. At Closing, Seller shall deliver or cause to be delivered to Purchaser (or Title Insurance Company, as appropriate), the following, executed, certified, and acknowledged by Seller, as appropriate:

(a) One (1) original deed (the “**Deed**”) in substantially the form attached hereto as Exhibit C, duly executed with the appropriate acknowledgment form and otherwise in proper form for recording so as to convey title to the Property as required by this Agreement. The delivery of the Deed by Seller, and the acceptance by Purchaser, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed pursuant to this Agreement, except those obligations of Seller which are expressly stated in this Agreement to survive the Closing.

(b) An assignment by Seller and an assumption by Purchaser, in the form attached hereto as Exhibit D (the “**Assignment and Assumption of Intangibles**”), duly executed and acknowledged by Seller, of all of Seller’s right, title, and interest in and to all Intangible Property.

(c) A certification that Seller is not a "foreign person" as such term is defined in Section 1445 of the Internal Revenue Code, as amended and the regulations thereunder (collectively, the “**Code**”), which certification shall be signed under penalty of perjury.

(d) Originals, or copies certified by Seller as being complete, of all applicable bills, invoices, fuel readings, and other items that shall be apportioned as of the Closing Date.

(e) A counterpart of a closing statement jointly prepared by Seller and Purchaser reflecting the prorations and adjustments required under Section 4.06 of this Agreement and the balance of the Purchase Price due Seller (the “**Settlement Statement**”).

(f) All keys, key cards, and access codes to any portion of the Property, to the extent in Seller's possession or control.

(g) All other documents reasonably necessary or otherwise required by the Escrow Agent and Title Insurance Company to consummate the transaction contemplated by this Agreement and such other mutually acceptable documents as may be reasonably necessary or appropriate to effect the consummation of the transaction which is the subject of this Agreement.

Section 4.03 Purchaser’s Closing Deliverables. On the Closing Date, Purchaser shall deliver or cause to be delivered to Seller (or Title Insurance Company, as appropriate), the following, executed, certified, and acknowledged by Purchaser, as appropriate:

(a) The balance of the Purchase Price as set forth in Section 3.01(c).

(b) Purchaser shall, where applicable, join with Seller in the execution and delivery of the closing documents and instruments required under Section 4.02 of this Agreement.

(c) An organizational resolution of Purchaser authorizing the transaction contemplated hereby and the execution and delivery of the documents required to be executed and delivered hereunder.

(d) All other documents reasonably necessary or otherwise required by the Escrow Agent or the Title Insurance Company to consummate the transactions contemplated by this Agreement and such other mutually acceptable documents as may be reasonably necessary or appropriate to effect the consummation of the transaction which is the subject of this Agreement.

Section 4.04 Conditions to Closing. The obligations of the Purchaser hereunder are, at Purchaser's option, subject to the satisfaction, on or prior to the date of the Closing, of the following conditions:

(a) Accuracy of Representations; Performance of Obligations. Seller will have performed Seller's obligations hereunder required to have been performed before the date of the Closing in all material respects, and the representations and warranties of the Seller contained in Article VI of this Agreement will be true and correct in all material respects (except for such representations and warranties that are qualified by their terms by a reference to materiality, which representations and warranties as so qualified will be true in all respects, and representations and warranties that relate to a certain date, which shall be true and correct as of such date) on and as of the date of the Closing with the same effect as though such representations and warranties had been made on and as of such date.

(b) Free and Clear. The Property shall be free and clear of all Liens, Claims and interests in, to or against the Property, other than Liens securing the Permitted Exceptions, to the fullest extent permissible under Section 363(f) of the Bankruptcy Code.

(c) Closing Deliverables. The Seller shall have fulfilled each of its closing deliverables as set forth in section 4.02 of this Agreement.

(d) Sale Order. ~~On or before October 31, 2024 (unless the Parties mutually agree to extend such date), the~~ The Bankruptcy Court shall have entered the Sale Order, in form and substance acceptable to Purchaser in its sole discretion, which shall have become a Final Order and provide, among other things, that the Sale is (i) free and clear of all Liens, Claims, encumbrances, interests, and rights of set-off, whether known or unknown, disputed, contingent, actual, or otherwise, arising prior to closing, pursuant to Section 363(f) of the Bankruptcy Code, (ii) by a good faith purchaser entitled to the protection of Section 363(m) of the Bankruptcy Code, and (iii) with no successor liability.

~~(e) Bidding Procedures Order. The Bankruptcy Court shall have entered the Bidding Procedures Order on or before September 30, 2024 (unless the Parties mutually agree to extend such date), in form and substance acceptable to Purchaser in its sole discretion.~~

(e) ~~(f)~~ Vacant Property. The Property shall be fully vacant as set forth in Section 7.04

of this Agreement.

(f) ~~(g)~~ Additional Documents. Purchaser will have received all such further instruments, and documents as the Purchaser may reasonably require to consummate the Sale.

Section 4.05 Closing Costs.

(a) Seller and Purchaser shall each pay the fees and expenses of its own counsel in connection with the preparation and negotiation of this Agreement. The Deed and other agreements and instruments related to the transaction contemplated by this Agreement and such legal costs shall not be part of the closing costs; provided, however, that if any legal action is instituted under this Agreement, the prevailing party in such action shall be entitled to recover from the other party costs related to such legal action, including reasonable attorneys' fees and costs in all trial, appellate, post-judgment, and bankruptcy proceedings.

(b) Seller shall pay:

(i) The commission owed to the Broker, if any, pursuant to Article XIII of this Agreement;

(ii) All recording fees for the release of any Liens on the Property, as required pursuant to the terms of this Agreement;

(iii) Any transfer taxes and sales taxes payable in connection with the transaction contemplated by this Agreement;

(iv) All costs related to the Chapter 7 Case.

(c) Purchaser shall pay:

(i) The costs charged by the Title Insurance Company, including, without limitation, costs related to the Title Commitment, any premiums, title endorsements, and affirmative insurance;

(ii) The costs related to the Survey and any other survey or survey update;

(iii) Any other fees or costs related to Purchaser's due diligence reviews; and

(iv) All costs related to the recording fees payable in connection with the recording of the Deed and Purchaser's lender's security instruments, if any.

Section 4.06 Apportionments. The following shall be apportioned as of 11:59 p.m. Eastern of the date immediately preceding the Closing Date, unless expressly provided for otherwise:

(a) All real estate taxes based on the fiscal year for which they are assessed and any assessments. If the Closing shall occur before a new tax rate is fixed, the apportionment of real estate taxes shall be upon the basis of the tax rate for the preceding fiscal period applied to the latest assessed valuation. If the Property shall be, or has been, affected by any assessments or special assessments payable in a lump sum or which are, or may become, payable in

installments, of which the first installment is then a charge or lien, or has already been paid, then at the Closing such amounts shall be paid or apportioned, as the case may be in the following manner:

- (i) Any such assessments or installments, or portion thereof, payable on or after the Closing Date shall be the responsibility of Purchaser; and
- (ii) Any such assessments or installments, or portion thereof, payable prior to the Closing Date shall be the responsibility of Seller.
- (b) All water and sewer charges based on the fiscal year for which they are assessed, unless the meters are read on the date immediately preceding the Closing Date.
- (c) Utilities, fuel, gas, and electric charges based on most recently issued bills, unless the meters are read on the date immediately preceding the Closing Date.
- (d) All other items customarily apportioned in connection with sales of buildings substantially similar to the Property in the State of North Carolina.

Section 4.07 Miscellaneous. Any miscellaneous adjustments payable by either Purchaser or Seller, as the case may be, that occur at the Closing may be paid at the Closing by delivery of personal or business checks, provided, however, that such miscellaneous adjustments do not exceed One Thousand and 00/100 Dollars (\$1,000.00). Any errors in calculations or apportionments shall be corrected or adjusted as soon as practicable after the Closing Date. The provisions of this Section 4.07 and Section 4.06 shall survive the Closing.

ARTICLE V TITLE MATTERS AND VIOLATIONS

Section 5.01 Acceptable Title. Seller shall convey, and Purchaser shall accept, such title to the Property that the Title Insurance Company is willing to insure, subject to the matters set forth in this Agreement. Seller shall convey, and Purchaser shall accept, fee simple title to the Property in accordance with the terms and conditions of this Agreement, and subject to:

- (a) The Permitted Exceptions; and
- (b) Such other matters as any Title Insurance Company shall be willing to omit as exceptions to coverage.

Section 5.02 Permitted Exceptions. The Property shall be sold, assigned, and conveyed by Seller to Purchaser, and Purchaser shall accept and assume same, subject to the following matters (collectively, the “**Permitted Exceptions**”):

- (a) Any and all present and future zoning, building, environmental and other laws, statutes, ordinances, codes, rules, regulations, requirements, or executive mandates of all Governmental Authorities having jurisdiction with respect to the Property, including, without limitation, landmark designations and all zoning variances and special exceptions, if any.
- (b) Any state of facts that an accurate survey of the Property would disclose, provided

such facts do not render title unmarketable.

(c) All presently existing and future liens for unpaid real estate taxes, assessments, and water and sewer charges that are not due and payable as of the Closing Date, subject to any apportionments as provided for in this Agreement.

(d) All covenants, restrictions, and rights, and all easements and agreements for the erection and/or maintenance of water, gas, steam, electric, telephone, sewer or other utility pipelines, poles, wires, conduits, or other like facilities, and appurtenances thereto, over, across, and under the Property.

(e) Any lien or encumbrance arising out of the acts or omissions of the Purchaser.

(f) Any exceptions disclosed on Schedule B of the Title Commitment (as hereinafter defined) which will be extinguished upon the transfer of the Property.

(g) The standard conditions and exceptions to title contained in the form of title policy issued to Purchaser by the Title Insurance Company.

(h) Such other matters as any reputable title insurer licensed to do business in the State of North Carolina shall be willing, without special premium, to omit as exceptions to title insurance coverage.

Section 5.03 Title.

(a) Purchaser shall promptly order at its sole cost and expense:

(i) A commitment for title insurance from the Title Insurance Company, together with copies of any tax search, departmental or municipal searches, and all instruments giving rise to any defects or exceptions to title to the Property (collectively, the "**Title Commitment**"), which the parties shall instruct the Title Insurance Company to deliver to counsel for both Purchaser and Seller concurrently; and

(ii) Either an update of an existing survey or a new survey of the Property, prepared by a surveyor licensed in the state where the Property is located ("**Survey**"), which the parties shall instruct the surveyor to deliver the Survey to counsel for both Purchaser and Seller concurrently.

(b) No later than ten (10) Business Days after receipt of the Title Commitment and Survey, Purchaser will notify Seller of Purchaser's objections to title (other than Permitted Exceptions) including matters based on the Survey ("**Title Objection Notice**").

(c) Not later than five (5) Business Days after receipt of Purchaser's Title Objection Notice, Seller will notify Purchaser whether or not Seller will remove the title defects ("**Title Defects**") specified in the Title Objection Notice. If Seller elects to cure the Title Defects, then Seller shall be obligated to remove such Title Defects from Purchaser's Title Commitment at Seller's sole cost and expense prior to Closing. If Seller notifies Purchaser within the five (5) Business Day period that Seller does not intend to remove the Title Defects specified in the Title

Objection Notice (or if Seller does not respond to Purchaser's Title Objection Notice within such five (5) Business Day period, in which case Seller shall be deemed to have elected not to remove such Title Defects, then Purchaser may, at its option, either (i) terminate this Agreement in which case Purchaser shall receive back the Deposit and the parties hereto shall have no further obligations under this Agreement, except pursuant to the provisions which expressly survive termination of this Agreement, or (ii) accept title at Closing subject to the Title Defects specified in the Title Objection Notice, without any reduction or adjustment in the Purchase Price.

(d) If Seller is unable to remove all such Title Defects which Seller has expressly agreed to remove on or before the Closing Date, subject to the terms hereof, then Purchaser may at its option: (i) waive such Title Defects and proceed to close the transaction, or (ii) terminate this Agreement by delivering written notice to Seller, in which event the Deposit shall be returned to Purchaser and the parties hereto shall have no further obligations under this Agreement, except pursuant to the provisions which expressly survive termination of this Agreement. If any supplemental or subsequent title or "run down" report issued by the Title Insurance Company discloses any liens, encumbrances, easements, restrictions, agreements, encroachments or other exceptions to title or the Survey not caused by Purchaser or its agents ([other than Permitted Exceptions](#)) (collectively, "**New Title Defects**"), Purchaser shall have the right to object to the New Title Defects by notifying Seller in writing (a "**Run Down Objection Notice**") of any such New Title Defects within five (5) Business Days after Purchaser's receipt of such New Title Defects. If Seller is unable or unwilling to remove any such New Title Defects in accordance with the requirements hereof, Seller shall so notify Purchaser within five (5) days of receipt of the Run Down Objection Notice and Purchaser shall have the right to accept such title as Seller shall be able to convey or to terminate this Agreement, by notice delivered to Seller within five (5) days following receipt of the New Seller Title Notice. If Purchaser elects to terminate this Agreement by delivering written notice thereof to Seller, then the Deposit shall be returned to Purchaser and the parties hereto shall have no further obligations under this Agreement, except pursuant to the provisions which expressly survive termination of this Agreement.

Section 5.04 Seller's Inability to Convey.

(a) If, on the Closing Date, Seller fails or is unable to convey title to the Property in accordance with this Agreement, Seller shall be entitled, upon written notice delivered to Purchaser on or prior to the Closing Date, to reasonable adjournments of the Closing one or more times for a period not to exceed sixty (60) days in the aggregate to enable Seller to convey such title to the Property.

(b) If Seller does not so elect to adjourn the Closing, and on the Closing Date, fails or is unable to convey title subject to and in accordance with the provisions of this Agreement, Purchaser may either: (i) terminate this Agreement by written notice to Seller delivered on or before the Closing Date, in which event Purchaser shall be entitled to a return of the Deposit, and this Agreement shall thereupon be deemed terminated and of no further effect, and neither party hereto shall have any obligations to the other hereunder or by reason hereof, except for the provisions hereof that expressly survive termination of this Agreement; or (ii) complete the purchase (with no reduction in the Purchase Price) with such title as Seller is able to convey on the Closing Date.

(c) If Seller elects to adjourn the Closing as provided in Section 5.04(a) above, this Agreement shall remain in effect for the period or periods of adjournment, in accordance with its terms. If, on the adjourned Closing Date, Seller fails or is unable to convey title to the Property subject to and in accordance with the provisions of this Agreement, Purchaser shall make its election between clauses (i) and (ii) of Section 5.04(b) above, by written notice to Seller given not later than the adjourned Closing Date. If Purchaser shall fail to give such notice as aforesaid, Purchase shall be deemed to have elected clause (ii) above and the Closing shall take place within three (3) Business Days following the adjourned Closing Date.

(d) Notwithstanding anything to the contrary contained in this Agreement, Seller shall not be required to take or bring any action or proceeding or any take other steps to remove any defect in or objection to title or to fulfill any condition precedent to Purchaser's obligations under this Agreement or to expend any moneys therefor, nor shall Purchaser have any right of action against Seller therefor, at law or in equity, except that Seller shall, on or prior to the Closing, pay, discharge, or remove of record or cause any Liens to be paid, discharged, or removed of record in accordance with the Sale Order, at Seller's sole cost and expense.

(e) Notwithstanding anything in this Section 5.04 above to the contrary, Purchaser may at any time accept such title as Seller can convey, without reduction of the Purchase Price or any credit or allowance on account thereof or any claim against Seller.

Section 5.05 Violations. Notwithstanding anything to the contrary in this Agreement, Purchaser shall accept title to the Property subject to any and all violations or any notes or notices of violations of law or municipal ordinances, orders, or requirements noted or issued prior to, on or after the date of this Agreement (collectively, the "**Violations**"), if any, provided the cost to cure such Violations does not exceed Twenty-Five Thousand and 00/100 Dollars (\$25,000.00). Purchaser acknowledges and accepts that Seller shall not be obligated to comply with or take any action or incur any expense in connection with any Violations. If requested by Purchaser, Seller shall furnish Purchaser with an authorization to make any required violation searches against the Property. In the event the cost to cure such Violations does exceed Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), then Purchaser shall have the right to either (i) request that Seller cure such Violations within fifteen (15) Business Days and Seller, in its sole discretion may elect to cure such Violation; provided, however, that if such Violation cannot be reasonably cured within said period, Seller may apply a credit toward the Purchase Price at Closing equal to the amount that the cost to cure such Violations exceeds Twenty-Five Thousand and 00/100 Dollars (\$25,000); if Seller does not cure the Violation or apply said credit, Purchaser shall have the option to terminate this Agreement by written notice to Seller delivered on or before the Closing Date, in which event Purchaser shall be entitled to a return of the Deposit, and this Agreement shall thereupon be deemed terminated and of no further effect, and neither party hereto shall have any obligations to the other hereunder or by reason hereof, except for the provisions hereof that expressly survive termination of this Agreement; or (ii) complete the purchase (with no reduction in the Purchase Price) on the Closing Date.

ARTICLE VI REPRESENTATIONS AND WARRANTIES

Section 6.01 Seller's Representations and Warranties. Seller represents and warrants

to Purchaser on and as of the date of this Agreement as follows:

(a) Seller is the permanent chapter 7 Trustee of the Debtor's bankruptcy estate, pursuant to Bankruptcy Code sections 701 and 702(d).

(b) Except for such authorization as is required by the Bankruptcy Court, Seller has full corporate power and authority to execute and deliver this Agreement and, subject to such authorization as is required by the Bankruptcy Court and any required approval by a Court of competent jurisdiction to perform its obligations hereunder. Without limiting the generality of the foregoing, the Board of Seller has duly authorized the execution, delivery and performance of this Agreement by Seller. This Agreement constitutes, and any and all other closing documents to be executed by Seller pursuant hereto, when executed, will constitute, the valid and legally binding obligation of Seller, enforceable in accordance with their terms and conditions, except as enforceability against Seller may be restricted, limited or delayed by applicable bankruptcy, moratorium or other Laws affecting creditors' rights generally and except as enforceability may be subject to general principles of equity..

(c) Seller is not a "foreign person" within the meaning of Section 1445 of the Code.

(d) Subject to Bankruptcy Court approval and any other required approval by a Court of competent jurisdiction, if any, neither the execution and delivery of this Agreement, the consummation of the transactions contemplated herein (including each Closing Document required to be delivered by Seller at Closing), nor the fulfillment of the terms hereof by Seller, will (i) violate any order or award of any court, administrative agency or governmental body applicable to Seller; (ii) constitute a violation by Seller of any Applicable Law; or (iii) conflict with or violate any charter document of Seller.

(e) To Seller's actual knowledge, there is no pending or threatened litigation or condemnation action against the Property or against Seller with respect to the Property as of the date of this Agreement.

(f) Seller has not entered into any service or equipment leasing contracts relating to the Property.

(g) Seller is not, and will not become, a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

(h) Seller has not received written notice from any governmental agency having jurisdiction over the Property of any uncured violation of any applicable laws, ordinances, rules and regulations, including without limitation, zoning, development, construction code and environmental laws.

~~(i) Except as may be disclosed in the Phase I prepared by AEI dated February 1, 2024, Seller has not received written notice from any governmental authority confirming the presence or release of any hazardous or toxic substances, in, on or under the Property, and Seller is not otherwise aware of the presence of any hazardous or toxic substances or of any releases or potential releases at the Property in violation of environmental laws that have not been remediated.~~

Section 6.02 Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller on and as of the date of this Agreement and on and as of the Closing Date as set forth in this Section 6.02.

(a) Purchaser is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of New Jersey.

(b) Purchaser has full power and authority to execute and deliver this Agreement and, subject to such authorizations as required by the Bankruptcy Court and any other required approval by a Court of competent jurisdiction, if any, to perform its obligations hereunder. The execution, delivery and performance of this Agreement and all other agreements contemplated hereby have been duly authorized by all requisite corporate action of Purchaser. This Agreement constitutes, and any and all other closing documents to be executed by Purchaser pursuant hereto when executed will constitute, the valid and legally binding obligation of Purchaser, enforceable in accordance with their terms and conditions, except as enforceability against Purchaser may be restricted, limited or delayed by applicable bankruptcy, moratorium or other Laws affecting creditors' rights generally and except as enforceability may be subject to general principles of equity.

(c) Subject to Bankruptcy Court approval, and any other required approval by a Court of competent jurisdiction, if any, neither the execution and delivery of this Agreement, the consummation of the transactions contemplated herein (including each Closing Document required to be delivered by Purchaser at Closing), nor the fulfillment of the terms hereof by Purchaser, will (i) violate any Applicable Law to which Purchaser is subject or any provision of its charter, bylaws, or other governing documents or (ii) conflict with, violate or result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Purchaser is a party or by which it is bound or to which any of its assets are subject.

(d) Purchaser is not required to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated herein (including each Closing Document required to be delivered by Purchaser at Closing), except for such notices, consents and approvals as have already been given or obtained, those required under or in relation to those required by the Bankruptcy Court.

(e) Purchaser has not violated any contract, agreement, or other instrument to which Purchaser is a party nor any judicial order, judgment, or decree to which Purchaser is bound by: (i) entering into this Agreement; (ii) executing any of the documents Purchaser is obligated to execute and deliver on the Closing Date or (iii) performing any of its duties or obligations

under this Agreement or otherwise necessary to consummate the transactions contemplated by this Agreement.

(f) To Purchaser's actual knowledge, there are no actions, lawsuits, litigation, or proceedings pending or threatened in any court or before any governmental or regulatory agency that affect Purchaser's power or authority to enter into or perform this Agreement. There are no judgments, orders, or decrees of any kind against Purchaser unpaid or unsatisfied of record, or, to the best of Purchaser's knowledge, threatened against Purchaser, which would have any material adverse effect on the business or assets or the condition, financial or otherwise, of Purchaser or the ability of Purchaser to consummate the transactions contemplated by this Agreement.

(g) Except for the express representations and warranties of Seller found in Section 6.01, Purchaser is acquiring the Property on an "AS IS, WHERE IS" basis, without any

representation or warranty of any kind or nature whatsoever, express or implied, and Purchaser acknowledges that no such representations or warranties have been made except as set forth in writing herein. In deciding whether to acquire the Property, Purchaser is relying solely on Purchaser's investigation of the Property.

(h) Purchaser is not, and will not become, a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations of OFAC (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

ARTICLE VII PRE-CLOSING COVENANTS

The parties agree as follows with respect to the period between the date of mutual execution of this Agreement and the Closing:

Section 7.01 General. Each of the Parties will use its commercially reasonable efforts to take all actions and to do all things reasonably necessary in order to consummate and make effective the transactions contemplated herein (including satisfaction, but not waiver, of the conditions to Closing set forth in this Agreement).

Section 7.02 Intentionally Omitted.

Section 7.03 Maintenance and Repairs. Seller shall cause the Property, and the Improvements, to be maintained in substantially the same manner as prior to the date of this Agreement pursuant to Seller's normal course of Business, subject to reasonable wear and Article VIII of this Agreement.

Section 7.04 Removal of Assets Prior to Closing. Except as otherwise agreed by the Parties, Seller shall deliver the Property fully vacant, including, without limitation, from any and all inventory and racking (if Purchase requests, on or before August 31, 2024, that such racking be removed prior to

~~Closing)~~ which shall be fully removed and vacated from the Property at the Seller's sole expense. ~~If Purchaser does not request that the racking be removed, then such racking shall remain at the Property.~~

Section 7.05 Additional Covenants of Seller Pending Closing. Seller covenants and agrees that, up to and through the Closing:

(a) Seller shall maintain its existing insurance coverage.

(b) Seller shall give Purchaser prompt notice of: (i) any actual or threatened condemnation of all or any portion of the Property of which Seller receives a written notice, (ii) any actual or threatened enforcement action by any governmental agency relating to the use, condition, or environmental condition of the Property of which Seller received a written notice, and (iii) the commencement of any action by any party seeking relief which could result in the imposition of a lien on the Property, (iv) any rezoning of the Property, (v) the filing in a court of competent jurisdiction of any action by any party seeking relief against Seller or the Property that would result in the imposition of a lien on the Property that will be binding on the Property following Closing, (vi) any casualty to the Property, (vii) written notice from a governmental authority of violations affecting the Property, (viii) all judgments, claims, and litigation affecting Seller or any part of the Property, and (x) Seller obtaining actual knowledge that any representations or warranties made by Seller herein are not true, accurate, and/or complete.

(c) Seller shall not enter into contract affecting the Property that would bind Purchaser or run with the land, which cannot be terminated by Seller prior to Closing or upon thirty (30) days' notice without charge, cost, penalty or premium to Purchaser.

ARTICLE VIII RISK OF LOSS

Section 8.01 Risk of Loss. Seller shall maintain its current liability and casualty insurance on the Property. If prior to Closing there shall be any damage or destruction to the Property or any of them by fire or other casualty, Seller shall give prompt notice thereof to Purchaser. So long as the cost of the repairs required to complete restoration of the loss, damage or destruction is not reasonably expected to exceed \$400,000 (as determined by Seller's insurance adjuster) and does not eliminate parking, access or in respect to a material portion of the Property (an "**Immaterial Casualty**"), then Purchaser may not terminate this Agreement, and Closing shall be completed without abatement of the Purchase Price. In such event, (a) Seller and Purchaser shall jointly negotiate and resolve any all insurance claims with respect to said damage, (b) Seller shall not undertake or complete any repairs to the Property without first obtaining the Purchaser's prior written consent (which shall include the designation of the third party to complete such repair), and all such repairs shall be completed in accordance with applicable laws, regulations and ordinances, (c) at Closing, Seller shall pay over to Purchaser all insurance proceeds collected by Seller with respect to damage to the Property from such fire or other casualty (but (i) excluding all insurance proceeds payable on account of Seller's inventory, furniture, equipment and other personal property, and (ii) excluding all proceeds for so-called "contents coverage", and (iii) deducting any amount required to reimburse Seller for Seller's actual costs incurred in connection with the repair and restoration of the Property) and, to the extent such proceeds have not yet been applied to the repair and restoration of the Property as provided in this Section 8.01, or to reimburse Seller for the cost and expense therefor, and if any such proceeds have not been collected, Seller shall assign to Purchaser all its right, title and interest in and to the same, and (d) at Closing Seller shall credit against

the Purchase Price the amount equal to the applicable deductibles under Seller's insurance policies for damage to the Real Property to the extent not otherwise paid or expended by Seller in connection with repair or restoration of the Property as a result of such fire or other casualty prior to the Closing. In the event the loss, damage or destruction is not an Immaterial Casualty, then Purchaser may elect in its sole discretion whether to terminate this Agreement or proceed to Closing.

Section 8.02 Condemnation. If, prior to Closing, Seller receives notice of the commencement of any condemnation proceeding or other proceeding in the nature of eminent domain in connection with any Material Portion of the Property or Improvements, Seller agrees to notify Purchaser in writing thereof. Purchaser then shall have the right, at Purchaser's option, to terminate this Agreement by giving written notice to Seller within five (5) Business Days after receipt of such notice. Upon such termination, the Deposit shall be returned to Purchaser and thereafter this Agreement shall be canceled with no further liability of either party to the other, except as specifically provided herein. If Purchaser does not so terminate this Agreement, Purchaser shall proceed to Closing hereunder as if no such proceeding had commenced and will pay Seller the full Purchase Price in accordance with this Agreement; Seller shall assign to Purchaser all of its right, title and interest in and to any compensation for such condemnation, and Seller shall not negotiate or settle any claims for compensation prior to Closing without Purchaser's participation. For purpose of this Section 8.02, a "Material Portion" shall mean any change is made, or proposed to be made, to the current means of ingress and egress to the Property or to the roads or driveways adjoining the Property, or to change such ingress or egress or to change the grade thereof which in any such event materially impairs access to the Property, or any proposed taking of 5% or more of the total square footage of the Improvement.

ARTICLE IX NOTICES

Section 9.01 Delivery of Notices. Unless specifically stated otherwise in this Agreement, all notices, demands, consents, approvals, waivers, or other communications (for purposes of this Section 9.01 collectively referred to as "**Notices**") shall be in writing and delivered to Purchaser or Seller at the addresses set forth in Section 9.02, by one of the following methods:

- (a) Personal delivery, whereby delivery is deemed to have occurred at the time of delivery;
- (b) Overnight delivery by a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the Business Day following deposit with the courier; or
- (c) Electronic transmission (facsimile or email) provided that such transmission is completed no later than 5:00 pm Eastern on a Business Day and the original is also sent by personal delivery, overnight delivery, or by mail in the manner previously described, whereby delivery is deemed to have occurred at the end of the Business Day on which the electronic transmission is completed.

Section 9.02 Parties' Addresses.

- (a) Unless changed in accordance with Section 9.02(b) of this Agreement,

the addresses for all communications and notices shall be as follows:

If to Seller: Kenneth P. Silverman, Chapter 7 Trustee
100 Quadrangle Suite 300
Jericho, NY 11753
EMAIL: kenneth.silverman@rimonlaw.com
TEL: 516-479-6310

with copy to: Rimon PC
100 Quadrangle Suite 300
Jericho, NY 11753
ATTN: Brian Powers
EMAIL: brian.powers@rimonlaw.com
TEL: 516-479-6357

If to Purchaser:

~~LREP~~

~~Acquisitions-III~~

~~LLC~~

~~c/o The Lightstone Group
1985 Cedar Bridge Avenue
Lakewood, NJ 08701
ATTN: Joseph E. Teichman, EVP and General Counsel
EMAIL: jteichman@lightstonegroup.com [●] with copy
to: Cole Schotz, P.C. [●]
1325 Avenue of the Americas, 19th Floor
New York, New York, 10019
ATTN: Rab N. Nalavala
EMAIL: rnalavala@coleschotz.com~~

(b) Any party may, by notice given in accordance with this Article, designate a different address or person for receipt of all communications or notices.

(c) Any notice under this Agreement may be given by the attorneys of the respective parties who are hereby authorized to do so on their behalf.

ARTICLE X TERMINATION

Section 10.01 Termination of Agreement.

(a) Termination by Purchaser. Purchaser may terminate this Agreement immediately upon written notice to Seller of the occurrence of any of the following, at which time all obligations of Purchaser hereunder shall be of no further force and effect:

(i) Purchaser is ready, willing, and able to perform and has properly served Seller with a Time is of the Essence demand and Seller has not properly rejected the same and not performed;

(ii) if there shall be a material breach by Seller of any material representation or warranty, or any material covenant or agreement contained in this Agreement, which breach cannot be cured or has not been cured within fifteen (15) days after the giving of written notice by Purchaser to Seller of such breach;

~~(iii) if the Bidding Procedures Order has not been entered by September 30, 2024, unless the Parties mutually agree to extend this date;~~ (iii)

~~(iv) if the Sale Order has not been entered and become a Final Order by October 31, 2024, unless the Parties mutually agree to extend this date;~~

(iv) ~~(v)~~ if Seller is unable or unwilling to close within sixty (60) days following the date that the Sale Order becomes a Final Order.

(b) Termination by Seller. If Purchaser is unable or unwilling to close within sixty (60) days following the date that the Sale Order becomes a Final Order and provided that all conditions precedent to Closing have been satisfied and there shall not have been a material breach by Seller, Seller may terminate this Agreement upon written notice to Purchaser, at which time all obligations of Seller hereunder shall be of no further force and effect, except for those obligations specified in this Agreement to survive termination.

(c) Termination by Purchaser or Seller. Subject to Bankruptcy Court approval, the Parties may terminate this Agreement by mutual written consent of Seller and Purchaser.

(d) Extension of Time Periods. The time periods for termination of this Agreement set forth in this Section 10.01 may be extended upon the written agreement of the Parties without the further approval of the Bankruptcy Court.

Section 10.02 Procedure For Termination. If this Agreement is terminated by Purchaser or Seller, or both, pursuant to Section 10.01, written notice thereof shall promptly be given to the other Party, and upon the giving of such notice (or at such time as specified in the particular termination right set forth in Section 10.01), the transactions contemplated herein shall be abandoned and this Agreement shall terminate to the extent and with the effect provided by Section 10.03, without further action by the Parties.

Section 10.03 Effect of Termination. If either Seller or Purchaser terminates this Agreement pursuant to Section 10.01, all rights and obligations of the Parties hereunder shall terminate without any liability of any Party to any other Party (except for any Liability of any Party then in breach of this Agreement); provided that if such termination is the result of a breach or default hereunder by the non-terminating Party, then the non-breaching Party shall be entitled to seek any and all remedies available to the terminating Party at law or in equity.

ARTICLE XI DISPUTE RESOLUTION

Section 11.01 Dispute Resolution. The Bankruptcy Court shall retain jurisdiction to adjudicate any dispute that arises under this Agreement.

ARTICLE XII BANKRUPTCY COURT MATTERS

~~**Section 12.01 Sale Motion.** Promptly following mutual execution of this Agreement, Seller shall file a motion (the “Sale Motion”) for entry of orders, in each case subject to review by and in a form acceptable to Purchaser, respectively: (i) setting a hearing on bidding and notice procedures for the sale of the Debtor’s property pursuant to this Agreement; (ii) authorizing Seller to enter into this Agreement, subject to higher and better proposals; establishing notice, bidding and sale procedures; (iii) approving payment of the Break-up Fee as set forth in this Agreement; (iv) establishing the first minimum overbid for the Property of the Purchase Price as the sum of (1) the Purchase Price, (2) the Break-up Fee, and (3) One Hundred Thousand Dollars (\$100,000.00), and (vi) setting a sale hearing for approval of the Sale (such order, the “Bidding Procedures Order”); and (B) the Sale Order.~~

~~**Section 12.02 Break-up Fee.**~~

~~(a) In consideration for Purchaser having expended considerable time and expense in connection with this Agreement and negotiation thereof and the identification and quantification of assets of the Seller, the Seller believes that the Purchaser is entitled to certain bid protections to be approved by the Bankruptcy Court, including the Break-up Fee.~~

~~(b) If an Auction is scheduled pursuant to the Bidding Procedures Orders, upon Seller’s request, Purchaser shall provide Seller with its calculation of the Break-up Fee, along with copies of any documentation reasonably necessary to substantiate each portion thereof,~~

~~within two (2) business days following the Bid Deadline scheduled pursuant to the Bidding Procedures Order (or such later time to which Seller may agree).~~

~~(c) Subject to approval by the Bankruptcy Court, and provided the Purchaser is in all material respects in compliance with the terms hereof, if Purchaser’s bid embodied in the Purchase Price as set forth in this Agreement is exceeded by a Competing Bid, or Seller enters into an Alternate Transaction, then Seller shall, or shall cause the purchaser in an Alternate Transaction, as applicable, to pay to Purchaser the Break-up Fee upon consummation of the Alternate Transaction from the proceeds of such Alternate Transaction paid at the closing thereof and seller shall promptly return the Deposit to the Purchaser.~~

~~(d) If this Agreement is terminated pursuant to Section 10.01(a)(i) (provided that the failure to close was due in whole or in part to any action or inaction by Seller), Section 10.01(a)(iii), Section 10.01(a)(iv), Section 10.01(a)(v) (except to the extent Seller enters into an Alternate Transaction), or Section 10.01(b), then the Break-up Fee shall not be payable.~~

~~**Section 12.03 Competing Transaction.**~~

~~(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher or better competing bids (each, a “Competing Bid”).~~

~~(b) Notwithstanding the execution of this Agreement, Seller is permitted to cause its Representatives to further market and initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Purchaser and its Representatives) in connection with any sale or other disposition of all or any other asset of Seller. In addition, Seller shall have the responsibility and obligation to respond to any and all other acts related thereto which are required under the Bankruptcy Code or other applicable law, including supplying information relating to the assets of Seller to prospective purchasers. Prior to Seller furnishing any non-public information to any Person in connection with an offer regarding the sale or other disposition of all or any part of the Property, Seller must enter into a customary confidentiality agreement with such Person, pursuant to the order of the Bankruptcy Court approving bidding procedures for the sale of the Property (the “**Bidding Procedures**”).~~

~~(b)~~ ~~(e)~~ If a Competing Bid is selected in conjunction with an auction (the “**Auction**”) but such bidder does not consummate the purchase of the Property and Purchaser is the second highest bidder (the “**Backup Bidder**”), Purchaser shall be subject to the rights and responsibilities of the Backup Bidder as set forth in the Bidding Procedures.

~~**Section 12.04 Treatment of Monetary Obligations.** The Break-up Fee and Purchaser’s Costs payable to Purchaser under this Agreement shall be entitled to administrative expense priority in Seller’s Chapter 7 Case pursuant to Sections 503(b) and 507(a) of the Bankruptcy Code.~~

~~**Section 12.05 Rejection of Pre-Petition PSA and Release of Claims in Connection Therewith.**~~

~~(a) The Parties acknowledge that Purchaser entered into that certain Purchase and Sale Agreement by and between Purchaser, as purchaser, and Debtor, as seller, entered into as of June 6, 2023, as restated and amended by that certain Reinstatement of and First Amendment to Purchase and Sale Agreement dated as of July 11, 2023, and further amended by that certain Second Amendment to Purchase and Sale Agreement dated as of August 18, 2023 (collectively, the “**Pre-Petition PSA**”). The Parties acknowledge that, pursuant to Bankruptcy Code § 365(d)(1), the Pre-Petition PSA was automatically rejected by the Trustee as of May 7, 2024.~~

~~(b) In exchange for the consideration provided herein and other good and valuable consideration:~~

~~(i) Seller, on behalf of the Debtor and its estate, hereby irrevocably and unconditionally fully and forever waives, releases, and discharges Purchaser, Purchaser’s parents, subsidiaries, affiliates, predecessors, successors, and assigns, and each of its and their respective officers, directors, employees, shareholders, and trustees, in their corporate and individual capacities (collectively, the “**Purchaser Released Parties**”), from any and all Claims, demands, actions, causes of actions, judgments, rights, fees, damages, debts, obligations, liabilities, and expenses (inclusive of attorneys’ fees) of any kind whatsoever, whether known or unknown, that Seller, on behalf of the Debtor and its estate, may have or have ever had against the Purchaser Released Parties, or any of them, arising out of, or in any way related to the Pre-Petition PSA and/or the rejection thereof.~~

~~(ii) Purchaser hereby irrevocably and unconditionally fully and forever waives, releases, and discharges Debtor, Seller and each of their parents, subsidiaries, affiliates,~~

~~predecessors, successors, and assigns, and each of its and their respective officers, directors, employees, shareholders, and trustees, in their corporate and individual capacities (collectively, the “Seller Released Parties”), from any and all Claims, demands, actions, causes of actions, judgments, rights, fees, damages, debts, obligations, liabilities, and expenses (inclusive of attorneys’ fees) of any kind whatsoever, whether known or unknown, that Purchaser, may have or have ever had against the Seller Released Parties, or any of them, arising out of, or in any way related to the Pre-Petition PSA and/or the rejection thereof.~~

~~(c) The provisions of this Section 12.05 shall survive Closing and shall remain effective regardless of whether Seller consummates an Alternative Transaction.~~

ARTICLE XIII ESCROW AGENT

Section 13.01 Escrow Terms. Title Insurance Company shall serve as the escrow agent (“**Escrow Agent**”) with regard to payment of closing costs set forth in Section 4.05 and payment of apportionments set forth in Section 4.06. Escrow Agent shall make disbursements as set forth in the Settlement Statement.

ARTICLE XIV CONFIDENTIALIT Y

Section 14.01 Confidential Information. Purchaser hereby agrees to hold as confidential all information disclosed to it by Seller and/or Debtor in connection with ~~the Pre-Petition PSA~~, the transaction contemplated hereby and concerning the other, or otherwise gained through Purchaser’s access to the Property (“**Seller Confidential Information**”). Seller hereby agrees to hold as confidential all information disclosed to it by Purchaser in connection with the transaction contemplated hereby (“**Purchaser Confidential Information**”). Seller Confidential Information and Purchaser Confidential Information may be collectively referred to as “**Confidential Information**”, and expressly excludes any information that is a matter of public record in connection with the Chapter 7 Case, or was otherwise previously or is hereafter publicly disclosed (other than in violation of this Agreement or other confidentiality agreements to which such other party is a party). Each of Purchaser and Seller and shall not release any such Confidential Information to third parties without the prior written consent of the other party, except (i) to its members, advisers, underwriters, analysts, employees, affiliates, officers, directors, consultants, lenders, investors, potential lenders and investors, accountants, legal counsel, governmental representatives or their agents, title companies or other advisors of any of the foregoing, provided that they are advised as to the confidential nature of such information and are instructed to maintain such confidentiality, (ii) to comply with any applicable law, rule (including, if applicable, the rules of an applicable stock exchange on which such party or its affiliates lists its securities) or regulation, and (iii) in any legal proceeding between the Seller and Purchaser in connection with this Agreement. Neither Seller nor Purchaser shall at any time issue a press release or otherwise communicate with media representatives regarding this sale and purchase unless such release or communication (x) has received the prior approval of the other party (which approval shall not be unreasonably withheld, conditioned or delayed) or (y) is required to comply with any applicable law, rule (including, if applicable, the rules of an applicable stock exchange on which such party or its affiliates lists its securities) or regulation.

Section 14.02 Return or Destruction of Confidential Information. As of the Closing Date or in the event of a termination of this Agreement, if applicable, such confidentiality shall be maintained by Purchaser and all Confidential Information in accordance with the written request of Seller shall be either promptly: (a) returned to Seller; or (b) destroyed by Purchaser, with any such destruction confirmed by Purchaser and its Transaction Parties in writing.

Section 14.03 Survival. The provisions of this Article shall survive the Closing Date or termination of this Agreement.

ARTICLE XV BROKERS

Section 15.01 Brokers. Purchaser and Seller each represent and warrant to each other that they dealt with no broker in connection with, nor has any broker had any part in bringing about, this transaction other than Cushman & Wakefield (the “**Broker**”). Seller shall pay the brokerage commission due Broker in accordance with the terms and conditions of a separate written agreement. Seller and Purchaser shall each indemnify, defend, and hold harmless the other from and against any claim of any broker or other person for any brokerage commissions, finder's fees, or other compensation in connection with this transaction if such claim is based in whole or in part by, through, or on account of,

any acts of the indemnifying party or its agents, employees, or representatives and from all losses, liabilities, costs, and expenses in connection with such claim, including without limitation, [reasonable] attorneys’ fees, court costs, and interest.

Section 15.02 Survival. The provisions of this Article XV shall survive the Closing or the termination of this Agreement prior to the Closing.

ARTICLE XVI MISCELLANEOUS

Section 16.01 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina.

Section 16.02 Merger; No Representations. This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. This Agreement is entered into after full investigation, no party is relying upon any statement or representation not set forth in this Agreement, made by any other party.

Section 16.03 No Survival. Except as otherwise provided in this Agreement, no representations, warranties, covenants, or other obligations of Seller set forth in this Agreement shall survive the Closing and no action based thereon shall be commenced after the Closing.

Section 16.04 Limitation of Liability.

(a) No shareholder or agent of Seller, nor any Seller Related Party, shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement or any amendment or amendments to any of the foregoing made at any time or times, heretofore and

hereafter, and Purchaser and its successors and assigns and, without limitation all other persons and entities, shall look solely to Seller's assets for the payment of any claim or for any performance and Purchaser, on behalf of itself and its successors and assigns, hereby waives any and all such personal liability.

(b) No shareholder or agent of Purchaser, nor any Purchaser Related Party shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and Seller and its successors and assigns and, without limitations, all other persons and entities, shall look solely to Purchaser's assets for the payment of any claim or for any performance, and Seller, on behalf of itself and its successors and assigns, hereby waives any and all such personal liability.

Section 16.05 Business Days. Whenever any action must be taken (including the giving of notices) under this Agreement during a certain time period (or by a particular date) that ends or occurs on a non-business day, then such period (or date) shall be extended until the next succeeding Business Day. As used herein, the term “**Business Day**” shall mean any day other than a Saturday, a Sunday, or a legal holiday on which national banks are not open for general business in the State of New York.

Section 16.06 Modifications and Amendments. This Agreement cannot under any circumstance be modified or amended orally and no agreement shall be effective to waive, change, modify, terminate, or discharge this Agreement, in whole or in part, unless such agreement is in writing and is signed by both Seller and Purchaser.

Section 16.07 No Recording. Neither this Agreement, nor any memorandum of this Agreement, shall be recorded. The recording of this Agreement, or any memorandum of this Agreement, by Purchaser shall constitute a material default and shall entitle Seller to retain the Deposit and any interest earned thereon.

Section 16.08 Successors and Assigns; Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns. Purchaser may not assign or otherwise transfer this Agreement, or any of its rights or obligations hereunder, without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion, ~~except that Purchaser may assign this Agreement to an affiliate without the consent of the Seller.~~ Any purported assignment without Seller's consent, ~~other than an assignment to an affiliate,~~ shall be void and of no force or effect. Any change in control of Purchaser or of any of the direct or indirect ownership interests in Purchaser, at any level or tier of ownership, whether in one transaction or a series of transactions, shall constitute an assignment for purposes of this Section 16.08.

Section 16.09 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect, invalidate, or render unenforceable any other term or provision of this Agreement. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

Section 16.10 Further Assurances. Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby, provided such documents are customarily delivered in real estate transactions in the State of North Carolina and do not impose any material obligations upon any party hereunder except as set forth in this Agreement.

Section 16.11 Counterparts. This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall together constitute but one and the same instrument.

Section 16.12 Headings. The captions or paragraph titles contained in this Agreement are for convenience and reference only and shall not be deemed a part of the text of this Agreement.

Section 16.13 No Waivers. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party providing the waiver. No waiver by either party of any failure or refusal to comply with any obligations under this Agreement shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

Section 16.14 No Offer. This Agreement shall not be deemed an offer or binding upon Seller or Purchaser until this Agreement is fully executed and delivered by Seller and Purchaser.

Section 16.15 Waiver of Jury Trial. SELLER AND PURCHASER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER ARISING IN TORT OR CONTRACT) BROUGHT BY SUCH PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

Section 16.16 Submission to Jurisdiction; Consent to Service of Process. Without limiting any Party's right to appeal any order of the Bankruptcy Court, (a) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any Claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated herein, and (b) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 9.02 hereof. The Parties hereby irrevocably waive, to the fullest extent permitted by Applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of the Parties hereby consents to process being served by any Party to this Agreement in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 9.02.

Section 16.17 Time of the Essence. The parties hereto acknowledge and agree that, except as otherwise expressly provided in this Agreement, TIME IS OF THE ESSENCE with respect to all time periods, dates and the payment and performance of all obligations under this Agreement (including, without limitation, the giving of Notices, the delivery of documents, and the funding of money). Whenever action must be taken by either party (including, without limitation, the giving of Notice, the delivery of documents, or the funding of money) under this Agreement, prior to the expiration of, by no later than, or on a particular date, unless otherwise expressly provided in this Agreement, such action

must be completed by 5:00 p.m. Eastern on such date. However, notwithstanding anything to the contrary herein, whenever action must be taken by either party (including, without limitation, the giving of Notice, the delivery of documents, or the funding of money) under this Agreement prior to the expiration of, by no later than, or on a particular date that is not a Business Day, then such date shall be extended until the immediately following Business Day.

[SIGNATURE PAGE FOLLOWS]

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

PURCHASER:

~~LREP ACQUISITIONS III LLC, a New Jersey~~
~~limited liability company~~ [PURCHASER NAME],
a[n] [STATE OF ORGANIZATION] [ENTITY
TYPE]

By: _____

Name:

Title:

SELLER:

BUTH-NA-BODHAIGE, INC. dba THE BODY
SHOP, a ~~Virginia~~ Delaware corporation

By: _____

Name: ~~Kenneth P. Silverman~~

Title: ~~Chapter 7 Trustee~~

**SCHEDULES AND
EXHIBITS**

Exhibit A	Legal Description of Real Property
Exhibit B	Excluded Property
Exhibit C	Draft Deed
Exhibit D	Assignment and Assumption of Intangibles

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Wake Forest, County of Wake, State of North Carolina:

Beginning at an existing iron pipe on the eastern right of way of Unicorn Drive, said iron pipe being the northwestern corner of the property belonging to Thurman Kitchin and being recorded in deed book 4649 page 467 of the Wake County Registry and being the POINT OF BEGINNING the following courses and distances: N 21-46-37 E 607.38' to a point, thence N 21-46-43 E 280.89' to an existing iron pipe, thence S 67-38-03 E 1343.06' to an existing iron pipe, thence S 27-52-38 W 319.83' to an existing iron pipe, thence S 03-00-21 W 147.43' to an existing iron pipe, thence S 02-51-38 W 129.00' to an existing iron pipe, thence S 55-58-11 W 201.32' to an existing iron pipe, thence S 56-00-06 W 64.61' to an existing iron pipe, thence S 07-07-17 E 164.03' to an existing iron pipe, thence S 01-06-15 E 347.20' to an existing iron pipe, thence S 33-34-02 W 81.22' to a point, thence with a creek S 75-00-55 W 36.27' to a point, thence N 67-44-31 W 59.44' to a point, thence N 43-38-17 W 38.19' to a point, thence N 58-27-25 W 25.32' to a point, thence S 63-12-00 W 45.93' to an existing iron pipe, thence N 55-59-48 W 421.33' to an existing iron pipe, thence N 40-58-22 W 341.40' to a new iron pipe, thence N 45-40-07 W 209.61' to an existing iron pipe, thence N 41-12-00 W 300.16' to an existing iron pipe, thence N 43-58-16 W 100.41' to the point of beginning.

LESS AND EXCEPT the property conveyed to Town of Wake Forest, by North Carolina General Warranty Deed recorded on October 20, 2020 in Book 18139 Page 1755, as described as follows:

That certain Clean Water Management Trust Fund (CWMTF) Conservation area lying in the Wake Forest Township, Wake County North Carolina and being the southern portion of now or formerly Buth NA Bodhaige Inc., Parcel "A" property as found in Deed Book (DB) 11638, Page (Pg) 2248 and Book of Maps (BM) 1992, (Pg) 1487 in the Wake County Register of Deeds, having Wake County Parcel Identification Number (PIN) 1739713177, and being bounded on the north by said Buth NA Bodhaige Inc., property, on the east by now or formerly Town of Wake Forest property as found in (DB) 10748, (Pg) 324 and (BM) 2004, (Pg) 555 in the Wake County Register of Deeds; and on the south by now or formerly Lot 1, Finger Lakes Drive LLC property as found in (DB) 17639, (Pg) 2220 and (BM) 2020, (Pg) 869 in the Wake County Register of Deeds; and on the west by now or formerly Lot 3, 708 Finger Lakes Drive LLC property as found in (DB) 17810, (Pg) 341 and (BM) 2019, (Pg) 2172 in the Wake County Register of Deeds and being more particularly described as follows:

Beginning at an existing iron pipe found in northern right of way terminus of One World Way (variable width public right of way) and a common line with said Buth NA Bodhaige Inc., property having North Carolina Grid Coordinates (all coordinates are referenced to NC Grid Coordinate Reference System NAD 83 (2011) and all distances are horizontal ground unless otherwise stated) of Northing = 790,807.67, Easting = 2,137,004.96; thence leaving said right of way terminus of One World Way, South 70 degrees 04 minutes 32 seconds East, a distance of 889.61 feet to a new rebar set in a common line with said now or formerly Town of Wake Forest property; thence along said common line with now or formerly Town of Wake Forest property, South 01 degrees 02 minutes 47 seconds East, a distance of 198.14 feet to a new rebar set; thence along said common line with now or formerly Town of Wake Forest property, South 33 degrees 37 minutes 30 seconds West, a distance of 81.22 feet to a new rebar set, said point also being a common corner with said now or formerly Lot 1, Finger Lakes Drive LLC property; thence along a common line with said now or formerly Lot 1, Finger Lakes Drive LLC property the following six (6) courses and distances: South 75 degrees 04 minutes 23 seconds West, a distance of 36.12 feet to a new rebar set; thence North 67 degrees 43 minutes 50 seconds West, a distance of 59.75 feet to a new rebar set; thence North 43 degrees 37 minutes 36 seconds West, a distance of 38.19 feet to a new rebar set; thence North 58 degrees 26 minutes 44 seconds West, a distance of 25.32 feet to a new rebar set; thence South 63 degrees 12 minutes 41 seconds West, a distance of 45.93 feet to a new rebar set; thence North 55 degrees 59 minutes 07 seconds West, a distance of 231.79 feet to a point, said point being a common corner with said now or

~~formerly Lot 3, 708 Finger Lakes Drive LLC property; thence along a common line with said now or formerly Lot 3, 708 Finger Lakes Drive LLC property, North 55 degrees 59 minutes 07 seconds West, a distance of 189.54 feet to a new rebar set; thence along a common line with now or formerly Lot 3, 708 Finger Lakes Drive LLC property, North 40 degrees 57 minutes 41 seconds West, a distance of 341.40 feet to a new rebar set; thence along a common line with said now or formerly Lot 3, 708 Finger Lakes Drive LLC property, North 45 degrees 39 minutes 26 seconds West, a distance of 46.09 feet to a new rebar set at the southern right-of-way terminus of said One World Way; thence along said northern right-of-way terminus of One Word Way, North 45 degrees 39 minutes 26 seconds West, a distance of 13.81 feet to an existing iron pipe, the Point of Beginning.~~

~~Said (CWMTF) Conservation area is the same as shown on an exempt subdivision map entitled "Exempt Subdivision and CWMTF Conservation Area Map for the Town of Wake Forest and the Clean Water Management Trust Fund—Contract Grant 2016-089 BUTH NA BODHAIGE, INC. 5036 ONE WORLD WAY Wake Forest, North Carolina" prepared by Timothy E. Bowes, PLS with VHB Engineering NC, P.C. and dated April 2, 2020.~~

~~NOTE FOR INFORMATION: Being Parcel No(s). 1739713269 and 1739719112, of the City of Wake Forest, County of Wake.~~

~~EXHIBIT B
EXCLUDED PROPERTY
EXHIBIT C FORM OF DEED~~

~~(attached)~~

~~NORTH CAROLINA TRUSTEE'S DEED~~

Excise Tax:	\$
Parcel ID:	1739713269 and 1739719112
Mail/Box To:	Grantee
Prepared By:	Grantor
Brief description for the Index:	5036 One World Way, Wake Forest, NC

~~THIS TRUSTEE'S DEED ("Deed") is made on the _____ day of _____, 2024, by and between:~~

GRANTOR	GRANTEE
Kenneth P. Silverman, Esq., solely in his capacity as Chapter 7 Trustee of the Bankruptcy Estate of Buth-na-Bodhaige, Inc., a Virginia corporation qualified in North Carolina d/b/a The Body Shop, Case No. 24-10392 (DSJ) 100 Jericho Quadrangle, Suite 300 Jericho, NY 11753	LREP Acquisitions III LLC, a New Jersey limited liability company

~~The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.~~

~~WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does hereby grant and release unto the Grantee, the heirs or successors and assigns of the Grantee forever, all of the Grantor's right, title, and interest in and to all that certain lot or parcel of land situated in the City of Wake Forest, Wake County, North Carolina, and more particularly described on Exhibit A attached hereto and made a part hereof (the "Property").~~

LEGAL DESCRIPTION

all that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Wake Forest, County of Wake, State of North Carolina.

Beginning at an existing iron pipe on the eastern right of way of Unicon Drive, said iron pipe being the northwestern corner of the property belonging to Thurman Kitchin and being recorded in deed book 4649 page 467 of the Wake County Registry and being the POINT OF BEGINNING the following courses and distances: N 21-46-37 E 607.38' to a point, thence N 21-46-43 E 280.89' to an existing iron pipe, thence S 67-38-03 E 1343.06' to an existing iron pipe, thence S 27-52-38 W 319.83' to an existing iron pipe, thence S 03-00-21 W 147.43' to an existing iron pipe, thence S 02-51-38 W 129.00' to an existing iron pipe, thence S 55-58-11 W 201.32' to an existing iron pipe, thence S 56-00-06 W 64.61' to an existing iron pipe, thence S 07-07-17 E 164.03' to an existing iron pipe, thence S 01-06-15 E 347.20' to an existing iron pipe, thence S 33-34-02 W 81.22' to a point, thence with a creek S 75-00-55 W 36.27' to a point, thence N 67-44-31 W 59.44' to a point, thence N 43-38-17 W 38.19' to a point, thence N 58-27-25 W 25.32' to a point, thence S 63-12-00 W 45.93' to an existing iron pipe, thence N 55-59-48 W 421.33' to an existing iron pipe, thence N 40-58-22 W 341.40' to a new iron pipe, thence N 45-40-07 W 209.61' to an existing iron pipe, thence N 41-12-00 W 300.16' to an existing iron pipe, thence N 43-58-16 W 100.41' to the point of beginning.

LESS AND EXCEPT the property conveyed to Town of Wake Forest, by North Carolina General Warranty Deed recorded on October 20, 2020 in [Book 18139 Page 1755](#), as described as follows:

That certain Clean Water Management Trust Fund (CWMTF) Conservation area lying in the Wake Forest Township, Wake County North Carolina and being the southern portion of now or formerly Buth NA Bodhaige Inc., Parcel "A" property as found in Deed Book (DB) 11638, Page (Pg) 2248 and Book of Maps (BM) 1992, (Pg) 1487 in the Wake County Register of Deeds, having Wake County Parcel Identification Number (PIN) 1739713177, and being bounded on the north by said Buth NA Bodhaige Inc., property, on the east by now or formerly Town of Wake Forest property as found in (DB) 10748, (Pg) 324 and (BM) 2004, (Pg) 555 in the Wake County Register of Deeds; and on the south by now or formerly Lot 1, Finger Lakes Drive LLC property as found in (DB) 17639, (Pg) 2220 and (BM) 2020, (Pg) 869 in the Wake County Register of Deeds; and on the west by now or formerly Lot 3, 708 Finger Lakes Drive LLC property as found in (DB) 17810, (Pg) 341 and (BM) 2019, (Pg) 2172 in the Wake County Register of Deeds and being more particularly described as follows:

Beginning at an existing iron pipe found in northern right-of-way terminus of One World Way (variable width public right-of-way) and a common line with said Buth NA Bodhaige Inc., property having North Carolina Grid Coordinates (all coordinates are referenced to NC Grid Coordinate Reference System NAD 83 (2011) and all distances are horizontal ground unless otherwise stated) of Northing = 790,807.67, Easting = 2,137,004.96; thence leaving said right of way terminus of One World Way, South 70 degrees 04 minutes 32 seconds East, a distance of 889.61 feet to a new rebar set in a common line with said now or formerly Town of Wake Forest property; thence along said common line with now or formerly Town of Wake Forest property, South 01 degrees 02 minutes 47 seconds East, a distance of 198.14 feet to a new rebar set; thence along said common line with now or formerly Town of Wake Forest property, South 33 degrees 37 minutes 30 seconds West, a distance of 81.22 feet to a new rebar set, said point also being a common corner with said now or formerly Lot 1, Finger Lakes Drive LLC property; thence along a common line with said now or formerly Lot 1, Finger Lakes Drive LLC property the following six (6) courses and distances: South 75 degrees 04 minutes 23 seconds West, a distance of 36.12 feet to a new rebar set; thence North 67 degrees 43 minutes 50 seconds West, a distance of 59.75 feet to a new rebar set; thence North 43 degrees 37 minutes 36 seconds West, a distance of 38.19 feet to a new rebar set; thence North 58 degrees 26 minutes 44 seconds West, a distance of 25.32 feet to a new rebar set; thence South 63 degrees 12 minutes 41 seconds West, a distance of 45.93 feet to a new rebar set; thence North 55 degrees 59 minutes 07 seconds West, a distance of 231.79 feet to a point, said point being a common corner with said now or formerly Lot 3, 708 Finger Lakes Drive LLC property; thence along a common line with said now

of formerly Lot 3, 708 Finger Lakes Drive LLC property, North 55 degrees 39 minutes 07 seconds west, a distance of 189.54 feet to a new rebar set; thence along a common line with now or formerly Lot 3, 708 Finger Lakes Drive LLC property, North 40 degrees 57 minutes 41 seconds West, a distance of 341.40 feet to a new rebar set; thence along a common line with said now or formerly Lot 3, 708 Finger Lakes Drive LLC property, North 45 degrees 39 minutes 26 seconds West, a distance of 46.09 feet to a new rebar set at the southern right-of-way terminus of said One World Way; thence along said northern right-of-way terminus of One World Way, North 45 degrees 39 minutes 26 seconds West, a distance of 13.81 feet to an existing iron pipe, the Point of Beginning.

Said (CWMTF) Conservation area is the same as shown on an exempt subdivision map entitled "Exempt Subdivision and CWMTF Conservation Area Map for the Town of Wake Forest and the Clean Water Management Trust Fund - Contract Grant 2016-089 BUTH NA BODHAIGE, INC. 5036 ONE WORLD WAY Wake Forest, North Carolina" prepared by Timothy E. Bowes, PLS with VHB Engineering NC, P.C. and dated April 2, 2020.

NOTE FOR INFORMATION: Being Parcel No(s). 1739713269 and 1739719112, of the City of Wake Forest, County of Wake

SCHEDULE A
LEGAL DESCRIPTION
File No.: MMTNC-189095
(Continued)

or formerly Lot 3, 708 Finger Lakes Drive LLC property, North 55 degrees 59 minutes 07 seconds West, a distance of 189.54 feet to a new rebar set; thence along a common line with now or formerly Lot 3, 708 Finger Lakes Drive LLC property, North 40 degrees 57 minutes 41 seconds West, a distance of 341.40 feet to a new rebar set; thence along a common line with said now or formerly Lot 3, 708 Finger Lakes Drive LLC property, North 45 degrees 39 minutes 28 seconds West, a distance of 46.09 feet to a new rebar set at the southern right-of-way terminus of said One World Way; thence along said northern right-of-way terminus of One World Way, North 45 degrees 39 minutes 28 seconds West, a distance of 13.81 feet to an existing iron pipe, the Point of Beginning.

Said (CWMTF) Conservation area is the same as shown on an exempt subdivision map entitled "Exempt Subdivision and CWMTF Conservation Area Map for the Town of Wake Forest and the Clean Water Management Trust Fund - Contract Grant 2016-089 BUTH NA BODHAIGE, INC. 5036 ONE WORLD WAY Wake Forest, North Carolina" prepared by Timothy E. Bowes, PLS with VHB Engineering NC, P.C. and dated April 2, 2020.

NOTE FOR INFORMATION: Being Parcel No(s). 1739713269 and 1739719112, of the City of Wake Forest, County of Wake.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Stewart Title Guaranty Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and a counter-signature by the Company or its Issuing agent that may be in electronic form.

ALTA Commitment for Title Insurance (8-1-16)

18909

~~EXHIBIT D FORM OF ASSIGNMENT~~

~~Assignment and Assumption of Intangible Property~~

~~This Assignment and Assumption of Intangible Property (this "Assignment"), dated as of [●] (the "Effective Date"), is entered into by and between Kenneth P. Silverman, as Chapter 7 Trustee of BUTH NA-BODHAIGE, INC. dba THE BODY SHOP, a Virginia corporation ("Assignor"), and [●], a [●] ("Assignee").~~

~~WHEREAS, Assignor, as seller, and Assignee, as purchaser, have entered into that certain Purchase and Sale Agreement (the "**Purchase Agreement**") dated as of [●], for the purchase and sale of that certain property having an address of 5036 One World Way, Wake Forest, North Carolina, and as more particularly described in the Purchase Agreement (the "**Property**"); and~~

~~WHEREAS, in connection with the purchase and sale of the Property, the Purchase Agreement obligates Assignor to assign to Assignee, and Assignee to assume from Assignor, the intangible property as further defined herein, subject to the terms and conditions set forth in this Assignment.~~

~~NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth in this Assignment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:~~

~~1. Assignment. As of the Effective Date of this Assignment, Assignor HEREBY ASSIGNS AND TRANSFERS unto Assignee all of Assignor's rights in, under and to all benefits and privileges accruing to Assignor thereunder to each of the following (collectively, the "**Assumed Intangible Property**"):~~

~~(a) Warranties and Guaranties. Any written warranty, guaranty or other obligation from any contractor, manufacturer or vendor to any improvements, furnishings, fixture or equipment located at the Property, to the extent assignable in connection with the sale of the Property (the "**Assumed Warranties and Guaranties**").~~

~~(b) Permits and Licenses. Any permit, license or other form of authorization or approval issued by a government agency or authority and legally required for the operation and use of the Property to the extent transferable with the sale of the Property (the "**Assumed Permits and Licenses**").~~

~~Assignor hereby disclaims all express or implied warranties regarding the existence or condition of, or title to, such Assumed Intangible Property, including without limitation the implied warranties of merchantability and suitability for a particular purpose.~~

~~2. Assumption.~~

~~(a) Assignee hereby assumes and agrees to perform any and all of the obligations and liabilities of Assignor under each of the Assumed Intangible Property accruing from and after the Effective Date.~~

~~(b) Assignee accepts all Assumed Intangible Property in its "AS-IS" condition and "WITH ALL FAULTS."~~

~~3. Miscellaneous.~~

~~(a) All notices and other communications required or permitted under this Assignment shall be given in the same manner as in the Purchase Agreement.~~

~~(b) This Assignment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original~~

~~together constitute but one and the same instrument. A signed copy of this Assignment delivered by either facsimile or e-mail shall be deemed to have the same legal effect as delivery of an original signed copy of this Assignment, provided such original signed copy is delivered within three (3) days thereafter. Notwithstanding the foregoing, each party hereto shall deliver original counterpart signatures to the other parties on or before the date hereof.~~

~~(c) This Assignment shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to conflict of law rules.~~

~~(d) This Assignment may not be modified or amended in any manner other than by a written agreement signed by the party to be charged.~~

~~(e) Assignor shall promptly execute and deliver to Assignee any additional instrument or other document which Assignee reasonably requests to evidence or better effect the assignment contained herein.~~

~~(f) This Assignment and the obligations of the parties hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.~~

~~IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed as of the date set forth above.~~

~~**ASSIGNOR:**
BUTH NA BODHAIGE, INC. dba THE BODY SHOP, a
Virginia corporation~~

~~By: _____ Name: Kenneth P. Silverma~~

~~**ASSIGNEE:**
{●}~~

~~By: _____ Name: _____~~

Document comparison by Workshare Compare on Monday, June 24, 2024
 5:20:34 PM

Input:	
Document 1 ID	file:///C:/Users/CourtneyMRoman/OneDrive - Rimon, P.C/Desktop/Body Shop - PSA - NO SIGNATURES - 5036 One World Way(w exhibits)(EXECUTION VERSION).pdf
Description	Body Shop - PSA - NO SIGNATURES - 5036 One World Way(w exhibits)(EXECUTION VERSION)
Document 2 ID	file:///C:/Users/CourtneyMRoman/OneDrive - Rimon, P.C/Desktop/Body Shop - FORM PSA.pdf
Description	Body Shop - FORM PSA
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	87
Deletions	236
Moved from	0
Moved to	0
Style changes	0
Format changes	0

Total changes	323
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