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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	: Chapter 11
THE CHRISTIAN BROTHERS' INSTITUTE, et al.	: Case No.: 11-22820 (RDD)
Debtors.	: (Jointly Administered)
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**DEBTOR'S MOTION FOR ORDERS PURSUANT TO SECTIONS 105(a) AND
363 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 6004 APPROVING
(I) SALE PROCEDURES AND NOTICE OF THE AUCTION RELATING THERETO,
(II) SALE OF REAL ESTATE TO IONA PREPARATORY SCHOOL OR A PARTY
MAKING A HIGHER AND BETTER OFFER FREE AND CLEAR OF LIENS, CLAIMS,
INTERESTS AND ENCUMBRANCES, (III) APPROVING THE STALKING HORSE
PURCHASE AGREEMENT, AND (IV) GRANTING RELATED RELIEF**

TO: THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

The Christian Brothers' Institute ("CBI" or the "Debtor"), debtor and debtor-in-possession herein, hereby moves this Court (the "Motion"): (i) for the entry of an order (the "Procedures Order") pursuant to 11 U.S.C. § 105(a) and 363 and Rule 6004 of the Federal Rules of Bankruptcy Procedure and pursuant to the amended guidelines adopted by General Order M-383 (a) approving bidding procedures (the "Sale Procedures") in connection with the sale (the "Sale") of certain real estate to Iona Preparatory School ("Iona Prep"), as more particularly described in the Agreement of Purchase and Sale (together with the related sale documents, the "Purchase Agreement"), (b) approving certain bidding protections (the "Bidding Protections")

including a break-up fee and expense reimbursement (the “Break-Up Fee”), (c) scheduling an auction (the “Auction”) (if a qualified competing bid (other than Iona Prep’s) is timely received) and a sale hearing (the “Sale Hearing”), and (d) approving the form of notice of such Sale Procedures and Bidding Protections, the Auction and the Sale; and (ii) after completion of the Sale Hearing, entry of an order (the “Sale Order”) pursuant to 11 U.S.C. § 105(a) and 363 and Rule 6004 of the Federal Rules of Bankruptcy Procedure (a) authorizing and approving the Sale to Iona Prep or to another qualified bidder submitting a higher or otherwise better offer (the “Successful Bidder”) free and clear of all liens, claims, encumbrances and interests, (b) approving the Purchase Agreement, and (c) granting related relief. In support of the Motion, CBI respectfully states as follows:

PRELIMINARY STATEMENT

1. By this Motion, CBI seeks to sell the Premises (as defined below) to Iona Prep for a total consideration of \$8,500,000¹ (or to such entity that submits a qualified bid for at least \$8,675,000) and establish procedures for the sale, including approving bid procedures and bid protections to Iona Prep as the stalking horse bidder.
2. While CBI and Iona Prep share some common trustees, CBI submits that the transaction contemplated in the Purchase Agreement is not an “insider transaction.” Indeed, as discussed below, CBI and Iona Prep took measures to ensure that the common trustees abstained from any decision making process vis-à-vis the sale. Additionally, CBI is placing the Purchase Agreement to the test of the broader public marketplace via the imposition of the proposed Sale Procedures and is in the process of engaging a qualified broker to market the sale in the hope that higher and better offers are generated for the Premises.

¹ \$5 million in cash plus a \$3.5 million note payable over twenty-five years at an interest rate of five percent.

3. CBI (and its counsel) have expended substantial amounts of time and effort negotiating the Purchase Agreement with Iona Prep. CBI submits that all negotiations were at arms' length, were fair and reasonable, and the fruit of such negotiations will inure to the benefit of CBI's bankruptcy estate. CBI respectfully requests that this Court approve the relief requested herein.

JURISDICTION

4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding is proper in this district and before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

5. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 105(a) and 363 and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). The Debtor also relies upon the amended guidelines adopted pursuant to General Order M-383.

GENERAL BACKGROUND

6. On April 28, 2011 (the "Petition Date"), CBI and The Christian Brothers of Ireland, Inc. ("CBOI" and together with CBI, the "Debtors") each commenced their respective Chapter 11 case by filing a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). Pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code, the Debtors continue to operate as debtors-in-possession. No trustee has been appointed.

7. The Debtors' cases were consolidated for administrative purposes only, by order dated May 2, 2011. Thereafter, by order dated May 18, 2011, the Debtors were authorized to retain Tarter Krinsky & Drogin LLP as bankruptcy counsel.

8. On May 11, 2011, the United States Trustee appointed an Official Committee of Unsecured Creditors (the “Committee”). The Committee retained Pachulski Stang Ziehl & Jones LLP as its counsel which was approved by an order of this Court dated July 14, 2011.

9. CBI is a domestic not-for-profit 501(c)(3) corporation organized under § 102(a)(5) of the New York Not-for-Profit Corporation Law. CBI was formed in 1906 pursuant to Section 57 of the then existing New York Membership Law. The Not-for-Profit Corporation Law replaced the Membership Law effective September 1, 1970. The purpose for which CBI was, and continues to be, formed was to establish, conduct and support Catholic elementary and secondary schools principally throughout New York State. As a not-for-profit corporation, the assets, and/or income are not distributable to, and do not inure to, the benefit of its directors or officers. CBI depends upon grants and donations to fund a portion of its operating expenses.

10. CBI is governed by a board of trustees currently consisting of the following Brothers: (i) Brother Hugh O’Neill; (ii) Brother Kevin Griffith; (iii) Brother Barry Lynch; (iv) Brother Daniel Casey; (v) Brother Anthony Murphy; and (vi) Brother Raymond Vercruyse.

11. The cause for the filing of these cases has been extensively detailed in the affidavit pursuant to Local Bankruptcy Rule 1007-2 filed with the original petitions, and is referred to as if fully set forth herein. In short, the Debtors’ Chapter 11 cases were filed in an effort to resolve in one forum, an onslaught of litigation and claims asserted by alleged sexual abuse plaintiffs against the Debtors. Additionally, through the Chapter 11 process, the Debtors hope to reorganize their financial affairs so as to enable them to provide for their aged Brothers and continue their educational and outreach missions.

RELEVANT BACKGROUND

12. CBI owns the premises located at 173 Stratton Road, New Rochelle, New York

(together with certain personality and fixtures located thereon, the “173 Premises”) as well as a certain vacant parcel of land across from the 173 Premises (the “Vacant Premises” and together with the 173 Premises, the “Premises”). Since the 1950s, Iona Grammar School (“Iona Grammar”) has operated a school on the 173 Premises. Prior to that time, and beginning in or around 1916, Iona Prep and Iona Grammar shared common facilities at a different location. Through the sale contemplated in the Purchase Agreement, it is anticipated that Iona Prep and Iona Grammar will once again share common facilities.

A. Iona Preparatory School

13. By way of background, Iona Prep was founded in 1916 by the Christian Brothers. Current enrollment is approximately 750 male students in grades 9 through 12. Iona Prep is a recipient of the prestigious Blue Ribbon Award. Presently, Iona Prep operates on a 27 acre campus located on Wilmot Road in New Rochelle, New York.

14. Iona Prep is governed by a two-tiered board consisting of (i) a board of trustees containing three trustees, all of which are Brothers, and (ii) a “lay person” board of directors. Iona Prep’s current trustees are as follows: (i) Brother Tom Murphy (Chair); (ii) Brother Daniel Casey; and (iii) Brother Raymond Vercruyse.²

B. Iona Grammar School

15. Iona Grammar, similarly, has a rich history deeply rooted in the Christian faith. Iona Grammar currently operates at the 173 Premises and enrolls approximately 200 male students in grades pre-K though 8. CBI has permitted Iona Grammar to run its school at the 173 Premises virtually rent free since the 1950s.

16. Iona Grammar is governed by a two-tiered board consisting of (i) a board of

² As noted *supra*, Brothers Daniel Casey and Raymond Vercruyse also serve as trustees of CBI.

trustees containing three trustees, all of which are Brothers, and (ii) a “lay person” board of directors. Iona Grammar’s current trustees are as follows: (i) Brother Tom Murphy (Chair); (ii) Brother Daniel Casey; and (iii) Brother Raymond Vercruyse.³

C. Description of the Premises

17. The 173 Premises consists of approximately six acres and contains various improvements. For instance, the 173 Premises contains (i) an approximate 24,000 square foot building currently being used as the main school building for Iona Grammar, (ii) an approximate 8,600 square foot, two story building currently used as a residence for Brothers, (iii) an approximate 1,400 square foot structure currently used as a nursery school, (iv) a two car garage, (v) various recreational fields, and (vi) parking for approximately 40 vehicles.

18. The Vacant Premises, which is across from the 173 Premises, consists of approximately five acres and is currently being used as a recreational field in connection with the operation of Iona Grammar.

D. Iona Prep’s Decision to Purchase Premises

19. Prior to the Petition Date, Iona Prep approached CBI to express its interest in purchasing the Premises. Iona Prep’s decision was reached after careful consideration by Iona Prep’s school administration and the board of directors. Subsequent to Iona Prep’s board of directors’ vote in favor of purchasing the Premises, the decision was presented to Iona Prep’s board of trustees for final approval. The decision to purchase the Premises was ultimately approved by the following trustees: Brothers Tom Murphy, Daniel Casey, and Raymond Vercruyse.⁴

³ As noted *supra*, Brothers Daniel Casey and Raymond Vercruyse also serve as trustees of CBI.

⁴ Because Brothers Daniel Casey and Raymond Vercruyse serve as trustees of CBI, such Brothers abstained from CBI’s decision making process vis-à-vis the sale of the Premises.

E. Summary of Purchase Agreement

20. The salient terms of the Purchase Agreement are as follows:⁵

Purchase Price: The purchase price for the Premises is \$8.5 million – consisting of \$5 million in cash and a \$3.5 million twenty-five year note bearing an annual interest rate of 5% per annum (300 monthly payments of \$24,460.65) secured by a mortgage.

Assets to be Sold:

- (i) those certain parcels of land (the “Land”) described on Exhibits A and B to the Purchase Agreement;
- (ii) All improvements situated on the Land (the “Improvements”);
- (iii) The streets, roads, lands, and alleys in front of and adjacent to the Land;
- (iv) All hereditaments and appurtenances to the Improvements and the Land, including without limitation all easements, rights-of-way, and other similar interests appertaining to the Improvements;
- (v) All machinery, equipment, fixtures and appliances of whatever nature which are affixed or attached to the Land or Improvements (the “Fixtures”);
- (vi) All appliances, equipment, furniture, fittings, tools, supplies, building materials and other similar articles of personal property not affixed or attached to the Improvements but which are used or to be used for or useable in any present or future enjoyment, occupancy or operation of the Improvements remaining at the Premises on the date of Closing (the “Personal Property”);
- (vii) Any service contracts, maintenance contracts, union contracts, concession agreements, agency agreements, and other written contracts or agreements affecting the Premises or the operation thereof at Closing, including those listed on Exhibit “C” to the Purchase Agreement;

⁵ The Summary of the Purchase Agreement set forth in the Motion is for convenience only. To the extent that the summary differs in any way with the Purchase Agreement, the actual terms of the Purchase Agreement will control. A copy of the fully executed Purchase Agreement is annexed hereto as **Exhibit “E.”** Additionally, capitalized terms contained in this section that are not otherwise defined, shall have the meaning ascribed to such term in the Purchase Agreement.

- (viii) Any unpaid award for any taking by condemnation or any damage to the Land or Improvements by reason of a change of grade of any street or highway;
- (ix) All site plans, architectural renderings, plans and specifications, engineering plans, as-built drawings, floor plans, and other similar plans or diagrams, if any, which relate to the Real Property (hereinafter defined); and
- (x) Seller's interest in all licenses, permits and warranties which relate to the Real Property and which may be assigned by Seller to Purchaser.

21. The Purchase Agreement provides that Brothers may maintain their residence on the 173 Premises for a minimum of one year following the Closing.

22. The Purchase Agreement requires CBI to obtain an order authorizing the Sale by no later than April 5, 2012. The Purchase Agreement contains an outside closing date of April 23, 2012.

F. Retention of Broker

23. CBI is in the process of retaining a qualified broker who will appropriately market and advertise the sale of the Premises in order to exercise the Debtor's duty to obtain the highest and best offer for the Premises.

G. Proposed Sale Procedures

24. CBI desires to receive the greatest value for the Premises. Although CBI believes the terms of the Purchase Agreement are fair and reasonable and reflect the highest and best value for the Premises as of the date of this Motion, it nevertheless desires to place the Purchase Agreement to the test of the broader public marketplace in the hope that higher and better offers are generated for the Premises. Accordingly, the Sale Procedures (as summarized below) were developed consistent with CBI's objective of promoting active bidding that will result in the highest and best offer the marketplace can sustain for the Premises while affording appropriate

protection to Iona Prep. Moreover, the Sale Procedures reflect CBI's objective of conducting the Auction in a controlled, but fair and open, fashion that promotes interest in the Premises by financially-capable, motivated bidders who are likely to close a transaction, while simultaneously discouraging non-serious offers and offers from persons CBI does not believe are sufficiently capable or likely to actually consummate a transaction.

25. The following paragraphs in this section summarize key provisions of the Sale Procedures, but are qualified in their entirety by reference to the actual Sale Procedures attached hereto as **Exhibit “A”**:

Determination of “Qualified Bidder” Status. Any potential bidder who wishes to submit a bid with respect to the Premises must demonstrate to the satisfaction of the Seller that such potential bidder is a “Qualified Bidder”. A Qualified Bidder is a potential bidder, other than Iona Prep, who delivers to the Seller a written and binding offer on or before the Bid Deadline (as defined below) that:

- (i) is a bid for the Premises in their entirety for a cash price equal to or greater than \$8,675,000;
- (ii) states that the bidder is prepared to enter into a legally binding purchase and sale agreement for the acquisition of the Premises on terms and conditions no less favorable to the Seller than the terms and conditions contained in the Purchase Agreement;
- (iii) is accompanied by a clean and duly executed purchase agreement (the “Modified Sale Agreement”) and a marked Modified Sale Agreement reflecting the variations from the Sale Agreement;
- (iv) states that the bidder’s offer is irrevocable until the closing of the purchase of the Premises if such bidder is the Successful Bidder;
- (v) does not request or entitle the bidder to any transaction or break-up fee, expense reimbursement or similar type of payment;

- (vi) fully discloses the identity of each entity that will be bidding for the Premises or otherwise participating in connection with such bid;
- (vii) is accompanied by a cash deposit or cashier's check in the amount of \$867,500 (the "Good Faith Deposit"), which Tarter Krinsky & Drogin LLP will hold in a segregated account containing only deposits received from Qualified Bidders;
- (viii) states that the bidder is financially capable of consummating the transaction contemplated by the Modified Sale Agreement;
- (ix) contains such financial and other information that will allow the Seller and the Creditors' Committee (to the exclusion of all other parties) to make a reasonable determination as to the bidder's financial and other capabilities to consummate the transaction contemplated by the Modified Sale Agreement;
- (x) does not contain any due diligence contingencies of any kind;
- (xi) contains evidence that the bidder has received debt and/or equity funding commitments or has financial resources readily available sufficient in the aggregate to finance the purchase of the Premises, which evidence is satisfactory to the Seller and the Creditors' Committee in their reasonable discretion;
- (xii) includes evidence of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery, and closing of the Modified Sale Agreement; and
- (xiii) contains other information reasonably requested by CBI.

A competing bid meeting the above requirements shall constitute a "Qualified Bid". The Seller shall make a determination regarding whether a bid is a Qualified Bid and shall notify bidders whether their bids have been determined to be qualified by no later than March 30, 2012, at 4:00 p.m. (ET).

Notwithstanding anything in the Sale Procedures to the contrary, the Purchase Agreement is deemed a Qualified Bid and Iona Prep is a Qualified Bidder.

Bid Deadline. All Qualified Bids must be submitted by no later than March 28, 2012, at Noon (ET) (the “Bid Deadline”).

Auction. In the event that the Seller receives by the Bid Deadline one or more bids that they deem in their discretion to constitute Qualified Bids (other than by Iona Prep), the Seller shall conduct an auction with respect to the Premises (the “Auction”). The Auction shall take place on April 3, 2012, at 10:00 a.m. (ET) at the offices of Tarter Krinsky & Drogin LLP, 1350 Broadway, New York, New York 10018. The Auction shall be governed by the following procedures:

- (i) Only representatives of the Seller, the Committee, Iona Prep, and Qualified Bidders may participate at the Auction;
- (ii) Only Iona Prep and other Qualified Bidders shall be entitled to make any subsequent bids at the Auction;
- (iii) Iona Prep and each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale;
- (iv) Bidding shall commence at the amount of the highest and best Qualified Bid submitted by the Qualified Bidders by the Bid Deadline;
- (v) Iona Prep and other Qualified Bidders shall participate in person at the Auction (or through a method designated by Seller), through a duly authorized representative with authority to bind the entity;
- (vi) The Auction will be conducted so that Iona Prep and each Qualified Bidder will be informed of the previous bid;
- (vii) Qualified Bidders may submit successive bids in increments of at least \$50,000;
- (viii) The Auction shall continue until there is only one offer that the Seller determines, subject to Bankruptcy Court approval, is the highest and best offer submitted at the Auction from among the Qualified Bidders and Iona Prep (the “Successful Bid”). The bidder submitting such Successful Bid shall become the “Successful Bidder,” and shall have such rights and responsibilities set forth in the Sale Agreement or the Modified Purchase Agreement, as applicable;
- (ix) At the end of the Auction, the Seller shall also announce the next highest and otherwise best offer after the Successful Bid (the “Next Highest Bid,” and the Qualified Bidder that submitted such bid, the “Next Highest Bidder”);

- (x) All Qualified Bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Auction, these sale procedures, and the construction and enforcement of the Qualified Bidders' Modified Purchase Agreement(s), as applicable; and
- (xi) CBI will arrange for the actual bidding at the Auction to be transcribed.

Break-Up Fee and Expense Reimbursement. Subject to Bankruptcy Court approval and certain conditions, Iona Prep shall be entitled to payment of a break-up fee and reimbursement for expenses incurred in connection with the transaction contemplated in the Purchase Agreement in an aggregate amount not to exceed \$150,000.

Sale Hearing. The Successful Bid (or Iona Prep if no Qualified Bid is received) will be subject to approval by the Bankruptcy Court. The hearing to approve the sale of the Premises to the Successful Bidder (the "Sale Hearing") will take place on April 4, 2012, at 10:00 a.m. (ET), or at such time thereafter as counsel may be heard, in the Bankruptcy Court. The Sale Hearing may be adjourned with the consent of the Successful Bidder from time to time on notice to creditors and other parties in interest, or without further notice other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

Closing. The closing to the Successful Bidder shall take place at the offices of counsel to the Seller, Tarter Krinsky & Drogin LLP, 1350 Broadway, New York, New York 10018 by no later than April 23, 2012. In the event that, for any reason, the Successful Bidder fails to close the sale transaction contemplated by its Successful Bid, then, without notice to any other party or further court order, the Seller shall be authorized to close with the Next Highest Bidder.

RELIEF REQUESTED

26. By this Motion, CBI requests entry of the Procedures Order as contemplated by General Order M-383 (i) approving the Sale Procedures, (ii) approving the Bidding Protections, and (iii) scheduling an Auction and Sale Hearing with respect to the Sale in the event a Qualified Bid from an entity other than Iona Prep is timely received. In addition, provided that the Court enters the Procedures Order, the CBI further requests entry of the Sale Order, upon completion of the Sale Hearing (i) authorizing and approving the Sale to Iona Prep or any other Successful

Bidder, as the case may be, free and clear of all liens, claims, encumbrances and interests, and (ii) approving the Purchase Agreement.

BASES FOR REQUESTED RELIEF

A. The Sale Procedures Including the Break-Up Fee Should be Approved

27. To compensate Iona Prep for serving as a “stalking horse” whose bid will be subject to higher or better offers, CBI seeks authority to provide Iona Prep with the Bidding Protections in the event that it is not the Successful Bidder. CBI and Iona Prep believe (i) that the Bidding Protections are reasonable, given the benefits to the estate of having a definitive agreement and the risk to Iona Prep that a third-party offer ultimately may be accepted, and (ii) that the Bidding Protections are necessary to preserve and enhance the value of CBI’s estate.

28. Bidding incentives encourage a potential purchaser to invest the requisite time, money and effort to negotiate with a debtor and perform the necessary due diligence attendant to the acquisition of a debtor’s assets, despite the inherent risks and uncertainties of the chapter 11 process. Historically, bankruptcy courts have approved bidding incentives similar to the Bidding Protections under the “business judgment rule,” which proscribes judicial second-guessing of the actions of an entity’s board taken in good faith and in the exercise of honest judgment. See In re Marrose Corp., Case Nos. 89-B-12171 (CB) to 89-B-12179 (CB), 1992 WL 33848, at *5 (Bankr. S.D.N.Y. Feb. 15, 1992) (“agreements to provide breakup fees or reimbursement of fees and expenses are meant to compensate the potential acquirer who serves as a catalyst or ‘stalking horse’ which attracts more favorable offers”); 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 it is undertaking”) (citation omitted); see also Official Comm. of Subordinated Bondholders v.

Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 657-58 (S.D.N.Y. 1992) (establishing three basic factors for determining whether to permit breakup fees in bankruptcy: whether “the relationship of the parties who negotiated the break-up fee [is] tainted by self-dealing or manipulation,” whether “fee hamper[s], rather than encourage[s], bidding” and whether “the amount of the fee [is] unreasonable relative to purchase price”), appeal dismissed, 3 F.3d 49 (2d Cir. 1993).

29. Under the “business judgment rule,” the Bidding Protections contemplated by the Purchase Agreement are appropriate. The Purchase Agreement and the Bidding Protections are the product of extensive good faith, arms’-length negotiations between CBI and Iona Prep. The Bidding Protections are fair and reasonable in amount, particularly in view of Iona Prep’s efforts to date, and the risk to Iona Prep of being used as a “stalking horse.”

30. In addition, the amount of the proposed Break-Up Fee, which is approximately 1.7% of the Purchase Price, is within the range of break-up fees typically approved by bankruptcy courts. See, e.g., In re The Singer Co. N.V., Case No. 99-10578 (Bankr. S.D.N.Y. July 26, 2000) (approving break-up fee of 3.0% of purchase price); see also The IT Group, Inc., Case No. 02-10118 (MFW) (Bankr. D. Del. Feb. 12, 2002) (approving break-up fee of 3.0% of transaction value); In re Polaroid Corp., Case No. 01-10864 (PJW) (Bankr. D. Del. Nov. 19, 2001) (approving break-up fee of 3.0% of proposed purchase price).

31. Further, Iona Prep’s offer provides a minimum bid on which other bidders can rely, thereby increasing the likelihood of a higher and better offer for the Premises. Additionally, the mere existence of the Bidding Protections permits the Debtor to insist that competing bids for the Premises be materially higher or otherwise better than the Purchase Agreement – a clear benefit to CBI’s estate.

32. In sum, CBI's ability to offer the Bidding Protections enables it to ensure the sale of the Premises to a contractually-committed bidder at a price it believes to be fair while, at the same time, providing it with the potential of even greater benefit to the estate. Thus, the Bidding Protections should be approved.

B. The Sale is Within the Debtor's Sound Business Judgment

33. Bankruptcy Code § 363(b)(1) provides: “[t]he 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). Section 105(a) of the Bankruptcy Code provides in relevant part: “[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

34. A debtor should be authorized to sell assets out of the ordinary course of business pursuant to Bankruptcy Code § 363 and prior to obtaining a confirmed plan or reorganization if it demonstrates a sound business purpose for doing so. See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); see also Titusville Country Club v. Pennbank (In re Titusville Country Club), 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991) (stating that “sound business purpose test” is appropriate); In re Del. & Hudson Ry. Co., 124 B.R. 169, 177 (D. Del. 1991) (sale of substantially all of debtor's assets outside of reorganization plan is appropriate when sound business reason justifies such sale).

35. Courts have applied four factors in determining whether a sound business justification exists: (i) whether a sound business reason exists for the proposed transaction; (ii) whether fair and reasonable consideration is provided; (iii) whether the transaction has been proposed and negotiated in good faith; and (iv) whether adequate and reasonable notice is provided. See Lionel, 722 F.2d at 1071 (setting forth “sound business” purpose test); see also

Del. & Hudson Ry., 124 B.R. at 175 (adopting Lionel factors in determining whether sound business purpose exists for sale outside ordinary course of business); cf. In re Abbotts Dairies of Pa., Inc., 788 F.2d 143, 147-49 (3d Cir. 1986) (implicitly adopting articulated business justification test of Lionel and adding “good faith” requirement).

36. Here, each of the four factors have been satisfied. First, there is more than adequate business justification to sell the Premises to Iona Prep and to enter into the Purchase Agreement. As noted above, the 173 Premises is currently being operated as a school for Iona Grammar and it is CBI’s understanding that Iona Prep will permit Iona Grammar to continue to operate its school on the Premises. This is particularly important as parents of the students need to be assured that Iona Grammar would be able to continue despite CBI’s Chapter 11 filing. This ensures that the Premises will continue to be used for Christian educational purposes – which is critical to CBI. Additionally, the Purchase Agreement Provides that Brothers may maintain their residence at the 173 Premises for a minimum of one year following closing of the sale. Moreover, as noted above, CBI has permitted Iona Grammar use of the 173 Premises rent free for the past 45 years or so and selling the Premises permits CBI to monetize an otherwise non-performing asset. Finally, although CBI has other assets, CBI’s current cash flow is somewhat challenged due to the fact that many of its Brothers are aged and the difficult economic environment has negatively impacted fundraising. The proceeds of this sale will contribute to CBI’s ability to fund a plan of reorganization to resolve all sexual abuse claims.

37. With respect to the second factor, Iona Prep has offered substantial value for the Premises and is prepared to consummate the transaction upon Bankruptcy Court approval and the other terms and conditions of the Purchase Agreement. As set forth above, the Purchase Agreement requires Iona Prep to pay a minimum of \$8,500,000 (\$5 million in cash and a \$3.5

million twenty-five year note bearing an annual interest rate of 5% per annum) for the Premises. CBI respectfully submits that such consideration is both fair and reasonable.⁶ Furthermore, to dispel any doubt, the sale of the Premises to Iona Prep is subject to competing bids, thereby enhancing CBI's ability to receive the highest and best value for the Premises. Consequently, the fairness and reasonableness of the consideration to be received by CBI will ultimately be demonstrated by a "market check" through the auction process, which is the best means for establishing whether a fair and reasonable price is being paid. Finally, the Sale will not constitute a sale of substantially all of CBI's assets.

38. As to the third factor, CBI and Iona Prep are proceeding in good faith. Indeed, despite sharing some common trustees, CBI submits that Iona Prep is not an insider and the transaction was negotiated in good faith and at arms' length. As discussed above and more fully below in Point E, CBI and Iona Prep took painstaking measures to ensure that the common trustees abstained from any decision making process vis-à-vis the sale.

39. With respect to the last factor, as described more fully below in the Notice and Publication section, CBI will provide adequate and reasonable notice of the proposed sale of the Premises.

40. Under these circumstances, therefore, sound business reasons exist that justify the sale of the Premises outside the ordinary course of business and prior to the confirmation of a reorganization plan. Accordingly, this Court should approve the Sale.

⁶ The purchase price is consistent with a recent appraisal obtained by Iona Prep. The Debtor will be prepared to proffer the appraisal at the Sale Hearing, to the extent necessary. The Creditors' Committee has been provided a copy of the appraisal. In order not to chill bidding, the appraisal has not been submitted in connection with this Sale Motion.

C. Iona Prep or Successful Bidder Should be Entitled to the Protections of Bankruptcy Code § 363(m)

41. Pursuant to § 363(m) of the Bankruptcy Code, a good faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. See Licensing by Paolo, Inc. v. Sinatra (In re Gucci), 126 F.3d 380, 390 (2d Cir. 1997); In re Mark Bell Furniture Warehouse, Inc., 992 F.2d 7, 9 (1st Cir. 1993); In re Abbotts Dairies of Pa., Inc., 788 F.2d at 147; In re Willemain v. Kivitz, 764 F.2d 1019, 1023 (4th Cir. 1985).

42. The Purchase Agreement is the product of extensive arms'-length negotiations between CBI and Iona Prep. These negotiations have involved substantial time and energy by the parties and their professionals, and the Purchase Agreement reflects give-and-take and compromises by both sides. Additionally, the Sale Procedures ensure that a prospective purchaser will not be able to exert any undue influence over CBI. Under the circumstances, this Court should therefore find that (i) the sale of the Premises is the result of good faith arms'-length negotiations and (ii) Iona Prep or the Successful Bidder is entitled to all of the protections of Bankruptcy Code § 363(m).

D. The Sale Satisfies the Requirements of Bankruptcy Code § 363(f) for a Sale Free and Clear of Liens, Claims, Encumbrances and Interests

43. While CBI believes that the Premises are unencumbered, out of an abundance of caution, it is seeking a § 363(f) finding. Under Bankruptcy Code § 363(f), a debtor-in-possession may sell property free and clear of any interest in such property of an entity other than the estate only if, among other things:

- (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 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). Because Bankruptcy Code § 363(f) is drafted in the disjunctive, satisfaction of anyone of its five requirements will suffice to approve the sale of the Premises “free and clear” of liens, claims, encumbrances and interests (collectively, the “Encumbrances”). See 11 U.S.C. § 363(f); Mich. Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.), 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (recognizing that Bankruptcy Code § 363(f) is written in disjunctive, and holding that court may approve sale “free and clear” provided that at least one subsection of § 363(f) is met), cert. dismissed, 503 U.S. 978 (1992); Citicom Homeowners Servs., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988) (same).

44. To the extent that any liens exist on the Premises, CBI is confident that it will obtain any necessary consent on or before the Sale Hearing, thereby satisfying Bankruptcy Code § 363(f)(2).⁷ Additionally, CBI is confident that the proceeds from the sale of the Premises will exceed the value of any lien on the Premises, thereby satisfying Bankruptcy Code § 363(f)(3).

E. Extraordinary Provisions

45. While CBI does not believe that Iona Prep is an insider, out of an abundance of caution, and as required pursuant to the amended Guidelines for the Conduct of Asset Sales, CBI

⁷ The Debtor does not believe any liens exist against the Premises and all net sale proceeds will be made available to the Debtor’s bankruptcy estate.

makes the following disclosures “to ensure the fairness of the sale process and the proposed transaction.” Amended Guidelines at ID1.⁸

46. As discussed *supra*, prior to the Petition Date, Iona Prep approached CBI to express its interest in purchasing the Premises. Iona Prep’s decision was first approved by its board of directors which consists entirely of lay persons. After approval by the lay-person board of directors, that decision was then presented to Iona Prep’s board of trustees for final approval. The decision to purchase the Premises was ultimately approved by the following trustees: Brothers Tom Murphy, Daniel Casey, and Raymond Vercruyse.

47. Because Brothers Daniel Casey, and Raymond Vercruyse serve as trustees of CBI, such Brothers abstained from CBI’s decision making process vis-à-vis the sale of the Premises.

48. Additionally, in order to ensure that the transaction contemplated in the Purchase Agreement is fair, CBI is placing the Purchase Agreement to the test of the broader public marketplace in the hope that higher and better offers are generated for the Premises. As discussed above, the Sale Procedures were developed consistent with CBI’s objective of promoting active bidding that will result in the highest and best offer the marketplace can sustain for the Premises while affording appropriate protection to Iona Prep. Moreover, the Sale Procedures reflect CBI’s objective of conducting the Auction in a controlled, but fair and open, fashion that promotes interest in the Premises by financially-capable, motivated bidders who are

⁸ Even if this Court deems the transaction contemplated in the Purchase Agreement to be an “insider” transaction, that fact alone does not make such transaction *per se* invalid. Rather, such transaction would be subject to higher scrutiny by this Court. See In re Medical Software Solutions, 286 B.R. 431, 445 (Bankr. D. Utah 2002) (noting that “[i]t is not bad faith *per se* for an insider to purchase property from an estate, even where the insider has a fiduciary duty to the estate”) (internal citation omitted); In re Drexel Burnham Lambert Group, Inc., 134 B.R. 493, 498 (Bankr. S.D.N.Y. 1991) (noting that insider agreements are subject to closer scrutiny). The Debtor submits that because of the measures taken to ensure the propriety of the transaction, such sale is proper and should be approved.

likely to close a transaction, while simultaneously discouraging non-serious offers and offers from persons CBI does not believe are sufficiently capable or likely to actually consummate a transaction.

49. Moreover, CBI is in the process of retaining a qualified broker who will appropriately market and advertise the sale of the Premises.

NO PRIOR REQUEST

50. No previous request for the relief sought herein has been made to this or any other Court.

NOTICE AND PUBLICATION

51. CBI proposes to serve a copy of the Motion and all exhibits by hand delivery or overnight delivery upon (i) the Office of the United States Trustee for the Southern District of New York; (ii) counsel for the Committee; (iii) counsel to Iona Prep; and (iv) all other parties that have filed a notice of appearance and demand for service of papers in this bankruptcy case under Bankruptcy Rule 2002 (the “Bidding Procedures Notice Parties”).

52. Provided the Court enters the proposed Procedures Order, CBI requests that pursuant to the Procedures Order, no later than three (3) business days after entry of the Procedures Order, CBI (or its agents) shall serve a copy of the Procedures Order (including the Notice of Auction and Sale Hearing substantially in the form attached as **Exhibit “C”** hereto) upon the following by first-class mail: (i) the Office of the United States Trustee for the Southern District of New York; (ii) counsel for Iona Prep; (iii) counsel to the Committee; (iv) all other entities (or counsel therefor) known to have asserted any liens, claims or encumbrances in or upon the Premises; (v) all federal, state and local regulatory or taxing authorities or recording offices that are reasonably known by CBI to have an interest in the relief requested by the

Motion; (vi) all parties known by CBI to have expressed a *bona fide* interest in acquiring the Premises; (vii) the Internal Revenue Service; (viii) the United States Attorney's office; and (ix) all entities who have filed a notice of appearance and request for service of papers in the Debtors' cases (collectively, the "Auction and Sale Notice Parties").

53. Additionally, no later than five (5) business days after entry of the Procedures Order by the Bankruptcy Court, CBI (or its agents) shall cause the Notice of Auction and Sale Hearing substantially in the form attached as **Exhibit "C"** hereto to be served upon all other known creditors of the Debtors.

54. No later than five (5) business days after entry of the Procedures Order by the Bankruptcy Court, CBI (or its agents) shall arrange to place an advertisement in *Real Estate Weekly* (the "Advertisement") advertising the Sale of the Premises and advising interested parties of the Bid Deadline, date of Auction and how such parties could receive additional information. The Advertisement shall contain the salient terms set forth in the Notice of Auction and be published by no later than February 24, 2012.

55. CBI believes that the foregoing notice procedures to the Bidding Procedures Notice Parties, the Auction and Sale Notice Parties and other parties in interest is sufficient to provide effective notice of the Sale Procedures, the Auction and the Sale to potentially interested parties in a manner designed to maximize the chance of obtaining the broadest possible participation while minimizing the costs to the estates. Accordingly, CBI requests that the Court find that notice in this manner is sufficient and that no further notice of the Auction or the Sale Procedures is required.

CONCLUSION

WHEREFORE, CBI respectfully requests that this Court enter the Procedures Order (attached hereto as **Exhibit “B”**): after a hearing on shortened notice (a) approving the Sale Procedures; (b) approving the Bidding Protections, including the Break-Up Fee; (c) scheduling an Auction and Sale Hearing; and (d) approving the Notice of Auction and Sale Hearing. In addition, CBI respectfully requests that this Court at the Sale Hearing enter an order (a proposed draft form of which is attached hereto as **Exhibit “D”**): (a) authorizing the CBI to sell the Premises free and clear of all liens, claims, encumbrances and interests, and (b) approving the Purchase Agreement. CBI further requests that this Court grant such other and further relief as is just and proper.

Dated: New York, New York
January 30, 2012

TARTER KRINSKY & DROGIN LLP
*Attorneys for The Christian Brothers’ Institute, et al.
Debtors and Debtors-in-Possession*

By: /s/ Scott S. Markowitz
Scott S. Markowitz
Eric H. Horn
1350 Broadway, 11th Floor
New York, New York 10018
(212) 216-8000

EXHIBIT A

SALE PROCEDURES

The following sale procedures (the “Sale Procedures”), which were approved by order (the “Sale Procedures Order”) of the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) dated February ___, 2012, shall govern the sale / auction process for the Premises, as such term is defined in that certain Agreement of Purchase and Sale (the “Purchase Agreement”) between The Christian Brothers’ Institute (the “Seller”) and Iona Preparatory School (the “Purchaser”) dated as of January 20, 2012. The Seller will seek entry of an order from the Bankruptcy Court authorizing and approving the sale of the Premises¹ free and clear of liens, claims, encumbrances, and interests, to the Purchaser or such other Successful Bidder (as defined below) as may be made at the Auction (as defined below).

1. Approvals. The proposed sale shall in all respects be subject to approval by the Bankruptcy Court and in compliance with (i) the applicable provisions of the Bankruptcy Code, (ii) the Bankruptcy Rules, (iii) other applicable rules and law, and (iv) the terms of the Purchase Agreement.

2. Assets to be Sold. The assets to be sold shall consist of the Premises and such sale shall be free and clear of liens, claims, encumbrances and interests as provided in the Purchase Agreement.

3. Sale As Is, Where Is. The Premises shall be sold as is, where is, without any representation or warranty of any type whatsoever, other than as may be contained in the Purchase Agreement.

4. Qualification of Bidders. Any potential bidder who wishes to submit a bid with respect to the Premises must demonstrate to the satisfaction of the Seller that such potential bidder is a “Qualified Bidder.¹” A Qualified Bidder is a potential bidder, other than the Purchaser, who delivers to the Seller a written and binding offer on or before the Bid Deadline (as defined below) that:

- (i) is a bid for the Premises in their entirety for a price equal to or greater than \$8,675,000;
- (ii) states that the bidder is prepared to enter into a legally binding purchase and sale agreement for the acquisition of the Premises on terms and conditions no less favorable to the Seller than the terms and conditions contained in the Purchase Agreement (as determined by the Seller in its reasonable business judgment);
- (iii) is accompanied by a clean and duly executed purchase agreement (the “Modified Purchase Agreement”) and a marked Modified Purchase Agreement reflecting the variations from the Purchase Agreement;

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the Purchase Agreement.

- (iv) states that the bidder's offer is irrevocable until the closing of the purchase of the Premises if such bidder is the Successful Bidder;
- (v) does not request or entitle the bidder to any transaction or break-up fee, expense reimbursement or similar type of payment;
- (vi) fully discloses the identity of each entity that will be bidding for the Premises or otherwise participating in connection with such bid;
- (vii) is accompanied by a cash deposit or cashier's check in the amount of \$867,500 (the "Good Faith Deposit"), which Tarter Krinsky & Drogin LLP will hold in a segregated account containing only deposits received from Qualified Bidders;
- (viii) states that the bidder is financially capable of consummating the transaction contemplated by the Modified Purchase Agreement;
- (ix) contains such financial and other information that will allow the Seller and the Creditors' Committee (to the exclusion of all other parties) to make a reasonable determination as to the bidder's financial and other capabilities to consummate the transaction contemplated by the Modified Purchase Agreement;
- (x) does not contain any due diligence contingencies of any kind;
- (xi) contains evidence that the bidder has received debt and/or equity funding commitments or has financial resources readily available sufficient in the aggregate to finance the purchase of the Premises, which evidence is satisfactory to the Seller and the Creditors' Committee in their reasonable discretion;
- (xii) includes evidence of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery, and closing of the Modified Purchase Agreement; and
- (xiii) contains other information reasonably requested by the Seller.

A competing bid meeting the above requirements shall constitute a "Qualified Bid". The Seller shall make a determination regarding whether a bid is a Qualified Bid and shall notify bidders whether their bids have been determined to be qualified by no later than March 30, 2012, at 4:00 p.m. (ET).

Notwithstanding anything herein to the contrary, the Purchase Agreement is hereby deemed a Qualified Bid, and the Purchaser is deemed a Qualified Bidder.

5. **Bid Deadline.** All Qualified Bids must be submitted by no later than March 28, 2012, at Noon (ET) (the “Bid Deadline”). Prior to the Bid Deadline, Qualified Bidders shall deliver written copies of their bids to: (a) counsel to the Seller, Tarter Krinsky & Drogin LLP, 1350 Broadway, 11th Floor, New York, New York 10018, Attn: Scott S. Markowitz, Esq.; and (b) counsel to the Official Committee of Unsecured Creditors (the “Committee”), Pachulski Stang Ziehl & Jones, 10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067, Attn: James I. Stang, Esq.

6. **Auction.** In the event that the Seller receives by the Bid Deadline one or more bids that they deem in their discretion to constitute Qualified Bids (other than by the Purchaser), the Seller shall conduct an auction with respect to the Premises (the “Auction”). The Auction shall take place on April 3, 2012, at 10:00 a.m. (ET) (the “Auction Time”) at the offices of Tarter Krinsky & Drogin LLP, 1350 Broadway, 11th Floor, New York, New York 10018, or such other place and time as the Seller shall notify all Qualified Bidders, the Committee, the Purchaser, and other invitees via e-mail or facsimile not later than one (1) business day before the Auction Time (or re-scheduled Auction Time, as applicable). If, however, no such other Qualified Bid is received by the Bid Deadline, then the Auction will not be held, and Seller shall so notify Purchaser no later than one (1) business day after the Bid Deadline. The Auction shall be governed by the following procedures:

- (i) Only representatives of the Seller, the Committee, the Purchaser, and Qualified Bidders may participate at the Auction;
- (ii) Only the Purchaser and other Qualified Bidders shall be entitled to make any subsequent bids at the Auction;
- (iii) Purchaser and each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale;
- (iv) Bidding shall commence at the amount of the highest and best Qualified Bid submitted by the Qualified Bidders by the Bid Deadline;
- (v) The Purchaser and other Qualified Bidders shall participate in person at the Auction (or through a method designated by Seller), through a duly authorized representative with authority to bind the entity;
- (vi) The Auction will be conducted so that Purchaser and each Qualified Bidder will be informed of the previous bid;

- (vii) Qualified Bidders may submit successive bids in increments of at least \$50,000;
- (viii) The Auction shall continue until there is only one offer that the Seller determines, subject to Bankruptcy Court approval, is the highest and best offer submitted at the Auction from among the Qualified Bidders and the Purchaser (the “Successful Bid”). The bidder submitting such Successful Bid shall become the “Successful Bidder,” and shall have such rights and responsibilities set forth in the Purchase Agreement or the Modified Purchase Agreement, as applicable;
- (ix) At the end of the Auction, the Seller shall also announce the next highest and otherwise best offer after the Successful Bid (the “Next Highest Bid,” and the Qualified Bidder that submitted such bid, the “Next Highest Bidder”);
- (x) All Qualified Bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Auction, these sale procedures, and the construction and enforcement of the Qualified Bidders’ Modified Purchase Agreement(s), as applicable; and
- (xi) The Seller will arrange for the actual bidding at the Auction to be transcribed.

7. Break-Up Fee and Expense Reimbursement. Subject to Bankruptcy Court approval, Purchaser shall be entitled to payment of a break-up fee and reimbursement for expenses incurred in connection with the transaction contemplated in the Purchase Agreement in an aggregate amount up to \$150,000 which shall be payable to Purchaser only if:

- (i) Seller does not proceed with the sale of the Premises to Purchaser as a result of receiving a Higher and Better Offer, and the closing of such Higher and Better Offer is consummated; and
- (ii) Purchaser is not in breach of its obligations under the Purchase Agreement which breach or default has not been waived in writing by Seller and the parties have not otherwise terminated the Purchase Agreement upon mutual written consent.

8. Sale Hearing. The Successful Bid (or the Purchaser if no other Qualified Bid is received by the Bid Deadline) will be subject to approval by the Bankruptcy Court. Please be advised that the hearing to approve the sale of the Premises to the Successful Bidder (the “Sale Hearing”) will take place on **April 4, 2012, at 10:00 a.m. (ET)**, or at such time thereafter as counsel may be heard, in the Bankruptcy Court. The Sale Hearing may be adjourned with the consent of the Successful Bidder from time to time on notice to creditors and other parties in

interest, or without further notice other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

9. Acceptance of the Successful Bid. The Seller shall have accepted a Qualified Bid only when (a) the Bankruptcy Court has approved the Successful Bid and an order approving such bid has been docketed and (b) definitive documentation has been executed in respect thereof.

10. Closing. The closing to the Successful Bidder shall take place at the offices of counsel to the Seller, Tarter Krinsky & Drogin LLP, 1350 Broadway, New York, New York 10018 by no later than **April 23, 2012**. Except as otherwise provided in the Purchase Agreement, in the case that Purchaser is the Successful Bidder, in the event that, for any reason, the Successful Bidder fails to close the sale transaction contemplated by its Successful Bid, then, without notice to any other party or further court order, the Seller shall be authorized to close with the Next Highest Bidder.

11. Return of Good Faith Deposit. Good Faith Deposits submitted by Qualified Bidders (other than the Successful Bidder and the Next Highest Bidder) that have not been forfeited shall be returned within two (2) business days of the entry of the order approving the sale of the Premises. The Good Faith Deposit of the Successful Bidder shall be held until the closing of the Sale and applied in accordance with the Purchase Agreement or the Modified Purchase Agreement, as applicable. Within two (2) business days of the entry of the order approving the sale of the Premises, the Good Faith Deposit of the Next Highest Bidder shall be returned to such Next Highest Bidder. In the event the Successful Bidder fails to close pursuant to the Purchase Agreement or the Modified Purchase Agreement, as applicable, the Next Highest Bidder shall be granted two (2) business days after receiving notice from the Seller that the Successful Bidder defaulted to deliver the Good Faith Deposit to Seller's counsel or such Next Highest Bidder shall lose its status as Next Highest Bidder and not be entitled to close the Sale.

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
In re: : Chapter 11
: Case No.: 11-22820 (RDD)
THE CHRISTIAN BROTHERS' INSTITUTE, *et al.* :
: (Jointly Administered)
Debtors. :
----- X

**ORDER PURSUANT TO 11 U.S.C. § 105(a) AND 363 AND RULE
6004 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE (I)
APPROVING SALE PROCEDURES IN CONNECTION WITH THE
SALE OF CERTAIN REAL ESTATE, (II) APPROVING CERTAIN
BIDDING PROTECTIONS, (III) SCHEDULING AN AUCTION AND A SALE
HEARING, AND (IV) APPROVING THE FORM OF NOTICE OF SUCH SALE**

Upon the motion dated January 30, 2012 (the “Motion”)¹ of The Christian Brothers’ Institute (“CBI” or the “Debtor”), for, among other things, the entry of an order pursuant to 11 U.S.C. § 105(a) and 363 and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (a) approving sale procedures in connection with the sale of certain real estate, (b) approving certain bidding protections, (c) scheduling an auction and a sale hearing, and (d) approving the form of notice of such sale procedures and bidding protections, the auction and the sale; and the Bankruptcy Court having reviewed the Motion and having heard the statements of counsel in support of the relief requested therein before the Bankruptcy Court; and the Bankruptcy Court having determined that the relief requested in the Motion is in the best interest of the Debtor, its estate, creditors and other parties in interest; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

¹ Capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Motion.

FOUND AND DETERMINED THAT:

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 10, 1984 (Ward, Acting C.J.).

B. The statutory predicates for the relief sought in the Motion and the basis for the approvals and authorizations herein are 11 U.S.C. §§ 105 and 363 and Rules 2002 and 6004 of the Bankruptcy Rules.

C. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O).

D. Venue of this case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

E. Good and sufficient notice of the relief sought in the Motion has been given under the circumstances, and no further notice is required, and such notice complied with all applicable requirements of 11 U.S.C. §§ 102 and 363, Rules 2002, 6004 and 9008 of the Bankruptcy Rules and any other applicable provision of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules and any Administrative Orders. A reasonable opportunity to object or be heard regarding the relief requested in the Motion (including, without limitation, with respect to the proposed Sale Procedures, as defined below, and the Break-Up Fee) has been afforded to all interested persons and entities including, but not limited to: (i) the Office of the United States Trustee for the Southern District of New York; (ii) counsel for the Committee; (iii) counsel to Iona Prep; and (iv) all other parties that have filed a notice of appearance and demand for service of papers in this bankruptcy case under Bankruptcy Rule 2002 (the "Bidding Procedures Notice Parties").

F. The Debtor's proposed notice of the Sale Procedures (as defined below), the Auction (if necessary) and the Sale Hearing, as set forth in the Motion, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice, and no other or further notice is required.

G. The sale procedures substantially in the form attached hereto as **Exhibit "A"** (the "Sale Procedures") are fair, reasonable and appropriate and are designed to maximize the recovery for the Debtor and its estate.

H. The Debtor has demonstrated a compelling and sound business justification for authorizing the payment of the Break-Up Fee.

I. The Break-Up Fee has been negotiated at arms' length, is fair and reasonable and approval thereof is justified in light of the substantial amount of time expended by Iona Prep and the benefit provided to the Debtor's estate and creditors by the Sale contemplated in the Purchase Agreement.

J. The entry of this Procedures Order is in the best interests of the Debtor, its estate, its creditors and parties in interest; and it is therefore

ORDERED, ADJUDGED AND DECREED THAT:

1. The Sale Procedures attached hereto as **Exhibit "A,"** and incorporated herein by reference, are hereby approved in all respects and shall apply with respect to, and shall govern all proceedings related to, (i) the Purchase Agreement, (ii) the Auction, and (iii) the Sale.

2. The Break-Up Fee and payment thereof by the Debtor on the terms and conditions contained in the Purchase Agreement are hereby approved. The Break-Up Fee shall be accorded treatment as a superpriority administrative expense claim in the Chapter 11 case, senior to (x)

any liens and claims of any prepetition secured lender, and (y) all other administrative claims at any time allowed in the Debtor's Chapter 11 case.

3. All objections to the entry of this Procedures Order or to the relief provided herein that have not been withdrawn, waived, resolved or settled, and all reservations of rights included therein, are hereby denied and overruled on the merits with prejudice.

4. The Debtor is hereby authorized to take any and all actions necessary or appropriate to implement the Sale Procedures.

5. The notice procedures for the Auction and Sale Hearing, as described in the Motion, are approved in all respects, and the form of Notice of Auction and Sale Hearing, in substantially the form attached hereto as **Exhibit "B,"** is hereby approved.

6. Notwithstanding anything herein or in the Sale Procedures to the contrary, the Purchase Agreement is hereby deemed a Qualified Bid and Iona Prep is deemed a Qualified Bidder.

7. If a Qualified Bid is timely received in accordance with the Sale Procedures from an entity other than Iona Prep, the Auction shall be scheduled for **April 3, 2012, at 10:00 a.m. (ET)** at the offices of Tarter Krinsky & Drogin LLP, 1350 Broadway, 11th Floor, New York, New York 10018 unless rescheduled to a later date in accordance with the Sale Procedures.

8. No later than three (3) business days after entry of this Procedures Order, CBI (or its agents) shall serve a copy of the Procedures Order (including the Notice of Auction and Sale Hearing substantially in the form attached as **Exhibit "B"** hereto) upon the following by first-class mail: (i) the Office of the United States Trustee for the Southern District of New York; (ii) counsel for Iona Prep; (iii) counsel to the Committee; and (iv) all other entities (or counsel therefor) known to have asserted any liens, claims or encumbrances in or upon the Premises; (v)

all federal, state and local regulatory or taxing authorities or recording offices that are reasonably known by CBI to have an interest in the relief requested by the Motion; (vi) all parties known by CBI to have expressed a *bona fide* interest in acquiring the Premises; (vii) the Internal Revenue Service; (viii) the United States Attorney's office; and (ix) all entities who have filed a notice of appearance and request for service of papers in the Debtors' cases (collectively, the "Auction and Sale Notice Parties").

9. No later than five (5) business days after entry of the Procedures Order, CBI (or its agents) shall cause the Notice of Auction and Sale Hearing substantially in the form attached as **Exhibit "B"** hereto to be served upon all other known prepetition creditors of the Debtors.

10. No later than five (5) business days after entry of the Procedures Order by the Bankruptcy Court, CBI (or its agents) shall arrange to place an advertisement in *Real Estate Weekly* (the "Advertisement") advertising the Sale of the Premises and advising interested parties of the Bid Deadline, date of Auction and how such parties could receive additional information. The Advertisement shall contain the salient terms set forth in the Notice of Auction and be published by no later than February 24, 2012.

11. Any objections to the Sale of the Premises must: be in writing; conform to the requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules of the United States Bankruptcy Court for the Southern District of New York; set forth the name of the objector; set forth the nature and amount of the objector's claims against or interests in the Debtor's estate or property; state the legal and factual basis for the objection and the specific grounds therefor; be filed with the United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601 on or before **4:00 p.m. (ET)** **on April 2, 2011;** and be served so as to be received by (i) undersigned attorneys for the Debtor,

Tarter Krinsky & Drogin LLP, 1350 Broadway, New York, New York 10018 (Attn: Scott S. Markowitz, Esq.), (ii) counsel to the Committee, Pachulski Stang Ziehl & Jones, 10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067 (Attn: James I. Stang, Esq.) (iii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Paul K. Schwartzberg, Esq), no later than **4:00 p.m. (ET) on April 2, 2012.**

12. The Sale Hearing to consider approval of the Debtor's entry into and consummation of a transaction with a Successful Bidder shall be held on **April 4, 2012 at 10:00 a.m. (ET)** unless rescheduled to an earlier or later date in accordance with the Sale Procedures.

13. The Debtor is hereby authorized and empowered to take such steps, expend such sums of money and do such other things as may be necessary to implement and effect the terms and requirements established by this Procedures Order.

14. This Court shall retain jurisdiction over any matters related to or arising from the implementation of this Procedures Order, including (but not limited to) the right to amend this Procedures Order.

Dated: White Plains, New York
February ___, 2012

HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

TARTER KRINSKY & DROGIN LLP

Attorneys for The Christian Brothers' Institute, et al.

Debtors and Debtors-in-Possession

1350 Broadway, 11th Floor

New York, New York 10018

(212) 216-8000

Scott S. Markowitz, Esq.

Eric H. Horn, Esq.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----	x
In re:	: Chapter 11
THE CHRISTIAN BROTHERS' INSTITUTE, et al.	: Case No.: 11-22820 (RDD)
Debtors.	: (Jointly Administered)
-----	x

**NOTICE OF AUCTION OF REAL ESTATE LOCATED AT
173 STRATTON ROAD, NEW ROCHELLE, NEW YORK
AND VACANT PROPERTY, AND SALE HEARING**

PLEASE TAKE NOTICE that pursuant to the *Debtor's Motion for entry of Orders: (I) Pursuant to 11 U.S.C. § 105(a) and 363 and Rule 6004 of the Federal Rules of Bankruptcy Procedure (a) Approving Sale Procedures in Connection with the Sale of Certain Real Estate located at 173 Stratton Road, New Rochelle, New York and Vacant Property of Approximately Five Acres Across Therefrom, (b) Approving Certain Bidding Protections, (c) Scheduling an Auction and a Sale Hearing, and (d) Approving the Form of Notice of Such Sale Procedures and Bidding Protections, the Auction and the Sale; and (II) Pursuant to 11 U.S.C. § 105(a) and 363 and Rule 6004 of the Federal Rules of Bankruptcy Procedure (a) Authorizing and Approving the Sale to Iona Preparatory School or to Another Qualified Bidder Submitting a Higher or Otherwise Better Offer Free and Clear of All Liens, Claims, Encumbrances and Interests, (b) Approving the Purchase Agreement, and (c) Granting Related Relief (the "Sale Motion")* filed with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") on January 30, 2012, and under the terms of the Agreement of Purchase and Sale (the "Purchase Agreement") between The Christian Brothers' Institute ("CBI" or the "Debtor") (as seller) and Iona Preparatory School (as the stalking horse bidder) (the "Stalking Horse Bidder"), the Debtor is selling the premises located at 173 Stratton Road, New Rochelle, New York and vacant property across therefrom (the "Premises") subject to higher and better offers.

PLEASE TAKE FURTHER NOTICE that in accordance with the *Order Pursuant to 11 U.S.C. § 105(a) and 363 and Rule 6004 of the Federal Rules of Bankruptcy Procedure (a) Approving Sale Procedures in Connection with the Sale of Certain Real Estate, (b) Approving Certain Bidding Protections, (c) Scheduling an Auction and a Sale Hearing, and (d) Approving the Form of Notice of such Sale Procedures and Bidding Protections, the Auction and the Sale*

(the “Procedures Order”), approved by the Bankruptcy Court, the Debtor will conduct an auction (the “Auction”) with respect to the sale of the Premises if a Qualified Bid by any entity other than the Stalking Horse Bidder is timely received. The Auction will take place on **April 3, 2012, at 10:00 a.m. (ET)** at the offices of Tarter Krinsky & Drogin LLP, 1350 Broadway, New York, New York 10018. All interested parties are invited to prequalify for the Auction and to present competing offers to purchase the Premises in compliance with the Sale Procedures (as defined below).

PLEASE TAKE FURTHER NOTICE that consideration of competing offers and attendance at the Auction is subject to certain terms and conditions and procedures described in the Procedures Order (collectively, the “Sale Procedures”).

PLEASE TAKE FURTHER NOTICE that if the Debtor receives a Qualified Bid (at least \$8,675,000), the Debtor will conduct the Auction. Bidding at the Auction will commence with the highest bid and continue in increments of not less than \$50,000 until all parties have made their final offers. At the conclusion of the bidding, the Debtor will announce its determination as to the person or entity (the “Successful Bidder”) submitting the highest or otherwise best bid for the Premises (the “Successful Bid”). At the end of the Auction, the Debtor shall also announce the next highest and otherwise best offer after the Successful Bid (the “Next Highest Bid”) and the Qualified Bidder that submitted such bid (the “Next Highest Bidder”).

PLEASE TAKE FURTHER NOTICE that a hearing to approve the Sale of the Premises (the “Sale Hearing”) will be held on **April 4, 2012 at 10:00 a.m. (ET)** at the Bankruptcy Court before the Honorable Robert D. Drain. If the Debtor does not receive any Qualified Bids (other than the Purchase Agreement), the Debtor will report such result to the Bankruptcy Court at the Sale Hearing and, upon approval by the Bankruptcy Court, proceed with a sale of the Premises to the Stalking Horse Bidder under the Purchase Agreement. If however, the Debtor receives one or more Qualified Bids (other than the Purchase Agreement) and the Auction is conducted, the Debtor will notify the Bankruptcy Court of the results of the Auction and present both the Successful Bid and Next Highest Bid to the Bankruptcy Court for approval at the Sale Hearing. The Sale Hearing may be adjourned, from time to time, without further notice to creditors or parties in interest other than by announcement of the adjournment in open court or on the Bankruptcy Court’s docket.

PLEASE TAKE FURTHER NOTICE that if you seek to object to the sale of the Premises, you must comply with the terms for making such objections as set forth in the Procedures Order. If any party fails to timely file and serve an objection in accordance with the Procedures Order, the Bankruptcy Court may disregard such objection.

This Notice is qualified in its entirety by the Procedures Order. All persons and entities are urged to read the Procedures Order and its provisions carefully. To the extent that this Notice is inconsistent with the Procedures Order, the terms of the Procedures Order shall govern.

Copies of the Procedures Order, the Purchase Agreement and the Sale Motion are available from the undersigned counsel for the Debtor upon written request or online at www.omnimgt.com/thechristianbrothers.

Dated: New York, New York
February ___, 2012

TARTER KRINSKY & DROGIN LLP
Attorneys for The Christian Brothers' Institute, et al.
Debtors and Debtors-in-Possession

By: _____

Scott S. Markowitz
Eric H. Horn
1350 Broadway, 11th Floor
New York, New York 10018
(212) 216-8000

EXHIBIT D

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
In re: : Chapter 11
: Case No.: 11-22820 (RDD)
THE CHRISTIAN BROTHERS' INSTITUTE, *et al.* :
: (Jointly Administered)
Debtors. :
----- X

**ORDER PURSUANT TO 11 U.S.C. § 105(a) AND 363 AND RULE 6004 OF THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE (A) AUTHORIZING AND
APPROVING THE SALE TO IONA PREPARATORY SCHOOL FREE AND CLEAR
OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, (B) APPROVING
THE PURCHASE AGREEMENT, AND (C) GRANTING RELATED RELIEF**

Upon the motion dated January 30, 2012 (the “Motion”)¹ of The Christian Brothers’ Institute (“CBI” or the “Debtor”), for, among other things, the entry of an order pursuant to 11 U.S.C. § 105(a) and 363 and Rule 6004 of the Federal Rules of Bankruptcy Procedure (a) authorizing and approving the sale to Iona Preparatory School (“Iona Prep”), or to another qualified bidder submitting a higher or otherwise better offer, free and clear of all liens, claims, encumbrances and interests, (b) approving the Purchase Agreement, and (c) granting related relief (collectively, the “Sale Relief”); and a hearing having been held on February 15, 2012 with respect to the Sale Procedures that the Debtor requested in the Motion (the “Bidding Procedures Hearing”); and after the conclusion of the Bidding Procedures Hearing, the Court having entered a Procedures Order [Docket No.], in which the Court, among other things, (i) approved certain auction and sale procedures (the “Sale Procedures”), (ii) scheduled a hearing on the Sale Relief, including the Debtor’s request to approve a sale to the bidder(s) submitting the highest or otherwise best offer for the Premises as determined in accordance with the Sale Procedures, for April 4, 2012 (the “Sale Hearing”), and (iii) approved payment of the Break-up Fee and Expense

¹ Capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Motion.

Reimbursement (as defined in the Purchase Agreement) to Iona Prep; and the Debtor having that the highest and otherwise best offer for the sale of the Premises submitted at the auction, conducted on April 3, 2012 (the “Auction”) was made by Iona Prep in the form of the Purchase Agreement; and the Court having held the Sale Hearing to consider the approval of the Sale of the Premises pursuant to the terms and conditions of the Purchase Agreement; and the Court having considered (i) the Motion, (ii) the Sale and the Purchase Agreement; (iii) the arguments of counsel made, and the evidence submitted, proffered or adduced, at the Sale Hearing, (iv) the record in this Case, of which the Court took judicial notice at the Sale Hearing; and the Court having determined that the relief requested in the Motion and the Sale to Iona Prep in accordance with the Purchase Agreement and the provisions of this order (this “Order”) are in the best interests of the Debtor, its estate, its creditors and other parties in interest; and it appearing that reasonable and adequate notice of the Motion, the Procedures Order, the Sale and the Sale Hearing have been provided to all persons required to be served in accordance with the Bankruptcy Code, the Bankruptcy Rules and the local rules and orders of this Court; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:²

A. The Court has jurisdiction over this matter and over the property of the Debtor, including the Premises to be sold, transferred and conveyed, pursuant to 28 U.S.C. §§ 157(a) and 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 10, 1984 (Ward, Acting C.J.).

² Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, as applicable.

B. The statutory predicates for the relief sought in the Motion and the basis for the approvals and authorizations herein are 11 U.S.C. §§ 105 and 363 and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure.

C. On April 28, 2011 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). Since the Petition Date, the Debtor has continued in possession and management of its business and property as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

D. The Sale Relief constitutes a sale of property of the Debtor’s estate outside the ordinary course of business within the meaning of section 363(b) of the Bankruptcy Code.

E. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O).

F. Venue of this case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

G. As evidenced by the affidavits of service previously filed with the Court, and based on the representations of counsel at the Sale Hearing: (i) due, proper, timely, adequate and sufficient notice of the Motion, the Procedures Order, the Auction, the Sale Hearing and the Sale has been provided in accordance with Bankruptcy Code §§ 102, 105 and 363 and Bankruptcy Rules 2002, 6004, 9008 and 9014 and in compliance with the Procedures Order; (ii) such notice was good and sufficient, and appropriate under the particular circumstances; and (iii) no other or further notice of the Motion, the Auction, the Sale Hearing or the Sale is or shall be required.

H. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, through marketing efforts and a competitive sale process conducted in accordance with the

Procedures Order, the Debtor, with its consultants and advisors, conducted a thorough and adequate search for interested potential purchasers, and afforded such interested potential purchasers a full, fair and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase the Premises.

I. The sale process has been conducted fairly and openly in a manner reasonably calculated to produce the highest and best offer for the Premises under the circumstances and in compliance with the Procedures Order.

J. The Debtor and its professionals have complied with the Procedures Order.

K. The Debtor is the sole lawful owner of the Premises, as set forth in the Purchase Agreement, and, upon entry of this Order, has the legal power and authority to convey all of its right, title and interest therein and thereto.

L. At the conclusion of the Auction, the Debtor announced that it had determined that the offer submitted by Iona Prep was the highest and otherwise best offer and that Iona Prep was the Successful Bidder in accordance with the Procedures Order.

M. Upon entry of this Order, (i) the Debtor has full corporate power and authority to execute the Purchase Agreement and the sale of the Premises has been duly and validly authorized , (ii) the Debtor has all of the corporate power and authority necessary to consummate the Sale contemplated by the Purchase Agreement, (iii) the Debtor has taken all necessary corporate action necessary to authorize and approve the Sale, the Purchase Agreement and the consummation by the Debtor of the transaction contemplated thereby and (iv) no consents or approvals, other than those expressly provided for in the Purchase Agreement, are required for the Debtor to consummate the Sale.

N. The relief requested in the Motion, including, without limitation, approval of the Sale of the Premises to Iona Prep in accordance with the terms and conditions of the Purchase Agreement and this Order, is in the best interests of the Debtor, its creditors, its estate and all other parties in interest in this Case.

O. The Debtor has exercised sound business judgment in deciding, and has shown good and sufficient justification, to enter into the Purchase Agreement and to sell the Premises to the Iona Prep pursuant to the Purchase Agreement.

P. A fair and reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein as well as the Sale has been afforded to all interested persons and entities, including: (i) the Office of the United States Trustee for the Southern District of New York; (ii) counsel for Iona Prep; (iii) counsel to the Committee; (iv) all entities (or counsel therefor) known to have asserted any liens, claims or encumbrances in or upon the Premises; (v) all federal, state and local regulatory or taxing authorities or recording offices that are reasonably known by CBI to have an interest in the relief requested by the Motion; (vi) all parties known by CBI to have expressed a *bona fide* interest in acquiring the Premises; (vii) the Internal Revenue Service; (viii) the United States Attorney's office; and (ix) all entities who have filed a notice of appearance and request for service of papers in the Debtors' cases (collectively, the "Auction and Sale Notice Parties").

Q. The Debtor and Iona Prep negotiated and entered into the Purchase Agreement in good faith, without collusion or fraud, and at arms' length within the meaning of Bankruptcy Code § 363(m). Neither the Debtor nor Iona Prep engaged in any conduct that would cause or permit the Purchase Agreement, the consummation of the transactions contemplated thereby to be avoided, or costs of damages to be imposed under Bankruptcy Code§ 363(n).

R. Iona Prep is a good faith purchaser under Bankruptcy Code § 363(m), and as such is entitled to the protections of Bankruptcy Code § 363(m).

S. The sale process conducted by the Debtor and its retained advisors was open, fair and reasonable, conducted in good faith and free of collusion, and in compliance with the Sale Procedures. The outcome of such Auction was not the result of collusive or otherwise unlawful conduct on the part of Iona Prep or any other third party.

T. The offer of Iona Prep for the Premises is the highest and best offer received by the Debtor and the Purchase Price (as defined in the Purchase Agreement) is fair and reasonable, and constitutes reasonably equivalent value and fair consideration for the Premises under the Bankruptcy Code and other applicable law.

U. The Debtor may sell the Premises free and clear of all Interests or Claims because, in each case, one or more of the standards set forth in Bankruptcy Code §§ 363(f)(1)-(5) has been satisfied.

V. The Sale of the Premises by the Debtor to Iona Prep pursuant to the Purchase Agreement (i) is or will be legal and a valid and effective transfer of the Premises to Iona Prep and (ii) vests or will vest Iona Prep with all right, title and interest of the Debtor in the Premises on the closing of the Sale free and clear of any Interests or Claims (except as expressly provided for in the Purchase Agreement) pursuant to Bankruptcy Code §§ 105, 363(b) and 363(f).

W. There were no objections by any holders of Interests or Claims that have not been resolved by the terms of this Order, or otherwise overruled or withdrawn, and all such parties are deemed to have consented to the Motion and Sale Relief pursuant to Bankruptcy Code § 363(f)(2).

X. All findings of fact and conclusions of law made or announced by the Court at the Sale Hearing or in the Procedures Order are incorporated herein; and it is therefore

ORDERED, ADJUDGED AND DECREED THAT:

1. The Sale Relief requested in the Motion is GRANTED in the manner and to the extent set forth below, and the Sale Relief and all other transactions contemplated under the Purchase Agreement are hereby approved.

2. Pursuant to Bankruptcy Code §§ 105(a), 363(b), 363(f) and 363(m), the Sale and the Purchase Agreement and the transaction contemplated thereby are hereby approved and authorized.

3. Pursuant to Bankruptcy Code § 363(b), the Debtor is hereby authorized to and directed to take any and all actions necessary or appropriate to (a) to sell the Premises to Iona Prep and consummate the Sale in accordance with and subject to the terms and conditions of the Purchase Agreement, and to transfer and assign all right, title and interest (including common law rights) to all property, to be conveyed in accordance with and subject to the terms and conditions of the Purchase Agreement, and (b) execute and deliver, and is empowered to perform under, consummate and implement, the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement.

4. The consideration provided by Iona Prep for the Premises pursuant to the terms of the Purchase Agreement is fair and reasonable, and shall be deemed for all purposes to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law. The Sale may not be avoided, or costs or damages imposed on or awarded

against any party in interest in these bankruptcy cases under section 363(n), or any other provision, of the Bankruptcy Code.

5. Pursuant to Bankruptcy Code §§ 363(b) and 363(f), upon the Closing, and except as otherwise expressly provided in the Purchase Agreement, the Premises shall be transferred to Iona Prep free and clear of all mortgages, restrictions, hypothecations, charges, indentures, loan agreements, instruments, leases, licenses, options, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens (including, without limitation, mechanics', materialmens' and other consensual and nonconsensual liens and statutory liens), judgments, demands, encumbrances, rights of first refusal, offsets, contracts, recoupment, rights of recovery, claims for reimbursement, contribution, indemnity, exoneration, products liability, alter-ego, tax, decrees of any Court or foreign or domestic governmental entity (to the extent permitted by law), or charges of any kind or nature, if any, including (without limitation) any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, debts arising in any way in connection with any agreements, acts or failures to act, of the Debtor or any of the Debtor's predecessors or affiliates, claims (as that term is defined in the Bankruptcy Code), obligations, liabilities, demands, guaranties, options, rights, contractual or other commitments, restrictions, interests and matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or noncontingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of this bankruptcy case, and whether imposed by agreement, understanding, law, equity or otherwise, other than Permitted Exceptions (collectively and as such pertains to the Premises, the "Interests or

Claims"), with all such Interests or Claims to attach to the cash proceeds in the order of their priority, with the same validity, force and effect that they now have as against the Premises, subject to any claims and defenses that the Debtor may possess with respect thereto.

6. Except as expressly provided for in the Purchase Agreement, following the Closing, no holder of any Interests or Claims against the Debtor or in the Premises shall, and any such holder is hereby enjoined from taking any actions to, interfere with Iona Prep's title to or use and enjoyment of the Premises based on or related to such Interests or Claims.

7. The transfer of the Premises to Iona Prep pursuant to the Purchase Agreement does not require any consents other than as specifically provided for in the Purchase Agreement and constitutes a legal, valid and effective transfer of the Premises, and shall vest Iona with all right, title and interest of the Debtor in and to the Premises free and clear of all Interests or Claims of any kind or nature whatsoever (except as expressly provided for in the Purchase Agreement).

8. On the Closing and pursuant to the terms of the Purchase Agreement, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of all of the Premises or a bill of sale transferring good and marketable title in the Premises to Iona Prep.

9. If any person or entity that has filed financing statements, mortgages, mechanics' liens, *lis pendens* or other documents or agreements evidencing Interests or Claims against or in the Premises shall not have delivered to the Debtor prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfactions, releases of all Interests or Claims that the person or entity has with respect to the Premises, or otherwise, Iona Prep is hereby authorized and directed to execute and file such statements,

instruments, releases and other documents on behalf of the person or entity with respect to the Premises.

10. Except as otherwise provided in the Purchase Agreement, on the Closing Date, each of the Debtor's creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release their respective Interests or Claims against the Premises, if any, as may have been recorded or may otherwise exist.

11. Each and every filing agent, registrar, filing officer, title agent, title company, recorder of mortgages, recorder of deeds, registrar of deeds, administrative agency or unit, governmental department or unit, secretary of state, federal, state or local official, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title, is hereby directed to accept any and all documents and instruments necessary and appropriate , including a certified copy of this Order, to consummate the transaction contemplated in the Purchase Agreement (including, without limitation, striking all recorded Interests or Claims).

12. The transaction contemplated by the Purchase Agreement have been bargained for and undertaken by Iona Prep and the Debtor at arms' length, without collusion and in good faith within the meaning of Bankruptcy Code § 363(m). The consideration provided by Iona Prep for the Premises under the Purchase Agreement is fair and reasonably and shall be deemed for all purposes to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law. Iona Prep and the Debtor have not engaged in any conduct that would cause or permit the Purchase Agreement to be avoided. Iona Prep a buyer in good faith as the term is used in Bankruptcy Code § 363(m) and upon the granting of this Order by

this Court with respect to the Purchase Agreement, Iona Prep shall be entitled to the protection of Bankruptcy Code § 363(m). Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale, unless such authorization is duly stayed pending such appeal. The transactions contemplated by the Purchase Agreement may not be avoided, or costs or damages imposed on or awarded against any party in interest in these bankruptcy cases under Bankruptcy Code § 363(n), or any other provisions of the Bankruptcy Code.

13. The Debtor and its officers, employees and agents are hereby authorized to execute such documents and do such acts as are necessary or desirable to carry out the transaction contemplated by the terms and conditions of the Purchase Agreement and this Order.

14. The Debtor shall be, and hereby is, authorized to take all such actions and execute and deliver to Iona Prep such other and further agreements and documents as may be necessary to consummate the Sale and effectuate the terms of this Order, without further Order of this Court.

15. This Order and the Purchase Agreement shall be binding in all respects upon all creditors (whether known or unknown) of the Debtor, all successors and assigns of Iona Prep, the Debtor and its affiliates and subsidiaries and its estate, all other parties in interest, and any subsequent trustees appointed in the Debtor's Chapter 11 Case or upon a conversion to Chapter 7 under the Bankruptcy Code and shall not be subject to rejection or avoidance.

16. The failure specifically to include or to reference any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement, be authorized and approved in its entirety.

17. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate.

18. To the extent applicable, the automatic stay pursuant to Bankruptcy Code § 362 is hereby lifted with respect to the Debtor to the extent necessary, without further order of the Court (a) to allow Iona Prep to give the Debtor any notice provided for or contemplated in the Purchase Agreement, and (b) to allow Iona Prep to take any and all actions contemplated or permitted by the Purchase Agreement.

19. To the extent permitted by Bankruptcy Code § 525, no governmental unit may revoke or suspend any permit relating to the operation of the Premises sold, transferred or conveyed to Iona Prep on account of the filing or pendency of the Debtor's Chapter 11 Case or the consummation of the Sale.

20. In the event of any inconsistency between this Order, on the one hand, and the Purchase Agreement or other documents related to the Sale, on the other hand, the terms of this Order shall control.

21. This Court shall retain exclusive jurisdiction to enforce the terms and provisions of this Order, the Procedures Order and the Purchase Agreement in all respects and to decide any disputes arising between the Debtor and Iona Prep.

Dated: White Plains, New York
April ___, 2012

HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT E

AGREEMENT

OF

PURCHASE AND SALE

Between

THE CHRISTIAN BROTHERS' INSTITUTE,

Seller

-AND-

IONA PREPARATORY SCHOOL,

Purchaser

Date: JANUARY 20, 2012

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LIST OF EXHIBITS

- Exhibit A - Legal Description of 173 Premises
Exhibit B - Legal Description of Vacant Premises
Exhibit C - Service Contracts
Exhibit D - Loan Documents
Exhibit E - Permitted Exceptions
Exhibit F - Form of Deed
Exhibit F - Form of Bill of Sale

AGREEMENT OF SALE AND PURCHASE

This Agreement, made as of January 20th, 2012 (the "Agreement") between The Christian Brothers' Institute, a New York not-for-profit corporation, with an office at 33 Pryer Terrace, New Rochelle, New York 10804 (hereinafter called "Seller"), and Iona Preparatory School, a New York educational corporation with an office at 255 Wilmot Road, New Rochelle, New York 10804 (hereinafter called "Purchaser").

RECITALS:

Seller is the owner of the all those certain plots, pieces or parcels of land described on Exhibit "A" annexed hereto, known as and by the street address of **173 Stratton Road, New Rochelle, New York** and designated as **Section 7, Block 3001 and Lot 320** of the **Westchester County Tax Map** (the "**173 Premises**"), and (ii) all those certain plots, pieces or parcels of vacant land described on Exhibit "B" annexed hereto, located on the north side of Stratton Road and designated as **Section 7, Block 3064 and Lot 1** of the **Westchester County Tax Map** (the "**Vacant Premises**").

Purchaser wishes to purchase the 173 Premises and the Vacant Premises along with the buildings, improvements and the easements and appurtenant rights thereto and Seller is agreeable to said sale, on the terms and conditions set forth herein.

Seller has commenced a voluntary case (Case No. 11-22820) (the "**Chapter 11 Case**") pursuant to chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") and the parties intend to effectuate the transactions contemplated hereby in accordance with sections 105 and 363 of the Bankruptcy Code and the terms and conditions hereof.

The execution and delivery of this Agreement, and Seller's ability to consummate the transactions set forth in this Agreement, are subject, among other things, to the approval by the Bankruptcy Court.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and of other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Seller and Purchaser hereby agree as follows:

1. Sale of Premises.

Seller agrees to sell and convey, and Purchaser agrees to purchase, all of Seller's right, title and interest in and to:

- (a) Those certain parcels of land (the "**Land**") described on Exhibit "A" and Exhibit "B" annexed hereto and made a part hereof;
- (b) All improvements situated on the Land (the "**Improvements**");

- (c) The streets, roads, lands, and alleys in front of and adjacent to the Land;
- (d) All hereditaments and appurtenances to the Improvements and the Land, including without limitation all easements, rights-of-way, and other similar interests appertaining to the Improvements;
- (e) All machinery, equipment, fixtures and appliances of whatever nature which are affixed or attached to the Land or Improvements (the "**Fixtures**");
- (f) All appliances, equipment, furniture, fittings, tools, supplies, building materials and other similar articles of personal property not affixed or attached to the Improvements but which are used or to be used for or useable in any present or future enjoyment, occupancy or operation of the Improvements remaining at the Premises on the date of Closing (the "**Personal Property**");
- (g) Any service contracts, maintenance contracts, union contracts, concession agreements, agency agreements, and other written contracts or agreements affecting the Premises or the operation thereof at Closing, including those listed on Exhibit "C" annexed hereto (herein referred to as the "**Service Contracts**");
- (h) Any unpaid award for any taking by condemnation or any damage to the Land or Improvements by reason of a change of grade of any street or highway;
- (i) All site plans, architectural renderings, plans and specifications, engineering plans, as-built drawings, floor plans, and other similar plans or diagrams, if any, which relate to the Real Property (hereinafter defined); and
- (j) Seller's interest in all licenses, permits and warranties which relate to the Real Property and which may be assigned by Seller to Purchaser.

Seller's right, title and interest in and to the items set forth in clauses (a) through (e) above shall collectively hereinafter be referred to as the "**Real Property**". Seller's right, title and interest in and to the items set forth in clauses (a) through (j) above shall collectively hereinafter be referred to as the "**Premises**". The Premises shall be sold SUBJECT TO the "**Permitted Exceptions**" (as defined in Section 4 below).

2. Purchase Price.

The Purchase Price for the Premises is U.S. is Eight Million Five Hundred Thousand and 00/100 (**\$8,500,000.00**) Dollars (the "**Purchase Price**"), payable as follows:

- (i) Eight Hundred Fifty Thousand and 00/100 (**\$850,000.00**) Dollars (the "**Down Payment**") on or before the expiration of the Due Diligence Period (as defined herein);
- (ii) Four Million One Hundred Fifty Thousand and 00/100 (**\$4,150,000.00**) Dollars at Closing, subject to the adjustments and prorations set forth this Agreement (the "**Closing Balance**"); and

(iii) Three Million Five Hundred Thousand and 00/100 (**\$3,500,000.00**) Dollars by executing and delivering the loan documents in the forms annexed hereto as Exhibit "D" (the "**Loan Documents**"). Purchaser shall pay the mortgage recording tax, mortgage insurance premium and all recording fees therefore in connection with recording the mortgage referenced in the Loan Documents and insuring a first mortgage lien on the Premises.

Purchaser shall pay the Closing Balance, and all other sums that Purchaser is required to pay to the Seller under this Agreement at Seller's election to (i) Seller's direct order (or to the direct order of the party or parties designated by Seller) by unendorsed certified or cashier's checks drawn on a bank that is a member of the New York Clearinghouse, or (ii) by wire transfer of immediately available federal funds to an account designated by Seller. Upon oral notice from Seller, Purchaser will deliver separate checks at Closing in the number and manner reasonably requested by Seller.

3. Down Payment; OFAC Disclosure.

(a) On or before the expiration of the Due Diligence Period, Purchaser shall deliver the Down Payment to Tarter Krinsky & Drogin LLP ("Escrow Agent"), payable to "Tarter Krinsky & Drogin LLP, as attorneys". Escrow Agent shall deposit the Down Payment check in an interest-bearing bank account and shall hold the proceeds thereof and any interest thereon in escrow and maintain and disburse the Down Payment, all in accordance with the terms and provisions contained in this Agreement. To the extent interest is earned on the Down Payment, such interest shall be paid over to the party who ultimately is entitled to receive the Down Payment pursuant to the terms of this Agreement, provided, if the Closing shall occur, all such interest shall accrue to the benefit of Seller but no interest earned on the Down Payment shall be credited towards the Purchase Price.

Upon the closing of title of the Premises from Seller to Purchaser in accordance with this Agreement (the "**Closing**"), the Down Payment will be paid to Seller. If the Down Payment is not paid to Seller in that manner, it will be paid to the appropriate party as otherwise provided elsewhere in this Agreement. If any dispute arises between the parties as to the proper disposition of the Down Payment (a "**Dispute**"), Escrow Agent will not be required to make any payment thereof to either party except pursuant to a final order or judgment of a court having jurisdiction of the matter after the time to appeal has expired or in accordance with joint written instructions from the parties. If a Dispute exists, and is continuing, Escrow Agent will have the right to deposit the Down Payment and interest thereon, if any, with the Bankruptcy Court. Escrow Agent will give written notice of such deposit to Seller and Purchaser. Upon such deposit, Escrow Agent will be relieved and discharged of all further obligations and responsibilities hereunder. Escrow Agent has endorsed this Agreement only to acknowledge its receipt of the Down Payment and to confirm its agreement to act in conformity with the provisions of this Section.

The parties acknowledge that Escrow Agent is acting solely as a stakeholder at their request and for their convenience, that Escrow Agent will not be deemed to be the agent of either of the parties, and that Escrow Agent will not be liable to either of the parties for any act or omission on its part unless taken or suffered in bad faith, in willful disregard of this Agreement or involving gross negligence. Seller and Purchaser will jointly and severally

indemnify and hold Escrow Agent harmless from and against all costs, claims and expenses, including reasonable attorneys' fees, incurred in connection with the performance of Escrow Agent's duties hereunder, except with respect to actions or omissions taken or suffered by Escrow Agent in bad faith, in willful disregard of this Agreement or involving gross negligence on the part of Escrow Agent. This indemnity will survive Closing. Purchaser acknowledges that Escrow Agent represents Seller and will continue to represent Seller in this transaction and may, if Seller so desires, represent Seller in connection with any Dispute that may arise in connection with this Agreement, including, without limitation, those relating to the disposition of the Down Payment.

Escrow Agent will be entitled to rely upon any judgment, certificate, demand or other writing delivered to it hereunder without being required to determine the authenticity or the correctness of any facts stated therein, the propriety or validity thereof, or the jurisdiction of the Bankruptcy Court issuing any such judgment. Escrow Agent may act in reliance upon any instrument or signature believed to be genuine or duly authorized, and advice of counsel in reference to matter or matters connected therewith.

Any notice, demand or other communication to Escrow Agent will be sent in accordance with the provisions of this Agreement with respect to notice to a party at the address for Seller's attorney as set forth herein.

If there is a Dispute, the party to whom the Down Payment is finally awarded by a court of competent jurisdiction will be entitled to reimbursement for its reasonable legal fees and disbursements incurred in the Dispute.

The parties acknowledge and understand that the entire Down Payment may not be protected by the Federal Deposit Insurance Corporation and/or any insurance offered by or through it, and agree that the Escrow Agent will have no liability for failure of the depository or depositories in which the Down Payment is deposited.

(b) Purchaser represents and warrants to Seller that neither Purchaser nor any of its officers or directors (a "Principal") is a person or entity with whom United States persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of 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 Person 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. In order to permit Seller to establish the identity of Purchaser to comply with OFAC, upon Seller's request, each Principal that is an individual will also exhibit to Seller and permit Seller to copy the individual's passport.

(c) If Purchaser fails to deliver the Down Payment to Escrow Agent on or before the expiration of the Due Diligence Period, Seller shall have the right to terminate this Agreement and in such event, neither party shall have any further claim against the other party and this Agreement shall be of no further force and effect except for those covenants or obligations which this Agreement expressly provides shall survive termination of the Agreement.

(d) . If Purchaser defaults under this Agreement, the parties hereto agree that the damages that Seller will sustain as a result thereof will be substantial but will be difficult to ascertain. Accordingly, the parties agree that in the event of such default, Seller shall have the right to terminate this Agreement and (subject to the procedural requirements of the Escrow Agreement) to retain the Down Payment as and for its liquidated damages and sole remedy, and upon such retention neither party shall have any further claim against the other party and this Agreement shall be of no further force and effect. The limitation of Purchaser's liability contained in this subsection (c) shall not limit Purchaser's liability under any indemnifications given by Purchaser in this Agreement.

(e) If the Closing does not occur due to a breach of this Agreement by Seller, Purchaser shall have such remedies as Purchaser shall be entitled to at law or in equity, including, but not limited to, specific performance. Notwithstanding the previous sentence, Purchaser waives any right it may have to bring an action against Seller for damages, Purchaser's remedies being limited to termination or specific performance. Purchaser also expressly waives the right to file a *lis pendens*, or to take any other action that would adversely affect Seller's ability to convey title to the Premises free and clear of any claim of Purchaser, unless and only if Purchaser thereafter commences an action for specific performance as permitted under applicable law. Nothing contained in this paragraph shall prejudice Purchaser's rights to obtain the Break-up Fee and Expense Reimbursement (hereinafter defined) in accordance with Section 14 if the Closing does not occur due to a breach of this Agreement by Seller

4. Permitted Exceptions.

(a) The Premises shall be sold and are to be conveyed subject to the matters set forth in Exhibit "E" to this Agreement ("collectively, the "**Permitted Exceptions**").

(b) The existence of any mortgages, liens, claims or encumbrances which are not Permitted Exceptions shall not be grounds for an objection to title provided that Seller obtains on order from the Bankruptcy Court providing that the sale shall be free and clear of all such mortgages, liens, claims or encumbrances.

5. Adjustments.

(a) Except as otherwise specifically provided herein, Purchaser and Seller shall adjust as of midnight of the day preceding the Closing the items hereinafter set forth. If any such items are not determinable at the Closing, the adjustment shall be made subsequent to the Closing when the amount is determined. Any errors or omissions in computing adjustments at the Closing shall be promptly corrected. The obligations set forth in this Section 5 shall survive the Closing. Except as otherwise specifically provided for herein, all adjustments shall be made in the manner recommended by the Customs in Respect to Title Closings of the Real Estate Board of New York, Inc., and there shall be no other adjustments. The items to be adjusted are:

(i) water rates, water meter charges and sewer rents, if any, on the basis of the fiscal period for which assessed;

(ii) fuel, if any, on the basis of Seller's last cost therefor, including sales tax, as evidenced by a written statement of Seller's fuel oil supplier dated within thirty (30) days of the Closing, which statement shall be conclusive as to quantity and cost;

(iii) charges under all Service Contracts which are to survive Closing or permitted renewals or replacements thereof, including salaries, benefits, other compensation and related taxes of all building employees under any employment agreements or collective bargaining agreements;

(iv) license and permit fees on assignable licenses and permits;

(v) maintenance supplies in unopened containers based on Seller's actual cost therefor, including sales tax; and

(vi) any other item which, under the express terms of this Agreement, is to be apportioned at the Closing.

(b) At the Closing, the net adjustment pursuant to this Section 5 shall be paid (i) if in favor of Seller, in the same manner as set forth in Section 2 of this Agreement, or (ii) if in favor of Purchaser, as a credit against the Closing Balance payable pursuant to Section 2 of this Agreement.

(c) Seller shall prepare and submit to Purchaser for Purchaser's reasonable approval at least three (3) business days prior to the Closing a preliminary closing statement. Seller and Purchaser shall use their best efforts to expeditiously agree upon a final closing statement (the "**Closing Statement**") prior to Closing, provided that if for any reason Seller and Purchaser cannot agree on the adjustments and prorations pursuant to Section 5, at least one (1) business day prior to the Closing, then the Closing Statement will be finalized based on Seller's determinations made in good faith with Purchaser reserving its rights to dispute the same within a reasonable time frame after the Closing. Each of the parties shall act reasonably and in good faith in preparing the Closing Statement, and Seller shall provide reasonably satisfactory backup for the items in the Closing Statement. The Closing Statement, once agreed upon, shall be signed by Purchaser and Seller and delivered to the other party. The preliminary proration shall be paid at Closing by Purchaser to Seller (if the preliminary prorations result in a net credit to Seller) or by Seller to Purchaser (if the preliminary prorations result in a net credit to Purchaser) by increasing or reducing the cash to be delivered by Purchaser in payment of the Purchase Price at the Closing. The parties hereto agree that any errors or omissions in computing apportionments at the Closing shall be corrected promptly after they are discovered.

6. Inability to Convey.

(a) Subject to subsection (b) of this Section 6, if Seller shall be unable to convey title to the Premises subject only to the Permitted Exceptions and such other matters as any reputable title insurance company doing business in the New York metropolitan area would be willing to approve and insure without special premium or charge (a "**Title Insurer**"), and Purchaser shall be unwilling to (1) waive objection to each lien, claim, encumbrance or exception which is not a Permitted Exception (a "**Title Defect**"), and (2) close this transaction without (x) abatement of the Purchase Price, (y) credit or allowance of any kind, or (z) any claim

or right of action against Seller for damages or otherwise, Seller shall have the right, at Seller's sole election, to either (i) take such action as Seller shall deem advisable to remove, remedy or comply with each such Title Defect, or (ii) terminate this Agreement. If Seller shall elect to take action to remove, remedy or comply with each such Title Defect, Seller shall be entitled to one or more adjournments of the Outside Closing Date (hereinafter defined) for a period not to exceed ninety (90) days in the aggregate, and the Closing shall be adjourned to a date specified by Seller not beyond such ninety (90) day period. If, for any reason whatsoever, Seller shall not have succeeded in removing, remedying or complying with each such Title Defect at the expiration of such adjournment(s), Purchaser may, within five (5) days after the expiration of the last of such adjournments, give notice to Seller that Purchaser is willing to waive objection to each such Title Defect and to close this transaction without abatement of the Purchase Price, credit or allowance of any kind or any claim or right of action against Seller for damages or otherwise. If Purchaser does not give such notice, this Agreement shall be deemed to be terminated as of the last adjourned date of the Closing. Upon any termination of this Agreement pursuant to this subsection (a), Purchaser shall be entitled only to a return of the Down Payment and Seller shall have no obligation or liability to Purchaser for any damages that Purchaser may have sustained by reason of Seller's inability to convey title in accordance with the terms of this Agreement. No action taken by Seller to remove, remedy or comply with or attempt to remove, remedy or comply with any purported Title Defect shall be an admission that any such purported title Defect is not a Permitted Exception.

(b) Nothing contained in this Agreement shall be deemed to require Seller to take or bring any action or proceeding or any other steps to remove any defect in or objection to title or to expend any moneys therefor, nor shall Purchaser have any right of action against Seller therefor, at law or in equity, for damages or specific performance, for Seller's inability to convey title in accordance with the terms of this Agreement.

(c) The acceptance of the Deed set forth in Section 13 hereof shall be deemed to be full performance and discharge of every agreement, covenant and obligation on Seller's part to be performed under this Agreement, and no such agreement, covenant or obligation of Seller shall survive acceptance of the deed, except for those which this Agreement expressly provides shall survive the Closing.

7. Title Report.

Within five (5) days of the date hereof, Purchaser shall order a title report for the Premises from a Title Insurer. Upon receipt thereof, and in any event at least twenty (20) days before the Closing, Purchaser shall forward a true copy of the title report to Seller's attorneys, together with a written statement specifying all exceptions to title set forth in such report which Purchaser claims are not Permitted Exceptions. The failure of Purchaser to so deliver a true copy of such report to Seller together with such written statement on or before the twentieth (20th) day prior to the Closing shall be deemed an irrevocable waiver of Purchaser's right to object to any exception set forth in such title report and all title continuations issued prior to such day. Purchaser shall instruct the Title Insurer, in writing, to furnish copies of all title continuations to Seller's attorneys at the address set forth herein simultaneously with the delivery thereof to Purchaser.

8. Due Diligence.

(a) During the period (the “**Due Diligence Period**”) commencing on the date hereof and ending at 5:00 P.M. Eastern Standard Time on January 15, 2012, Purchaser shall have the right to have the Premises inspected during reasonable hours, after reasonable notice to Seller, and to obtain the following inspection reports with respect to the Premises, at Purchaser’s sole cost and expense: (i) An environmental Phase I assessment inspection and report (the “**Phase I**”) from a reputable licensed environmental inspection laboratory or a licensed engineer (the “**Environmental Company**”) with respect to the presence or absence of hazardous or toxic substances or conditions at the Premises including, without limitation, asbestos, polychlorinated biphenyls, petroleum products and those hazardous substances defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* and all amendments thereto, including, without limitation, the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 9601 *et seq.*, and the rules and regulations promulgated thereunder; New York State Environmental Liability Review Act, New York Environmental Conservation Law (ECL) §§8-0101 *et seq.*; and the New York State Water Pollution Control Act, ECL §§ 17-0101 *et seq.*, (collectively, “**Hazardous Substances**”), on the Premises, and (ii) an inspection and report from a reputable licensed engineer (the “**Engineering Company**”) with respect to the structural and general physical condition of the Premises (the “**Engineering Report**”). In no event shall the Environmental Company or Engineering Company perform any intrusive testing, including without limitation, and drillings or borings, without obtaining the prior written consent of Seller, which consent may be withheld in Seller’s sole discretion.

(b) Purchaser shall cause copies of the Phase I and Engineering Report to be delivered to Seller prior to the expiration of the Due Diligence Period. Purchaser may elect to cancel this Agreement, by written notice (the “**Termination Notice**”) to Seller delivered on or before the last day of the Due Diligence Period, if (i) the Phase I states that there are Hazardous Substances on the Premises, or (ii) the Engineering Report reveals a material structural defect at the Premises that cannot be promptly remedied. If Purchaser terminates this Agreement as aforesaid, (a) this Agreement shall become null and void and of no further force or effect, except for those obligations expressly stated to survive the termination of this Agreement; and (b) neither Seller nor Purchaser shall have any further liability or obligation to the other under this Agreement, except for those obligations expressly stated to survive the termination of this Agreement.

(c) The Environmental Company and Engineering Company, and anyone acting on its behalf, may not enter upon the Premises until such company furnishes to Seller, in a form reasonably satisfactory to Seller, a certificate or certificates of insurance evidencing that such company has obtained such insurance coverage in such amounts and with such carriers that are reasonably acceptable to Seller including, Comprehensive General Liability Insurance with limits not less than \$2,000,000 per occurrence and \$5,000,000 in the aggregate for bodily injury, including death, and property damage combined. In addition, Purchaser hereby indemnifies and agrees to defend and hold Seller harmless from all loss, cost (including, without limitation, reasonable attorneys’ fees), claim or damage caused by the inspection of the Premises by Purchaser, the Environmental Company and Engineering Company, its agents, consultants or

representatives. The foregoing will survive the Closing or other termination of this Agreement. Purchaser shall maintain the results of such investigation in strict confidence (but shall be permitted to disclose the results to its advisors, lenders, and assignees) and shall make no disclosures of the conditions discovered thereby, unless required by law or court order.

(d) TIME SHALL BE OF THE ESSENCE WITH RESPECT TO PURCHASER'S ACTIONS PURSUANT TO THIS SECTION. In the event Purchaser shall (i) fail to have the Premises inspected prior to the expiration of the Due Diligence Period, (ii) fail to deliver a copy of the Phase I and Engineering Report to Seller prior to the expiration of the Due Diligence Period, or (iii) fail to give the Termination Notice prior to the expiration of the Due Diligence Period, Purchaser shall be deemed to have waived the right to cancel this Agreement as provided in this section.

Purchaser acknowledges that it is purchasing the Premises "as is" on the date hereof, subject to reasonable use, wear, tear and natural deterioration between the date hereof and the Closing. This Agreement, as written, contains all the terms of the agreement between the parties, and Purchaser acknowledges that Seller has made no representations and held out no inducements to Purchaser other than those herein expressed. Without limiting the generality of the foregoing, Purchaser has not relied on any representations or warranties, and Seller has not made any representations or warranties other than as expressly set forth herein, in either case express or implied, as to any matter, including without limitation (i) the current or future real estate tax liability, assessment or valuation of the Premises, (ii) the compliance of the Premises, in its current or any future state, with applicable zoning ordinances and the ability to obtain a change in the zoning or a variance in respect to the Premises, (iii) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Premises from any source, (iv) the present and future condition and operating state of any and all machinery or equipment on the Premises and the present or future structural and physical condition of any building or its suitability for rehabilitation or renovation, (v) the ownership or state of title of any Personal Property, (vi) the compliance of the Premises with laws, ordinances, rules or regulations issued by any governmental authority, agency or board, (vii) the potential qualification of the Premises for any and all benefits conferred by federal, state or municipal laws, whether for subsidies, special real estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated, and (viii) the current or future use of the Premises. Seller is not liable or bound to Purchaser in any manner by any verbal or written statements pertaining to the Premises or the operation, layout, expenses, condition, income, Leases, rents, agreements, licenses, easements, instruments, documents or Service Contracts (hereinafter defined) furnished by any real estate broker, agent, employee, or other person.

(e) Purchaser shall keep confidential all information contained in the Phase I and Engineering Report (collectively, the "**Confidential Information**"), and shall not disclose to any other person or entity any of the Confidential Information, nor shall Purchaser disclose a copy of all or any part of the Phase I and Engineering Report other than to any persons or entities who need to know for the purpose of completing the closing and reporting of the transaction contemplated by this Agreement, such as Purchaser's legal counsel, accountants, advisors, loan officers and Title Insurer provided such persons or entities agree to keep such Confidential

Information confidential. Notwithstanding the foregoing, Purchaser may disclose the Confidential Information to the extent necessary to comply with law or the valid order of a court of competent jurisdiction, in which event Purchaser shall notify Seller as promptly as practicable.

9. Satisfaction of Liens.

If, at the Closing, there are any liens or encumbrances on the Premises which Seller is obligated by this Agreement or elects to pay and discharge, Seller may use any portion of the Purchase Price to satisfy the same.

10. Violations.

Seller shall not be required to remove or comply with any code violations or notes or notices of violations of law or governmental ordinances, orders or requirements which were noted or issued by any governmental department, agency or bureau having jurisdiction as to conditions affecting the Premises, or update the Premises' Certificate of Occupancy and such violations shall not be a Title Defect. Purchaser shall accept the Premises subject to all such violations or liens and with the current certificate of occupancy without abatement against the Purchase Price, credit or allowance of any kind or any claim or right of action against Seller for damages or otherwise.

11. Representations.

(a) Seller represents and warrants to Purchaser that:

(i) As of the date hereof, Seller has received no written notice of any actions, suits or proceedings pending or threatened against the Premises, at law or in equity, before any federal, state, municipal or governmental department, commission, board, bureau, agency or instrumentality which would in any way affect the Premises;

(ii) As of the date hereof, Seller has received no written notice of any pending or threatened condemnation or eminent domain proceedings that would affect any part of the Premises;

(iii) (A) Seller is a duly formed and validly existing not-for-profit corporation under the laws of the State of New York, (B) subject to Bankruptcy Court approval, Seller has full authority to enter into the transactions contemplated by this Agreement and to execute any and all documents necessary to effectuate same, (C) the transactions contemplated by this Agreement do not violate any applicable provision of the charter or by-laws of Seller or any agreement which governs or restricts its corporate actions that could otherwise not be cleansed by the Sale Order, (D) any required consents of the directors of Seller have been given with respect to this Agreement and the transactions contemplated hereby, and (E) this Agreement and any and all documents executed in connection with the transactions contemplated herein, when executed, will constitute valid and binding obligations of Seller and will be enforceable in accordance with their respective terms;

(iv) Seller is not a foreign person and is a "United States Person" as such term is defined in Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended (the "Code"); and

(v) Seller's Taxpayer Identification Number is _____.

(b) Purchaser represents and warrants to Seller that:

(i) Purchaser is duly organized, authorized and qualified to do business in the State of New York and has the power to enter into the transactions contemplated by this Agreement and execute any and all documents to effectuate same;

(ii) the transactions contemplated by this Agreement do not violate any applicable provisions of the charter, by-laws, operating agreement or other documents affecting Purchaser;

(iii) member or shareholder approval of the transactions contemplated by this Agreement has either been obtained or is not required;

(iv) this Agreement and any and all other documents executed in connection with the transactions contemplated herein, when executed, will constitute valid and binding obligations of Purchaser and will be enforceable in accordance with their respective terms;

(iv) neither Purchaser nor any Principal is listed on the Specially Designated Nationals and Blocked Persons list maintained by the OFAC or is under investigation by any governmental authority for (or has been charged with or convicted of) violating money-laundering, or been notified that any of its or their assets have been "frozen" by any governmental authority, and

(vi) Purchaser's Taxpayer Identification Number is _____.

12. Seller's Covenants.

Between the date hereof and the Closing, Seller:

(a) shall not modify, amend or renew any Service Contracts except in the ordinary course of business, or enter into any new contract, license or agreement relating to the Real Property unless same is cancelable upon not more than thirty (30) days' notice;

(b) shall refrain from committing any overt act resulting in waste upon the Real Property;

(c) shall keep all insurance policies covering or relating to the Premises in full force and effect up to and including the Closing;

(d) shall not voluntarily encumber the Premises;

(e) shall not sell, assign, or otherwise transfer any air or development rights in the Real Property;

(f) shall not submit any application relating to zoning, rezoning or other land use matter for the Real Property without Purchaser's express written consent;

(g) shall endeavor to keep in full force and effect all transferable licenses and permits to use and operate the Real Property as it is currently being used and operated; and

(h) shall not apply for any new permit, license or certificate relating to the Real Property without Purchaser's express written consent.

13. Closing Documents.

(a) At the Closing, Seller shall deliver (or shall cause to be delivered) the following documents (collectively, the "**Seller's Closing Documents**"):

(i) a duly executed counterpart of a Bargain and Sale Deed without covenants against grantor's acts, substantially in the form of Exhibit "F" attached hereto (the "**Deed**");

(ii) a duly executed counterpart of a Bill of Sale, substantially in the form of Exhibit "G" attached hereto;

(iii) a certification, pursuant to Section 1445 of the Internal Revenue Code, that Seller is not a "**foreign person**" within the meaning of said Section;

(iv) the Closing Statement described in subsection 5(c) hereof;

(v) two (2) duly executed counterparts of the transfer tax returns and statements described in Section 16 hereof, together with certified checks to the order of the Title Insurer or the appropriate officers in payment of applicable transfer taxes (unless Seller elects to have Purchaser deliver such checks and receive a credit against the Purchase Price as provided herein);

(vi) original counterparts or copies of all Service Contracts in Seller's possession;

(vii) keys to the Improvements in possession of Seller or its agents;

(viii) such other instruments or documents which by the terms of this Agreement are to be delivered by Seller at Closing; and

(ix) an order from the United States Bankruptcy Court approving the sale of the Premises from Seller to Purchaser (a) free and clear of all liens, claims or encumbrances, with liens, claims and encumbrances, if any, to attach to the proceeds of the sale other than Permitted Exceptions; and (b) granting to the Purchaser the status of a "good faith purchaser" the protection afforded by §363(m) of the Bankruptcy Code (the "**Sale Order**").

(b) At the Closing, Purchaser shall deliver or cause to be delivered the following documents (collectively, the "Purchaser's Closing Documents"):

(i) The Closing Balance plus or minus the prorations pursuant to Section 5;

(ii) a certified copy of Purchaser's duly executed resolutions authorizing the execution of this Agreement, all documents required to be executed and delivered by Purchaser in connection therewith and the consummation of the transactions contemplated by the foregoing;

(iii) two (2) duly executed counterparts of the transfer tax returns and statements described in Section 16 hereof;

(iv) the Closing Statement; and

(v) such other instruments or documents, including without limitation, the Loan Documents, which by the terms of this Agreement are to be delivered by Purchaser at the Closing.

14. Bankruptcy Provisions.

(a) Purchaser acknowledges and understands that this Agreement is part of an extensive process undertaken by Seller to identify and negotiate a transaction with a bidder who is prepared to pay the highest and best purchase price for the Premises. ~~Promptly following the expiration of the Due Diligence Period and receipt of the Down Payment, Seller shall proceed to obtain all necessary approvals from the Bankruptcy Court. In connection therewith,~~ Seller shall promptly file a motion pursuant to Bankruptcy Code §363(b) to approve the sale of the Premises outside the ordinary course of business to Purchaser upon the terms and conditions set forth in this Agreement. Seller shall also seek to obtain customary bidding procedures and bid protections in favor of Purchaser, such as minimum competing bids and an expense reimbursement fee in the event Purchaser is overbid for the Premises.

(b) Either party may terminate this Agreement upon not less than ten (10) days prior written notice, in the event that the purchase and sale of the Premises, in the manner contemplated by this Agreement is (i) rejected by the Bankruptcy Court; or (ii) not approved by the Bankruptcy Court by April 5, 2012.

(c) In the event that Seller receives a Higher and Better Offer (as such term is defined below) for the Premises in accordance with the procedures set forth in the Bid Procedures Order (as such term is defined below), Seller shall notify Purchaser within one (1) business day of receipt of such Higher and Better Offer. Seller shall conduct an auction for the Premises in accordance with the Bid Procedures Order in the event it receives at least one (1) qualified Higher and Better Offer for the Premises.

(d) Subject to Bankruptcy Court approval, Purchaser shall be entitled to payment of a break-up fee and reimbursement for its documented, actual out-of-pocket expenses reasonably incurred in connection with the transactions contemplated hereby in an aggregate

amount not to exceed U.S. One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00) (the "Break-up Fee and Expense Reimbursement") which Break-up Fee and Expense Reimbursement shall be payable to Purchaser only if:

(i) Seller does not proceed with the transaction contemplated in this Agreement as a result of receiving a Higher and Better Offer and Seller closes the Higher and Better Offer transaction; and

(ii) Purchaser is not in breach of its obligations under this Agreement, which breach or default has not been waived in writing by Seller and the parties have not otherwise terminated this Agreement upon mutual written consent.

(e) For purposes of this Agreement, a Higher and Better Offer shall mean an offer by an entity or person, other than Purchaser, who makes a bid for the Premises of at least Eight Million Six Hundred Seventy Five Thousand and 00/100 (\$8,675,000.00) Dollars and demonstrates the financial wherewithal to pay such sum for the Premises.

(f) For purposes of this Agreement, a **Bid Procedures Order** means an order entered by the Bankruptcy Court approving the Bid Procedures and payment of the Break-up Fee and Expense Reimbursement in accordance with this Agreement.

15. Closing; Closing Costs. The Seller's Closing Documents and the Purchaser's Closing Documents shall be delivered, together with payment of the Closing Balance, at the Closing which shall be held at the offices of Tarter Krinsky & Drogin LLP, 1350 Broadway, New York, New York 10018, on or before April 23, 2012 (the "Outside Closing Date"). Except as expressly provided herein, each party shall bear its own costs and expenses, including attorney, accountant and other consultant fees, in connection with the execution and negotiation of this Agreement and the consummation of the transactions contemplated hereby. Purchaser shall pay for the cost of recording the Deed and the Loan Documents.

16. Transfer Taxes.

To the extent required by law, Seller shall pay at the Closing the New York State Real Estate Transfer Tax in accordance with Article 31 of the Tax Law and the New York City Real Property Transfer Tax imposed by Title II of Chapter 46 of the Administrative Code of the City of New York. Seller and Purchaser shall each execute and/or swear to the returns or statements required in connection with the aforesaid taxes. All such tax payments shall be made payable directly to the order of the appropriate governmental officer or the Title Insurer.

17. Brokerage. Purchaser and Seller represent and warrant to each other that no broker, finder or other party is entitled to a commission or other compensation or was instrumental or had any role in bringing about this sale. Each party agrees that should any claim be made for a commission, finder's fee or other compensation, other than a claim for commission by a broker, such party will hold the other party free and harmless from any and all claims, liabilities, losses, damages, costs or expenses including, without limitation, reasonable attorneys' fees and expenses, in connection with the falsity of the representation set forth above. The provisions of this Section shall survive the Closing or termination of this Agreement.

18. Conditions Precedent to Obligation of Purchaser and Seller to Close.

(a) The obligations of Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, at or prior to the Closing, of each of the following conditions, any one or more of which may be waived (but only in writing) by Purchaser, in its sole discretion:

(i) all of the representations and warranties made by Seller in this Agreement, including any statements in the Recitals, shall be true and correct in all material respects (other than those representations and warranties that are qualified by materiality, which shall be true and correct in all respects) as of the date hereof and as of the Closing as though made at and as of the Closing (except to the extent such representations and warranties expressly speak as of an earlier date, which shall be true and correct as of such date);

(ii) Seller shall have performed and complied in all material respects with all agreements and covenants required by this Agreement to be performed by Seller on or prior to the Closing;

(iii) Not later than **February 20, 2012**, the Seller shall make a motion in the Bankruptcy Court authorizing and approving, inter alia, the sale of the Premises to Purchaser on the terms and conditions set forth herein, free and clear of all liens and encumbrances other than Permitted Exceptions, and containing a finding that Purchaser has acted in "good faith" within the meaning of section 363(m) of the Bankruptcy Code

(iv) Not later than **April 5, 2012**, (the "**Order Outside Date**"), the Bankruptcy Court shall have entered the Sale Order; and

(v) all Seller's Closing Documents required to be made to Purchaser pursuant to Section 13(a) shall have been so delivered.

(b) The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, at or prior to the Closing, of each of the following conditions, any one or more of which may be waived (but only in writing) by Seller, in its sole discretion:

(i) all of the representations and warranties made by Purchaser in this Agreement, including any statements in the Recitals, shall be true and correct in all material respects (other than those representations and warranties that are qualified by materiality, which shall be true and correct in all respects) as of the date hereof and as of the Closing as though made at and as of the Closing (except to the extent such representations and warranties expressly speak as of an earlier date, which shall be true and correct as of such date);

(ii) Purchaser shall have performed and complied in all material respects with all agreements and covenants required by this Agreement to be performed by Purchaser on or prior to the Closing;

(iii) the Bankruptcy Court shall have entered the Sale Order; and

(iv) all Purchaser's Closing Documents required to be made to Seller pursuant to Section 13(b) shall have been so delivered.

19. Notices.

All notices under this Agreement must be given in writing and must be (i) personally delivered with proper receipt therefor, or (ii) sent by one-day express delivery service from the United States Postal Service, Federal Express, or other reputable national overnight courier service, to the parties at the following addresses:

To the Seller:

The Christian Brothers' Institute
33 Pryer Terrace
New Rochelle, New York 10804
Attn: Brother Kevin Griffith

with a copy to:

Tarter Krinsky & Drogin LLP
1350 Broadway, 11th Floor
New York, New York 10018
Attn: Anthony Dougherty, Esq.
Scott Markowitz, Esq.

To the Purchaser:

Iona Preparatory School
255 Wilmot Road, New Rochelle, New York 10804
Attn: Brother Thomas R. Leto

with a copy to:

Kent Hazzard, LLP
111 Church Street
White Plains, New York 10601
Attn: John A. Verni, Esq.

or at such other address in the State of New York as may be designated by either of the parties in a written notice given in accordance with the provisions of this Section. Any such notice shall be effective on the date of receipt or failure to accept receipt. Either party's attorneys may give notice on behalf of their respective clients.

20. Assignment.

Neither this Agreement nor any of the rights of Purchaser hereunder (nor the benefits of such rights) may be assigned or encumbered without Seller's prior written consent and any purported assignment or encumbrance without Seller's prior written consent shall be void.

21. Personal Property.

The parties hereto agree that no part of the Purchase Price shall be deemed to have been paid by Purchaser for any Personal Property transferred hereunder. Sales taxes, if any, payable by reason of the sale of any of the Personal Property shall be paid by Purchaser and Purchaser shall indemnify Seller with respect thereto. The indemnity set forth in the preceding sentence shall survive Closing.

22. Condemnation.

(a) Seller and Purchaser hereby waive the provisions of all applicable laws (including General Obligations Law Section 5-1311) relating to the occurrence of a condemnation between the date hereof and the Closing, and Seller and Purchaser agree that the following provisions with respect thereto shall govern. Seller agrees to notify Purchaser promptly if the Premises shall be taken in whole or in part by right of eminent domain or condemnation prior to the Closing (a "Taking").

(b) If the Taking will so affect the Premises as to (i) cause the Premises to not comply with applicable laws, codes and regulations concerning zoning and land use, or (ii) prevent the use of the Premises for its current purposes, then Purchaser shall have the right to terminate this Agreement by giving written notice to Seller within fifteen (15) days of the date Seller sends written notice to Purchaser of the Taking. In such case, neither party hereto shall have any further duties, obligations or liabilities to the other hereunder, except for those obligations specifically provided for in this Agreement to survive the termination of this Agreement, and Purchaser shall be entitled to the return of the Down Payment. If Purchaser does not so terminate this Agreement, or shall have no right to terminate this Agreement, then (x) this Agreement shall remain in full force and effect notwithstanding such Taking, (y) Purchaser shall purchase the Premises in its then condition without reduction of the Purchase Price or any other claim or offset, and (z) Seller shall assign to Purchaser at Closing the right to negotiate and receive any condemnation award payable to Seller as a result of the Taking, net of (A) any costs incurred by Seller in the process of litigating or negotiating the amount of, or collecting, the award, and (B) any sums expended by Seller to restore or protect the Premises as a result of the Taking.

23. Cooperation.

(a) Seller has advised Purchaser that it may be necessary after the Closing for Seller (or its representatives) to audit the records with respect to the period prior to the Closing. In addition, Seller may require access to such records in connection with any litigation by or against Seller and its affiliates with respect to the Premises for the period prior to the Closing, any tax audit, examination or challenge or similar proceeding, or any calculation of sums payable under Section 5. Accordingly, Purchaser hereby: (i) agrees to retain the records with respect to the period prior to the Closing for a period of three (3) years after the Closing or such additional

period as may reasonably be requested by Seller; and (ii) grants Seller, its affiliates and their respective representatives access to the such records, and if necessary for such audit, the Premises, after the Closing, at reasonable times and upon reasonable prior notice, for such purposes.

(b) Purchaser agrees to cooperate with Seller, its affiliates and their respective representatives in connection with any such litigation or proceedings with respect to the Property, any such tax audit, examination or challenge or similar proceeding, or any such calculation of sums payable under Section 5, said cooperation to be at no material cost or expense to Purchaser. Seller shall cooperate with Purchaser in connection with the assignment of all transferable licenses and permits to Purchaser and the application for a procurement of replacements of any non-transferable licenses and permits.

(c) The provisions of this Section 23 shall survive the Closing.

24. Possession.

Purchaser acknowledges that a certain number of members (the “**Brothers**”) of the Edmund Rice Christian Brothers North America Province (the “**Province**”) currently maintain a religious community (the “**Community**”) in the residence structure on a portion of the 173 Premises and Purchaser agrees to accept title to the Premises subject to the Brothers’ right to continue to live in Community on the 173 Premises, at no cost or expense, for a period not to exceed one (1) year after the Closing. It is understood by the parties hereto that within six (6) months of the Closing, Purchaser shall engage in discussions with the Brothers to discuss the future of the Community as it relates to the 173 Premises. This provision shall survive the Closing.

25. Termination.

(a) Notwithstanding anything to the contrary in this Agreement and in addition to any other rights and remedies herein, this Agreement may be terminated at any time prior to Closing:

(i) by either Seller or Purchaser:

1. if a governmental authority of competent jurisdiction issues a final non-appealable ruling or Order that permanently enjoins or otherwise prohibits the transactions contemplated hereby; or

2. upon mutual written consent of Seller and Purchaser.

In the event of a termination pursuant to this subsection (i), this Agreement shall be deemed null and void and the Escrow Agent shall return the Down Payment to Purchaser;

(ii) by Purchaser:

1. if the Closing shall not have occurred by the Closing Outside Date (subject to Seller's rights of adjournment as provided for herein); provided, however, that the right to terminate this Agreement under this Section 25 shall not be available to Purchaser if Purchaser's failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to have occurred on or prior to such date;

2. in the event of any material breach by Seller of the Bid Procedures Order or the Sale Order;

3. if the Chapter 11 Case is dismissed or converted to a case under chapter 7 of the Bankruptcy Code, and neither such dismissal nor conversion expressly contemplates the transactions provided for in this Agreement, or a trustee is appointed for Seller and such trustee rejects the transactions contemplated by this Agreement;

4. the Bankruptcy Court enters (A) an Order authorizing Seller or any of its affiliates to enter into any contract or agreement, or an Order confirming a plan, with respect to a Higher and Better Offer, or (B) an Order authorizing Seller or any of its affiliates to otherwise consummate a sale of the Premises to a party who is not Purchaser or its assignee(s) or designee(s);

provided that in the event of a termination pursuant to this subsection (ii), this Agreement shall be deemed null and void and the Escrow Agent shall return the Down Payment to Purchaser in accordance with Section 3; provided, however, that (x) provisions expressly stated to survive termination shall survive in accordance with their terms, and (y) nothing in this sentence shall prejudice the rights of Purchaser set forth in Section 14 of this Agreement.

26. Miscellaneous.

(a) This Agreement constitutes the entire agreement between the parties. This Agreement cannot be changed, modified, waived or terminated orally but only by an agreement in writing signed by the parties hereto. This Agreement shall be binding upon the parties hereto and their respective heirs, executors, personal representatives, successors and permitted assigns.

(b) This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same original, and the execution of separate counterparts by Purchaser and Seller shall bind Purchaser and Seller as if they had each executed the same counterpart.

(c) This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

(d) All checks to be given by Purchaser under this Agreement must be drawn on a member bank of the New York Clearing House Association.

(e) The headings used in this Agreement are for convenience only and do not constitute substantive matters to be considered in construing same.

(f) If either party hereto shall commence litigation against the other in connection herewith, the non-prevailing party in such action shall reimburse the reasonable attorneys' fees of the prevailing party in such action.

(g) Submission of drafts of this Agreement for examination or execution by Purchaser shall not bind Seller in any manner or be construed as an offer to sell, and no contract or obligation of Seller shall arise until this instrument is executed and delivered by both Seller and Purchaser and the Down Payment has been received by the Escrow Agent.

(h) Any sums payable after the Closing by either party hereto to the other shall bear interest at the rate of twelve (12%) percent per annum from the later of (i) the date the obligation to pay arises, and (ii) ten (10) days after demand is made for the payment. The provisions of this subsection (h) shall survive the Closing.

(i) Purchaser may not record this Agreement or any memorandum hereof, and any recordation or attempted recordation by Purchaser shall constitute a material default hereunder, giving Seller the right to terminate this Agreement and exercise any and all remedies of Seller set forth herein, or otherwise available at law or in equity.

(j) No failure of any party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder shall constitute a waiver of any party's right to demand strict compliance with the terms of this Agreement.

(k) Seller and Purchaser each agree, at any time and from time to time at or after the Closing, to execute, acknowledge where appropriate, and deliver or cause to be executed, acknowledged and delivered such further instruments and documents and to take such other action as the other of them or the Title Insurer may reasonably request to carry out the intents and purposes of this Agreement. The provisions of this subsection (k) shall survive the Closing.

(l) The rights and obligations of the parties hereto shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs and the legal representatives of their respective estates. Nothing in this Agreement is intended to confer any right or remedy under this Agreement on any person other than the parties to this Agreement and their respective successors and permitted assigns, or to relieve or discharge the obligation or liability of any person to any party to this Agreement or to give any person any right of subrogation or action over or against any party to this Agreement.

(m) If any term or provision of this Agreement is determined to be illegal, unconscionable or unenforceable, all of the other terms, provisions and sections hereof will nevertheless remain effective and be in force to the fullest extent permitted by law.

(n) The Bankruptcy Court shall be the sole arbiter of any disputes with respect to this Agreement.

{SIGNATURES CONTAINED ON THE FOLLOWING PAGE}

IN WITNESS WHEREOF, this Agreement has been entered into as of the day
and year first above written.

SELLER:

The Christian Brothers' Institute

By:

Bro. Kevin Griffith

Name: Brother Kevin Griffith

Title: Vice-President

PURCHASER:

Iona Preparatory School

By:

Bro. Thomas R. Leto

Name: Brother Thomas R. Leto

Title: President

ESCROW AGENT:

Tarter Krinsky & Drogin LLP

By:

E. J. Gannell

EXHIBIT A

LEGAL DESCRIPTION OF 173 PREMISES

EXHIBIT B

LEGAL DESCRIPTION OF VACANT PREMISES



NEW YORK METRO
800-853-4803
212-922-1593 fax
stewartnewyork.com

SCHEDULE A – DESCRIPTION

Title No.: ST11-11005

ALL that certain plot, piece or parcel of land, situate, lying and being in the City of New Rochelle, County of Westchester and State of New York, being a portion of the "Stratton Farm", north of Stratton Road, bounded and described as follows:

BEGINNING at a point in the northerly side of Stratton Road where the same is intersected by a dividing line between lands included in the Cemetery and the lands formerly of Francis A. Stratton;

RUNNING THENCE along said dividing line and along a stone wall, North 7 degrees 58 minutes 50 seconds West 200.24 feet to a corner in the said cemetery;

THENCE continuing along the dividing line between said lands included in the cemetery and the lands formerly of Francis A. Stratton and following a stone all South 70 degrees 5 degrees 0 minutes West 192.23 feet to lands now or formerly belonging to one O'Shea and/or E. Irving Hanson;

RUNNING THENCE along said lands now or formerly of O'Shea and/or E. Irving Hanson and following a stone wall the following courses and distances: North 0 degrees 51 minutes 0 seconds East 59.12 feet; North 0 degrees 10 minutes 0 seconds East 177.99 feet to lands now or formerly of Adrian Iselin;

RUNNING THENCE easterly along a stone wall between the lands now or formerly of Adrian Iselin and land now or formerly of Walter H. Jewell North 67 degrees 35 minutes 50 seconds East 192.38 feet; North 66 degrees 56 minutes 50 seconds East 119.30 feet; North 67 degrees 24 minutes 40 seconds East 355.32 feet to another stone wall which runs south; from

THENCE along said last mentioned stone wall: South 22 degrees 22 minutes 50 seconds East 17.56 feet; South 8 degrees 11 minutes 50 seconds East 376.93 feet to the intersection of said stone wall with Stratton Road; and

THENCE westerly along Stratton Road South 68 degrees 39 minutes 10 seconds West 32.23 feet; South 62 degrees 49 minutes 20 seconds West 493.45 feet to the point or place of BEGINNING.

LESS and EXCEPTING therefrom all that plot of land bounded and described as follows:

BEGINNING at the northwesterly corner of property now or formerly of William Backer, which point of beginning adjoins lands on the west formerly of E. Irving Hanson and/or R. R. Browning and lands on the north now or formerly of Adrian Iselin;

THENCE RUNNING easterly along a stone wall between the properties now or formerly of Adrian Iselin and William Backer, North 67 degrees 35 minutes 50 seconds East 98.55 feet;

THENCE through lands formerly of William Backer South 0 degrees 10 minutes 0 seconds West 241.40 feet to the dividing line between the lands included in the cemetery formerly belonging to Jonathan Carpenter and lands formerly of Francis A. Stratton;

THENCE along said dividing line; following a stone wall, South 70 degrees 5 minutes 0 seconds West 97.64 feet to lands now or formerly belonging to one O'Shea and/or E. Irving Hanson;

THENCE RUNNING along said last mentioned lands and following a stone wall, the following courses and distances: North 0 degrees 51 minutes 0 seconds East 59.12 feet; North 0 degrees 10 minutes 0 seconds East 177.99 feet to the point or place of BEGINNING.

EXHIBIT C

SERVICE CONTRACTS

NONE

EXHIBIT D

LOAN DOCUMENTS

NOTE

\$3,500,000.00

, 2012

New York, New York

FOR VALUE RECEIVED, the undersigned, **IONA PREPARATORY SCHOOL**, a _____, having an office at _____ (the "Borrower"), promises to pay to the order of **THE CHRISTIAN BROTHERS' INSTITUTE**, a New York not-for-profit corporation, having an office at 33 Pryer Terrace, New Rochelle, New York 10804 (the "Lender"), at the office of Lender or at such other place as Lender may designate to Borrower in writing from time to time, the principal sum of **Three Million Five Hundred Thousand and 00/100 (\$3,500,000) Dollars** (the "Loan") in lawful money of the United States of America with interest thereon to be computed from the date of this Note at the rate of **five (5.0%) percent** per annum (the "Note Rate").

ARTICLE I - TERMS AND CONDITIONS

1.01 Payments. The interest will be computed hereunder on the unpaid principal amount of the Loan based on a 360-day year and paid for the actual number of days elapsed for any whole or partial month in which interest is being calculated. In computing the number of days during which interest accrues, the day on which funds are initially advanced will be included regardless of the time of day such advance is made, and the day on which funds are repaid will be included unless repayment is credited prior to close of business. Borrower will make principal and interest payments to Lender in consecutive monthly installments of **Twenty Thousand Four Hundred Sixty and 65/100 (\$20,460.65) Dollars**, on the first (1st) day of each month, beginning on _____ 1, 2012, and continuing on the first day of each and every month (each a "Payment Date") thereafter through and including the first day of _____, 2037 (the "Maturity Date"), at which time the entire outstanding principal balance of the Loan, together with all accrued but unpaid interest thereon, will be due and payable in full. Each such monthly installment will be applied first to the payment of accrued interest and then to reduction of principal. If the day on which such payment is due is not a Business Day, then amounts due on such date will be due on the immediately preceding Business Day and with respect to payments of principal due on the Maturity Date, interest will be payable at the Note Rate through and including the day immediately preceding such Maturity Date. The term "**Business Day**" when used herein means a weekday, Monday through Saturday, except a legal holiday or a day on which banking institutions in New York, New York are authorized by law to be closed.

1.02 Prepayments. The principal amount of this Note may be prepaid, in whole or in part, at any time, without premium or penalty; provided, provided that together with such prepayment, Borrower pays all of the interest accrued thereon to and including the date of the prepayment.

1.03 Security. The indebtedness evidenced by this Note (the "Indebtedness") and the obligations created hereby are secured by a certain mortgage (the "Mortgage") executed and delivered by Borrower to Lender simultaneously with the execution of this Note, dated as of the date hereof, concerning, among other things, certain property located in Westchester County, New York and more particularly described in the Mortgage. The Mortgage together with this Note and all other documents to or of which Lender is a party or beneficiary now or hereafter evidencing, securing, guarantying, modifying or otherwise relating to the Indebtedness, are herein referred to collectively as the "Loan Documents". All of the terms and provisions of the Loan Documents are incorporated herein by reference. Some of the Loan Documents are to be filed on or about the date hereof in the appropriate office of public records.

1.04 Default. It is hereby expressly agreed that should any default occur in the payment of principal or interest as stipulated above, and such payment is not made when such payment is due, or should any other default occur under any of the Loan Documents which is not cured within any applicable grace or cure period, then a default will exist hereunder, and in such event the Indebtedness, including all sums advanced or accrued hereunder or under any other Loan Document, and all unpaid interest accrued thereon, will, at the option of Lender and without notice to Borrower, at once become due and payable and may be collected forthwith, whether or not there has been a prior demand for payment and regardless of the Maturity Date. In the event that any payment is not received by Lender within ten (10) days of the date that it is due, Borrower will also pay to Lender a late charge in an amount equal to four (4.0%) percent of the amount of such due payment. In the event this Note, or any part hereof, is collected by or through an attorney-at-law, Borrower agrees to pay all costs of collection including, but not limited to, reasonable attorney's fees.

1.05 Default Interest Rate: The unpaid principal sum due under this Note shall bear interest at a rate equal to five (5.0%) percent above the Note Rate (the "Default Rate") on and after the occurrence of any event of default and until the entire principal sum hereof has been fully paid, both before and after the entry of any judgment with respect to such event, but in no event shall the rate either before or after the occurrence of an event of default exceed the highest rate of interest, if any, permitted under applicable New York or Federal Law.

ARTICLE II - GENERAL CONDITIONS

2.01 No Waiver; Amendment. No failure to accelerate the Loan by reason of default, acceptance of a partial or past due payment, or indulgences granted from time to time, shall be construed (i) as a novation of this Note or as a reinstatement of the Loan as a waiver of such right of acceleration or of the right of Lender thereafter to insist upon strict compliance with the terms of this Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted hereunder or by any applicable laws. Borrower hereby expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing. No extension of the time for the payment of this Note or any installment due hereunder, made by agreement with any person now or hereafter liable for the payment of this Note will operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part unless Lender agrees otherwise in writing. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

2.02 Waivers. Presentment for payment, demand, protest and nonpayment and all other notices are hereby waived by Borrower. Borrower hereby further waives and renounces, to the fullest extent permitted by law, all rights to the benefits of any statute of limitations and any moratorium, reinstatement, marshalling, forbearance, valuation, stay, extension, redemption, appraisement, exemption and homestead now or hereafter provided by the laws of the United States of America and of each state thereof, both as to itself and in and to all of its property, real and personal, against the enforcement and collection of the obligations evidenced by this Note and the other Loan Documents.

2.03 Limit of Validity. The provisions of this Note and of all agreements between Borrower and Lender, whether now or existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of demand or acceleration of the Maturity Date or otherwise, shall the amount paid, or agreed to be paid ("Interest"), to Lender for the use, forbearance or retention of the money loaned under this Note exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, performance or fulfillment of any provision hereof or of any agreement between Borrower and Lender, at the time performance or fulfillment of such provision is due, exceeds the limit for Interest prescribed by law or otherwise transcend the limit of validity prescribed by applicable law, then the obligation to be performed or fulfilled will be reduced to such limit and if, from any circumstance whatsoever, Lender ever receives anything of value deemed Interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive Interest will be applied to the reduction of the principal balance owing under this Note in the inverse order of its maturity (whether or not then due) or at the option of Lender be paid over to Borrower, and not to the payment of Interest. All Interest (including any amounts or payments deemed to be Interest) paid or agreed to be paid to Lender will, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full period until payment in full of the principal balance of this Note so that the Interest thereon for such full period will not exceed the maximum amount permitted by applicable law.

2.04 Use of Funds. Borrower hereby warrants, represents and covenants that no funds disbursed hereunder will be used for personal, family or household purposes.

2.05 Unconditional Payment. Borrower is and will be obligated to pay principal, interest and any and all other amounts which become payable hereunder or under the other Loan Documents absolutely and unconditionally and without any abatement, postponement, diminution or deduction and without any reduction for counterclaim or setoff. In the event that at any time any payment received by Lender is deemed by a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under any bankruptcy, insolvency or other debtor relief law, then the obligation to make such payment will survive any cancellation or satisfaction of this Note or return thereof to Borrower and will not be discharged or satisfied with any prior payment thereof or cancellation of this Note, but will remain a valid and binding obligation enforceable in accordance with the terms and provisions hereof, and such payment will be immediately due and payable upon demand.

2.06 Further Assurances. Borrower will execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all reasonable documents, and take all reasonable actions, required by Lender from time to time to confirm the rights created under this

Note and the other Loan Documents, to protect and further the validity, priority and enforceability of this Note and the other Loan Documents, to subject to the Loan Documents any property of Borrower intended by the terms of any one or more of the Loan Documents to be encumbered by the Loan Documents, or otherwise carry out the purposes of the Loan Documents and the transactions contemplated thereunder; provided, however, that no such further actions, assurances and confirmations will increase, modify or change Borrower's obligations under this Note or under the other Loan Documents.

2.07 Miscellaneous. This Note will be interpreted, construed and enforced according to the laws of the State of New York. The terms and provisions hereof will be binding upon and inure to the benefit of Borrower and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title and assigns, whether by voluntary action of the parties or by operation of law. As used herein, the terms "Borrower" and "Lender" will be deemed to include their respective heirs, executors, legal representatives, successors, successors-in-title and assigns, whether by voluntary action of the parties or by operation of law. All personal pronouns used herein, whether used in the masculine, feminine or neuter gender, will include all other genders; the singular will include the plural and vice versa. Titles of articles and sections are for convenience only and in no way define, limit, amplify or describe the scope or intent of any provisions hereof. Time is of the essence with respect to all provisions of this Note. This Note and the other Loan Documents contain the entire agreements between the parties hereto relating to the subject matter hereof and thereof and all prior agreements relative hereto and thereto which are not contained herein or therein are terminated.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has executed this Note as of the date first above written.

Borrower:

IONA PREPARATORY SCHOOL

By: _____

Name:

Title:

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE made the _____ day of _____, 2012, between Iona Preparatory School having an office at _____ (the "Borrower"), and Christian Brothers Institute, a New York not-for-profit corporation, with an office at 33 Pryer Terrace, New Rochelle, New York 10804 (the "Lender").

WITNESSETH:

Whereas, Borrower is the owner of a fee estate in the premises located **173 Stratton Road, New Rochelle, New York** and designated as **Section 7, Block 3001 and Lot 320** and the land on the north side of Stratton Road and designated as **Section 7, Block 3064 and Lot 1** of the **Westchester County Tax Map** and more particularly described in Exhibit A attached hereto (collectively, the "Premises"); and,

Whereas, Borrower has borrowed from Lender the principal sum of Three Million Five Hundred Thousand and 00/100 (\$3,500,000.00) Dollars (the "Loan").

NOW THEREFORE, to secure the payment of an indebtedness in the principal sum of the Loan, lawful money of the United States of America, to be paid with interest according to that certain note dated the date hereof given by Borrower to Lender (such note, together with any and all renewals, modifications, consolidations and extensions thereof, is hereinafter referred to as the "Note"), Borrower has mortgaged, given, granted, bargained, sold, aliened, conveyed, confirmed and assigned, and by these presents does mortgage, give, grant, bargain, sell, alien, convey, confirm and assign unto Lender forever all right, title and interest of Borrower now owned, or hereafter acquired, in and to the following property, rights and interest (such property, rights and interests, collectively, the "Mortgaged Property"):

(a) the Premises together with all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Mortgaged Property (including, without limitation, any and all development rights, air rights or similar or comparable rights of any nature whatsoever now or hereafter appurtenant to the Premises or now or hereafter transferred to the Premises) and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises to the center line thereof;

(b) all structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Premises (the "Improvements");

(c) all of Borrower's rights and remedies at any time arising under or pursuant to Section 365(h) of the Bankruptcy Code, 11 U.S.C. Section 101 *et seq.* (the "Bankruptcy Code"), including, without limitation, all of Borrower's right thereunder to remain in possession of the Premises and the Improvements;

(d) all of the estate, right, title, claim or demand of any nature whatsoever of Borrower, either in law or in equity, in possession or expectancy, in and to the Mortgaged Property or any part thereof;

(e) all machinery, apparatus, equipment, fittings, fixtures and other property of every kind and nature whatsoever and all additions thereto and renewals and replacements thereof, and all substitutions therefore now owned or hereafter acquired by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon or in, or attached to, any portion of the Mortgaged Property or appurtenances thereto, or located off-site from the Mortgaged Property but purchased with the proceeds of the Loan and used or usable in connection with the present or future operation and occupancy of the Mortgaged Property as real property, as opposed to the operation of a separate business therein and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Mortgaged Property and whether stored at the Mortgaged Property or off-site if used in connection with such operation and occupancy (collectively, the "**Equipment**"), and the right, title and interest of Borrower in and to any of the Equipment which may be subject to any security agreements (as defined in the Uniform Commercial Code of New York), superior in lien to lien of this Mortgage and all proceeds and products of any of the above;

(f) all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain (including any transfer made in lieu of the exercise of said right), or for any other injury to or decrease in the value of the Mortgaged Property;

(g) all leases, subleases, tenancies, occupancy agreements, licenses and all other agreements affecting the use or occupancy of the Mortgaged Property now or hereafter entered into, including all renewals, replacements and guarantees thereof (collectively, the "**Leases**"), and the right to receive and apply the rents, issues, royalties, revenues, income and profits of the Mortgaged Property (collectively, the "**Rents**") to the payment of the Debt (as hereinafter defined);

(h) all right, title and interest of Borrower in and to (i) all contracts from time to time executed by Borrower or any manager or agent on its behalf relating to the ownership, construction, maintenance, repair, operation, occupancy, sale or financing of the Mortgaged Property or any part thereof and all agreements relating to the purchase or lease of any portion of the Mortgaged Property or any property which is adjacent or peripheral to the Mortgaged Property, together with the right to exercise such options and all leases of Equipment, (ii) all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Mortgaged Property or any part thereof, and (iii) all drawings, plans, specifications and similar or related items relating to the Mortgaged Property;

(i) all trade names, trade marks, logos, copyrights, good will and books and records relating to or used in connection with the operation of the Mortgaged Property or any part thereof; all general intangibles related to the operation of the Mortgaged Property now existing or hereafter arising;

(j) all cash funds, deposit accounts and other rights and evidence of rights to cash, now or hereafter created or held by Lender pursuant to this Mortgage or any other of the Loan Documents (as hereinafter defined);

- (k) all proceeds, both cash and non-cash, of the foregoing;
- (l) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property; and
- (m) the right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Lender in the Mortgaged Property.

FOR THE PURPOSE OF SECURING:

- (1) The Loan, together with interest as therein provided (the Loan, interest and all other sums which may or shall become due hereunder, collectively, is hereinafter referred to as the "**Debt**"); and
- (2) The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein contained and contained in any other agreements, documents or instruments now or hereafter evidencing, securing or otherwise relating to the indebtedness evidenced by the Note (the Note, this Mortgage, and such other agreements, documents and instruments, together with any and all renewals, amendments, extensions and modifications thereof, are hereinafter collectively referred to as the "Loan Documents") and the payment of all other sums therein covenanted to be paid; and
- (3) Any and all future or additional advances (whether or not obligatory) made by Lender for the benefit of Borrower to protect or preserve the Mortgaged Property or the lien or security interest created hereby on the Mortgaged Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Borrower's obligations hereunder or under the other Loan Documents or for any other purpose provided herein or in the other Loan Documents (whether or not the original Borrower remains the owner of the Mortgaged Property at the time of such advances); and
- (4) Any and all other indebtedness now owing or which may hereafter be owing by Borrower to Lender, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations, replacements and extensions thereof.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the proper use and benefit of Lender, and the successors and assigns of Lender, forever.

PROVIDED, HOWEVER, Lender will release this Mortgage and the lien hereof by proper instrument and this Mortgage will be satisfied and the estate, right, title and interest of Lender in the Mortgaged Property will cease upon the payment of all principal and interest and all other sums due or to become due under the Note, including, without limitation, any prepayment fees required pursuant to the terms of the Note, in the manner stipulated in the Note and all other sums payable hereunder and all other Debt has been paid and all other covenants

contained in the Loan Documents have been performed, and upon payment to Lender of all costs and expenses incurred for the preparation of the release.

AND Borrower covenants and agrees with and represents and warrants to Lender as follows:

1. Payment of Debt. Borrower will pay the Debt at the time and in the manner provided for its payment in the Note, this Mortgage and the Loan Documents.

2. Warranty of Title.

(a) Borrower warrants the title to the Premises, the Improvements, the Equipment and the balance the Mortgaged Property. Borrower further represents and warrants that (i) Borrower is now, and after giving effect to this Mortgage, will be in a solvent condition, (ii) the execution and delivery of this Mortgage by Borrower does not constitute a "fraudulent conveyance" within the meaning of the Bankruptcy Code as now constituted or under any other applicable statute, and (iii) no bankruptcy or insolvency proceedings are pending or contemplated by or against Borrower. Borrower will preserve its interest in and title to the Mortgaged Property and will forever warrant and defend the same to Lender against any and all claims whatsoever and will forever warrant and defend the validity and priority of the lien and security interest created herein against the claims of all persons and parties whomsoever.

(b) Borrower additionally represents and warrants, as to itself, that: (i) it has full power, authority and legal right to execute this Mortgage, and to mortgage, give, grant, bargain, sell, convey, confirm and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Borrower's part to be performed, and (ii) Borrower is a duly authorized validly existing _____ and this Mortgage has been executed by a duly authorized member thereof.

(c) No bankruptcy or insolvency proceedings are pending or contemplated by Borrower or against Borrower or by or against any endorser, cosigner or guarantor of the Note.

(d) All reports, certificates, affidavits, statements and other data furnished by Borrower to Lender in connection with the Loan are true and correct in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading.

(e) Borrower is not required to obtain any consent, approval or authorization from or to file any declaration or statement with, any governmental authority or agency in connection with or as a condition to the execution, delivery or performance of this Mortgage, the Note or the Loan Documents which has not been so obtained or filed.

(f) The Premises and the Improvements and the intended use thereof by Borrower comply with all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, applicable health and environmental laws and regulations and all other ordinances, orders or requirements issued by any state, federal or municipal authorities having or claiming jurisdiction over the Mortgaged Property. The Premises and Improvements constitute a separate tax parcel for purposes of ad valorem taxation. The Premises and

Improvements do not require any rights over, or restrictions against, other property in order to comply with any of the aforesaid governmental ordinances, orders or requirements.

(g) Borrower is in possession of all material licenses, permits and authorizations required by applicable law for the ownership and operation of the Mortgaged Property.

3. Insurance. Borrower (i) will keep the Improvements and the Equipment insured against loss or damage by fire, standard extended coverage perils and such other hazards as Lender shall from time to time require in amounts approved by Lender, which amounts shall in no event be less than one hundred (100%) percent of the full insurable value of the Improvements and the Equipment and shall be sufficient to meet all applicable co-insurance requirements, and (ii) will maintain such other forms of insurance coverage with respect to the Mortgaged Property as Lender shall from time to time require in amounts approved by Lender. All policies of insurance (the "Policies") shall be issued by insurers who are lawfully doing business in New York and are otherwise acceptable in all respects to Lender and shall be in amounts of no less than the principal balance of the Loan. Policies shall contain the standard New York lender non-contribution clause endorsement or an equivalent endorsement satisfactory to Lender naming Lender as Lender thereunder and shall otherwise be in form and substance satisfactory in all respects to Lender. All Policies will, upon request of Lender, name Lender as an additional insured, loss payee or other similar designation. Blanket insurance policies shall not be acceptable for the purposes of this paragraph unless otherwise approved to the contrary by Lender. Borrower shall pay the premiums for the Policies as the same become due and payable (the "Premiums"). At the request of Lender, Borrower will deliver the Policies to Lender. Not later than ten (10) days prior to the expiration date of each of the Policies, Borrower will deliver to Lender a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment of the Premiums satisfactory to Lender. If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in force and effect, Lender shall have the right, but not the obligation, after ten (10) days notice to Borrower to take such action as Lender deems necessary to protect its interest in the Mortgaged Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate, and all expenses incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand. Borrower shall at all times comply with and shall cause the Improvements and Equipment and the use, occupancy, operation, maintenance, alteration, repair and restoration thereof to comply with the terms, conditions, stipulations and requirements of the Policies. If the Premises, or any portion of the Improvements or the Equipment, is located in a federally designated "special flood hazard area," in addition to the other Policies required under this paragraph, a flood insurance policy shall be delivered by Borrower to Lender. If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other property hazard or casualty, Borrower shall give prompt notice thereof to Lender. Sums paid to Lender by any insurer may be retained and applied by Lender toward payment of the Debt whether or not then due and payable in such order, priority and proportions as Lender in its discretion shall deem proper or, at the discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall designate. If Lender shall receive and retain such insurance proceeds, the lien of this Mortgage shall be reduced only by the amount thereof received and retained by Lender and actually applied by Lender in reduction of the Debt. The provisions of subsection 4 of Section 254 of the Real Property Law of New York covering the insurance of buildings against loss by fire shall not apply to this Mortgage.

If the Improvements are damaged or destroyed, in whole or in part, by fire or other casualty, Borrower will give Lender prompt written notice of the occurrence. All insurance proceeds on the Mortgaged Property, and all causes of action, claims, compensation, awards and recoveries for any damage of all or any part of the Mortgaged Property or for any damage or injury to it for any loss or diminution in value of the Mortgaged Property, are hereby assigned to and will be paid to Lender. Lender will apply any sums received by it under this paragraph first to the payment of all of its costs and expenses (including, but not limited to, reasonable legal fees and disbursements) incurred in obtaining those sums, and then, Lender may elect, in Lender's absolute discretion and without regard to the adequacy of Lender's security, to retain and apply sums paid to Lender by an insurer, after deduction of Lender's reasonable costs and expenses of collection, toward payment of the Debt in such priority and proportions as Lender in its discretion deems proper.

4. INTENTIONALLY DELETED.

5. Escrow Fund. Borrower shall pay all real estate taxes, assessments, water rates, sewer rents and other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed against the Mortgaged Property (collectively, the "Taxes"). Borrower shall deliver paid receipts for the Taxes to Lender promptly after the remittance of payment.

6. Condemnation. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise, Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and this Mortgage and the Debt shall not be reduced until any award or payment therefore shall have been actually received and applied by Lender to the discharge of the Debt. Lender may apply the entire amount of any such award or payment to the discharge of the Debt whether or not then due and payable in such order, priority and proportions as Lender in its discretion shall deem proper. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of such award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive such award or payment, or a portion thereof sufficient to pay the Debt, whichever is less. Borrower shall file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to Lender. Borrower hereby irrevocably authorizes and empowers Lender, in the name of Borrower or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claim or claims. Although it is hereby expressly agreed that the same shall not be necessary in any event, Borrower shall, upon demand of Lender, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to Lender, free and clear of any encumbrances of any kind or nature whatsoever.

7. Leases and Rents. (a) Borrower hereby absolutely and unconditionally assigns, sells, transfers and conveys all of the right, title and interest in and to the Leases, along with all of the Rents and security deposits under the Leases, to Lender. This assignment is absolute in nature and not an assignment for additional security only. Lender waives the right to enter the Mortgaged Property for the purpose of collecting the Rents, and grants Borrower the right to collect the Rents. Borrower shall hold the Rents, or an amount sufficient to discharge all current sums due on the Debt, in trust for use in payment of the Debt. The right of Borrower to collect the Rents may be revoked by Lender without notice upon any default by Borrower under the terms of the Note, this

Mortgage or the Loan Documents. Following such revocation Lender may (i) retain and apply the Rents toward payment of the Debt in such order, priority and proportions as Lender, in its discretion, shall deem proper, or to the operation, maintenance and repair of the Mortgaged Property, irrespective of whether Lender shall have commenced a foreclosure of this Mortgage or shall have applied or arranged for the appointment of a receiver, (ii) enforce payment under the Leases and the performance of any and all terms and provisions under the Leases, and (iii) exercise all the rights and privileges of Borrower, as Landlord under the Leases, including the right to fix or modify Rents, to demand and sue for possession of the space covered by any Lease, and to relet such space and collect the Rents, income, and profits resulting from such reletting. Borrower shall not, without the consent of Lender, make, or suffer to be made, any Leases or modify any Leases or cancel any Leases or accept prepayments of installments of the Rents for a period of more than one (1) month in advance or further assign the whole or any part of the Rents. Lender shall have all of the rights against tenants of the Mortgaged Property as set forth in Section 291-f of the Real Property Law of New York. Borrower shall (i) fulfill or perform each and every provision of the Leases on the part of Borrower to be fulfilled or performed, (ii) promptly send copies of all notices of default which Borrower shall send or receive under the Leases to Lender, and (iii) enforce, short of termination of the Leases, the performance or observance of the provisions thereof by the tenants thereunder. Borrower shall from time to time, but not less frequently than once every year provide to Lender a complete and detailed leasing status report with respect to the Improvements, which leasing status report shall be in form and substance satisfactory in all respects to Lender. In addition to the rights which Lender may have herein, upon the occurrence of an Event of Default (herein defined) under this Mortgage, Lender, at its option, may require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of Borrower. Upon default in any such payment, Borrower will vacate and surrender possession of the Mortgaged Property to Lender, or to such receiver, and, in default thereof, Borrower may be evicted by summary proceedings or otherwise. Nothing contained in this paragraph shall be construed as imposing on Lender any of the obligations of the lessor under the Leases or of a "Lender in Possession".

(b) Borrower hereby irrevocably and unconditionally agrees and directs that the tenants under each Lease shall, upon demand and notice from Lender that Lender has elected to exercise its rights hereunder, pay all Rents, income, and profits under such Lease to Lender, without liability on the part of such tenant for determining the validity or propriety of Lender's demand, and notwithstanding any claim by Borrower that Lender's exercise of its right to receive payment is invalid or improper. Borrower will have no claim against any such tenant for any Rents or other sums paid by such tenant to Lender and hereby agrees to indemnify, defend and hold any such tenant harmless from and against losses, damages, costs and expenses (including but not limited to reasonable attorneys' fees) arising from any claim that any such lessee's payment of Rents or other sums to Lender was improper or unlawful.

(c) Borrower acknowledges and agrees that, upon recordation of this Mortgage, Lender's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Borrower and all third parties, including without limitation any subsequently appointed trustee in any case under the Bankruptcy Code, without the necessity of (i) commencing a foreclosure action with respect to this Mortgage, (ii) furnishing notice to Borrower or tenants under the Leases, (iii) making formal demand for the Rents, (iv) taking possession of the Premises as a Lender-in-possession, (v) obtaining the appointment of a receiver of the rents and profits of the Premises, (vi) sequestering or impounding the Rents, or (vii) taking any other affirmative action.

(d) Prior to Lender's actual entry and taking possession of the space immediately affected by any Lease, this Assignment shall not operate to place responsibility upon Lender for the condition, safety, control, care, management, or repair of such space. Nothing contained herein shall be construed to bind Lender at any time to the performance of any of the terms or provisions in any Lease, or otherwise to impose any obligation on Lender, including, without limitation, any liability under any covenant of quiet enjoyment contained in any Lease if any Lease is terminated or any lessee dispossessed upon foreclosure of any of the Loan Documents. Borrower agrees to indemnify and hold Lender harmless of and from any and all claims, liabilities, losses, expenses, or damages, including attorneys' fees, which Lender may incur under any Lease, or by reason of this Assignment, as well as any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking to be performed or discharged by Lender under any such Lease or under or by reason of this Assignment.

(e) Borrower will perform, both before and after any exercise by Lender of its rights or powers herein set forth, all of Borrower's covenants, agreements, and obligations as landlord under the Leases, and will neither do nor fail to do anything which may result in any release of liability of any tenant or Lease guarantor or the accrual of any right in any tenant to withhold any Rent or other sum payable under the terms of any Lease. Upon request of Lender, Borrower will give prompt notice to Lender of any notice of default received from any tenant or from any other person, and will furnish Lender with a copy of any such notice. If requested by Lender, Borrower will enforce each Lease and all remedies available to Borrower against the tenant thereunder in the event of any default by such tenant.

(f) Borrower will not make any other or further assignment of any Lease or of any interest therein, or of any of the Rents, except any further assignments to Lender. Borrower will not modify or amend the terms of any guaranty of any Lease or cancel or terminate any such guaranty, nor consent to the assignment of any Lease, or any subletting thereunder, without the prior written consent of Lender. In addition to those obligations set forth in any of the Loan Documents, Borrower will, within ten (10) days following the request of Lender, deliver to Lender a certified rent roll of all Leases in such detail and containing such information as Lender may reasonably request.

(g) If Borrower fails to make any payment or to perform any act required of Borrower under the terms of any Lease, then Lender may, but will not be obligated to, without further notice to or demand on Borrower, and without releasing Borrower from any obligation under this Assignment, make the payment or perform the act in such manner and to such extent as Lender may deem necessary to protect the security hereof, including specifically, without limitation, appearing in and defending any action or proceeding purporting to affect the security hereof or the rights or powers of Borrower or Lender, and performing or discharging any obligation, covenant, or agreement of Borrower under any Lease. In exercising any of such powers, Lender may pay all necessary costs and expenses, employ counsel, and incur and pay reasonable attorneys' fees. Any sum advanced or paid by Lender for any such purpose shall be immediately due and payable to Lender, and shall bear interest from the date paid or advanced by Assignee until repaid by Borrower Assignor at the Default Rate (hereinafter defined).

(h) Lender may assign all or part of Borrower's right, title, and interest in any or all Leases (to the extent of the interests therein conferred upon Lender by the terms hereof) to

any subsequent holder, owner, co-owner or participant, of or in the Note or other Loan Documents, or to any person who acquires title to the Premises through foreclosure or otherwise. From and after the acquisition of title to the Premises by any person, through foreclosure or conveyance in lieu of foreclosure, no assignee of Borrower's interest in any Lease shall be liable to account to Borrower for the Rents, income, and profits thereafter accruing. The recording of any valid release of this Mortgage shall operate as a release of this assignment in favor of the then owner of the Premises; provided, that the recording of any valid partial release of the Mortgage shall operate as a release hereof only with respect to that portion of the Premises thereby released from the Mortgage.

(i) Nothing herein contained shall be construed as making or constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Premises by Lender pursuant to the provisions set forth herein. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

(j) It is expressly understood that no judgment or decree entered on any Debt secured or intended to be secured by this Mortgage or any of the other Loan Documents shall operate to abrogate or lessen the effect of this Assignment, but that this Assignment shall continue in full force and effect until the payment and discharge of any and all indebtedness secured by the Loan Documents, in whatever form such indebtedness may be, and until the indebtedness secured by the Loan Documents shall have been paid in full and all bills incurred by virtue of the authority contained herein have been fully paid out of the Rents, issues, deposits, and avails of the Premises, by Borrower, or by any guarantor of payment of the Note, or until such time as this Assignment may be voluntarily released. This Assignment shall also remain in full force and effect during the pendency of any foreclosure proceedings pursuant to this Mortgage, both before and after sale, until the issuance of a deed pursuant to a foreclosure decree, unless the indebtedness secured by this Mortgage is fully satisfied before the expiration of any period of redemption.

(k) All rights and remedies set forth in this Assignment and in the other Loan Documents are cumulative, and the holder of the Note and of every other obligation secured hereby may recover judgment thereon, issue execution therefor and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby. Unless expressly provided in this Assignment to the contrary, no consent or waiver, whether express or implied, by any interested party referred to herein regarding any breach or default by any other interested party referred to herein, in the performance by such other party of any obligations contained herein shall be deemed a consent to or waiver of the party of the performance by such other party of any other obligations hereunder or the performance by any other interested party referred to herein of the same, or of any other obligations hereunder.

(l) For purposes of Section 552(b) of the Bankruptcy Code, Borrower and Lender agree that this Mortgage shall constitute a "security agreement," that the security interest created by such security agreement extends to property of Borrower acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and that such security interest shall extend to all Rents acquired by the estate after the commencement of a case in bankruptcy.

(m) Borrower acknowledges and agrees that all Rents shall be deemed to be "Cash Collateral" under Section 363 of the Bankruptcy Code in the event that Borrower files a

voluntary petition in bankruptcy or is made subject to any involuntary bankruptcy proceeding. After the filing of such petition, Borrower may not use Cash Collateral without the consent of Lender and/or an order of any bankruptcy court pursuant to Section 363(b)(2) of the Bankruptcy Code.

(n) Without the prior written consent of Lender, Borrower shall not enter into any new Leases or extend, modify, terminate (except for a material monetary default thereunder), accept the surrender of or otherwise change or abridge any existing Lease. Lender's prior written approval for any of the foregoing may be conditioned upon receipt of such information and supporting material as Lender may reasonably request. All Leases shall at all times be fully subject and subordinate to the lien of this Mortgage. Lender shall have the right to require Borrower to obtain from each tenant at the Mortgaged Property a subordination and attornment agreement in form, content, and manner of execution acceptable to Lender, and, from time to time, an estoppel certificate in form, content, and manner of execution acceptable to Lender. Notwithstanding the foregoing, unless Lender shall otherwise elect by a written notification to or agreement with the tenant, in no event shall any Lease (or any extension, amendment, or modification of any Lease) be binding upon Lender, whether or not Lender has consented to such instrument pursuant to this Section.

8. Maintenance of the Mortgaged Property.

Borrower shall cause the Mortgaged Property to be maintained in good condition and repair and will not commit or suffer to be committed any waste of the Mortgaged Property. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment, without the consent of Lender). Borrower shall promptly comply with all existing and future governmental laws, orders, ordinances, rules and regulations affecting the Mortgaged Property, or any portion thereof or the use thereof. Borrower shall promptly repair, replace or rebuild any part of the Mortgaged Property which may be damaged or destroyed by fire or other property hazard or casualty (including any fire or other property hazard or casualty for which insurance was not obtained or obtainable) or which may be affected by any taking by any public or quasi-public authority through eminent domain or otherwise, and shall complete and pay for, within a reasonable time, any structure at any time in the process of construction or repair on the Premises. Borrower will not, without obtaining the prior consent of Lender, initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or affecting the uses which may be made of the Mortgaged Property or any part thereof.

9. Environmental Provisions.

(a) For the purposes of this paragraph the following terms shall have the following meanings: (i) the term "**Hazardous Materials**" shall mean any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant or contaminant under any Environmental Requirement, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel fuel, another petroleum hydrocarbon product, asbestos, asbestos-containing materials or polychlorinated biphenyls, (ii) the "**Environmental Requirements**" shall collectively mean all present and future laws, statutes,

common law, ordinances, rules, regulations, orders, codes, licenses, permits, decrees, judgments, directives or the equivalent of or by any Governmental Authority and relating to or addressing the protection of the environment or human health, and (iii) the term "**Governmental Authority**" shall mean the Federal government, or any state or other political subdivision thereof, or any agency, court or body of the Federal government, any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions.

(b) Borrower hereby represents and warrants to Lender that (i) no Hazardous Materials are currently located at, on, in, under or about the Mortgaged Property in violation of Environmental Requirements, (ii) no releasing, emitting, discharging, leaching, dumping, disposing or transporting of any Hazardous Materials from the Mortgaged Property onto any other property or from any other property onto or into the Mortgaged Property has occurred or is occurring in violation of any Environmental Requirement, (iii) no notice of violation, non-compliance, liability or potential liability, lien, complaint, suit, order or other notice with respect to the Mortgaged Property is presently outstanding under any Environmental Requirement, nor does Borrower have knowledge or reason to believe that any such notice will be received or is being threatened, and (iv) the Mortgaged Property and the operation thereof are in full compliance with all Environmental Requirements.

(c) Borrower shall comply, and shall cause all tenants or other occupants of the Mortgaged Property to comply, in all respects with all Environmental Requirements, and will not generate, store, handle, process, dispose of or otherwise use, and will not permit any tenant or other occupant of the Mortgaged Property to generate, store, handle, process, dispose of or otherwise use, Hazardous Materials at, in, on, or about the Mortgaged Property in a manner that could lead or potentially lead to the imposition on Borrower, Lender or the Mortgaged Property of any liability or lien of any nature whatsoever under any Environmental Requirement. Borrower shall notify Lender promptly in the event of any spill or other release of any Hazardous Materials at, in, on, under or about the Mortgaged Property which is required to be reported to a Governmental Authority under any Environmental Requirement, will promptly forward to Lender copies of any notices received by Borrower relating to alleged violations of any Environmental Requirement or any potential liability under any Environmental Requirement and will promptly pay when due any fine or assessment against Lender, Borrower or the Mortgaged Property relating to any Environmental Requirement. If at any time it is determined that the operation or use of the Mortgaged Property is in violation of any applicable Environmental Requirement or that there are Hazardous Materials located at, in, on, under or about the Mortgaged Property that violates any applicable Environmental Requirement or that there are Hazardous Materials located at, in, on, under or about the Mortgaged Property which, under any Environmental Requirement, require special handling in collection, storage, treatment or disposal, or any form of cleanup or corrective action, Borrower shall, within thirty (30) days after receipt of notice thereof from any Governmental Authority or from Lender, take, at Borrower's sole cost and expense, such actions as may be necessary to fully comply in all respects with all Environmental Requirements.

(d) If Borrower fails to timely take, or to diligently and expeditiously proceed to complete in a timely fashion, any such action described in clause (c) above, Lender may, in its sole and absolute discretion, make advances or payments toward the performance or satisfaction of the same, but shall in no event be under any obligation to do so. All sums so advanced or paid by Lender (including, without limitation, attorney and consultant fees and expenses, investigation and laboratory fees and expenses, and fines or other penalty payments) and all sums advanced or paid in

connection with any judicial or administrative investigation or proceeding relating thereto, will immediately, upon demand, become due and payable from Borrower and shall bear interest at the Default Rate from the date any such sums are so advanced or paid by Lender until the date any such sums are repaid by Borrower to Lender. Borrower will execute and deliver, promptly upon request, such instruments as Lender may deem useful or necessary to permit Lender to take any such action, and such additional notes and mortgages, as Lender may require to secure all sums so advanced or paid by Lender. If a lien is filed against the Mortgaged Property by any Governmental Authority resulting from the need to expend or the actual expending of monies arising from an action or omission, whether intentional or unintentional, of Borrower or for which Borrower is responsible, resulting in the releasing, spilling, leaking, leaching, pumping, emitting, pouring, emptying or dumping of any Hazardous Materials into the waters or onto land located within or without New York State, then Borrower will, within thirty (30) days from the date that Borrower is first given notice that such lien has been placed against the Mortgaged Property (or within such shorter period of time as may be specified by Lender if such Governmental Authority has commenced steps to cause the Mortgaged Property to be sold pursuant to such lien), either (a) pay the claim and remove the lien, or (b) furnish a cash deposit, bond, or such other security with respect thereto as is satisfactory in all respects to Lender and is sufficient to effect a complete discharge of such lien on the Mortgaged Property.

(e) Lender may, at its option, cause an environmental audit of the Mortgaged Property or portions thereof to be conducted to confirm Borrower's compliance with the provisions of this paragraph, and Borrower shall cooperate in all reasonable ways with Lender connection with any such audit. If such audit discloses that a violation of or a liability under an Environmental Requirement exists or if such audit was required or prescribed by law, regulation or governmental or quasi-governmental authority, Borrower shall pay all costs and expenses incurred in connection with such audit; otherwise, the costs and expenses of such audit shall, notwithstanding anything to the contrary set forth in this paragraph, be paid by Lender.

(f) If this Mortgage is foreclosed, or if the Mortgaged Property is sold pursuant to the provisions of this Mortgage, or if Borrower tenders a deed or assignment in lieu of foreclosure or sale, Borrower shall deliver the Mortgaged Property to the purchaser at foreclosure or sale or to Lender, its nominee, or wholly-owned subsidiary, as the case may be, in a condition that complies in all respects with all Environmental Requirements.

(g) Borrower will defend, indemnify, and hold harmless Lender, its co-lenders, participants, employees, agents, officers, and directors, from and against any and all claims, demands, penalties, causes of action, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses) arising out of, or in any way related to, (i) any breach by Borrower of any of the provisions of this paragraph 9, (ii) the presence, disposal, spillage, discharge, emission, leakage, release, or threatened release of any Hazardous Materials which is at, in, on, under, about, from or affecting the Mortgaged Property, including, without limitation, any damage or injury resulting from any such Hazardous Material to or affecting the Mortgaged Property or the soil, water, air, vegetation, buildings, personal property, persons or animals located on the Mortgaged Property or on any other property or otherwise, (iii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to any such Hazardous Materials, (iv) any lawsuit brought or threatened, settlement reached, or order

or directive of or by any Governmental Authority relating to such Hazardous Materials, or (v) any violation of any Environmental Requirement or any policy or requirement of Lender hereunder. The aforesaid indemnification shall, notwithstanding any exculpatory or other provision of any other Loan Document or instrument now or hereafter executed and delivered in connection with the Loan, constitute the personal recourse undertakings, obligations and liabilities of Borrower.

(h) The obligations and liabilities of Borrower under this paragraph 9 shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of whether the Debt has been paid in full and irrespective of any foreclosure of this Mortgage, sale of the Mortgaged Property pursuant to the provisions of this Mortgage or acceptance by Lender, its nominee or affiliate of a deed or assignment in lieu of foreclosure or sale and irrespective of any other fact or circumstance of any nature whatsoever.

10. Financial Statements and Books and Records. Borrower will keep accurate books and records of account of the Mortgaged Property and its own financial affairs sufficient to permit the preparation of financial statements in accordance with generally accepted accounting principles. Borrower will provide to Lender as may be requested from time to time by Lender, within a reasonable time after the applicable request, financial statements and information, all of which must be certified to Lender as being true and correct by Borrower, any guarantor of the Loan or the entity or person to which they pertain, as applicable, be prepared in accordance with generally accepted accounting principles consistently applied and be in form and substance acceptable to Lender.

Lender and the agents, representatives and employees of Lender will, subject to the rights of tenants, have full and free access to the Premises and the Improvements and any other location where books and records concerning the Mortgaged Property are kept at all reasonable times for the purposes of inspecting the Mortgaged Property and of examining, copying and making extracts from the books and records of Borrower relating to the Mortgaged Property. Borrower will lend assistance to all such agents, representatives and employees of Lender.

11. Estoppel Certificates. Borrower, within ten (10) days after request by Lender and at its expense, will furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the amount of the unpaid principal balance of the Loan, (ii) the maturity date of the Loan, (iii) the interest rate of the Loan, (iv) the last date that interest has been paid under the Loan, and (iv) whether the offsets or defenses thereto, if any.

12. Transfer or Encumbrance of the Mortgaged Property. No part of the Mortgaged Property nor any interest of any nature whatsoever therein nor any interest of any nature whatsoever in Borrower (whether partnership, membership, stock, equity, beneficial, profit, loss or otherwise) shall in any manner be further encumbered, sold, transferred or conveyed, or permitted to be further encumbered, sold, transferred, assigned or conveyed without the prior consent of Lender, which consent in any and all circumstances may be withheld in the sole and absolute discretion of Lender. The provisions of the foregoing sentence of this paragraph shall apply to each and every such further encumbrance, sale, transfer, assignment or conveyance, regardless of whether or not Lender has consented to, or waived by its action or inaction its rights hereunder with respect to, any such previous further encumbrance, sale, transfer, assignment or conveyance, and irrespective of whether such further encumbrance, sale, transfer, assignment or conveyance is voluntary, by reason of operation of law or is otherwise made.

13. Notice. Any notice, request, demand, statement, authorization, approval or consent made hereunder shall be in writing and shall be hand-delivered or sent by Federal Express, or other reputable courier service, and shall be deemed given when received at the following addresses:

If to Borrower: Iona Preparatory School

With a copy to: Kent Hazzard LLP
111 Church Street
White Plains, New York 10801
Attention: John A. Vern, Esq.

If to Lender: The Christian Brothers' Institute
33 Pryer Terrace
New Rochelle, New York 10804

Attn:

With a copy to: Tarter Krinsky & Drogin LLP
1350 Broadway, 11th Floor
New York, New York 10018
Attention: Anthony Dougherty, Esq.

Each party may designate a change of address by notice to the other party, given at least fifteen (15) days before such change of address is to become effective.

13. Sale of Mortgaged Property. If this Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may, at the discretion of Lender, be sold in one or more parcels or in several interests or portions and in any order or manner.

14. Changes in Laws Regarding Taxation. In the event of the passage after the date of this Mortgage of any law of the State of New York deducting from the value of real property for the purpose of taxation any lien or encumbrance thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on this Mortgage, the Note or the Debt, Borrower shall, if permitted by law, pay any tax imposed as a result of any such law within the statutory period or within fifteen (15) days after demand by Lender, whichever is less, provided, however, that if, in the opinion of the attorneys for Lender, Borrower is not permitted by law to pay such taxes, Lender shall have the right, at its option, to declare the Debt due and payable on a date specified in a prior notice to Borrower of not less than thirty (30) days.

15. No Credits on Account of the Debt. Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes assessed against the Mortgaged Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Mortgaged Property, or any part thereof, by reason of this Mortgage or the Debt. If at any time this Mortgage shall secure less than all of the principal amount of the Debt, it is

expressly agreed that any repayment of the principal amount of the Debt shall not reduce the amount of the lien of this Mortgage until the lien amount shall equal the principal amount of the Debt outstanding.

16. Offsets, Counterclaims and Defenses. Any assignee of this Mortgage and the Note shall take the same free and clear of all offsets, counterclaims or defenses of any nature whatsoever which Borrower may have against any assignor of this Mortgage and the Note, and no such offset, counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon this Mortgage or the Note and any such right to interpose or assert any such offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

17. Other Security for the Debt. Borrower shall observe and perform all of the terms, covenants and provisions contained in the Note and in all other mortgages and other instruments or documents evidencing, securing or guaranteeing payment of the Debt, in whole or in part, or otherwise executed and delivered in connection with the Note, this Mortgage or the Loan.

18. Documentary Stamps. If at any time the United States of America, any state thereof, or any governmental subdivision of any such state, shall require revenue or other stamps to be affixed to the Note or this Mortgage, Borrower will pay for the same, with interest and penalties thereon, if any.

19. Right of Entry. Upon prior notice, Lender and its agents shall have the right to enter and inspect the Mortgaged Property at all reasonable times.

20. Performance of Other Agreements. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

21. Events of Default. The Debt shall become due at the option of Lender upon the occurrence of any one or more of the following events (herein collectively referred to as "Events of Default"):

(a) if Borrower fails to punctually perform any covenant, agreement, obligation, term or condition hereof which requires payment of any money to Lender (except those regarding payments to be made under the Note, which failure is subject to any grace periods set forth in the Note);

(b) if any Federal tax lien is filed against Borrower, any member of Borrower or the Mortgaged Property and the same is not discharged of record within thirty (30) days after the same is filed;

(c) if without the consent of Lender (which consent in any and all circumstances may be withheld in the sole and absolute discretion of Lender) any part of the Mortgaged Property or any interest of any nature whatsoever therein or any interest of any nature whatsoever in Borrower (whether partnership, membership, stock, equity, beneficial, profit, loss or otherwise) is in any manner, by operation of law or otherwise, whether directly or indirectly, further encumbered, sold, transferred, assigned or conveyed, and irrespective of whether any such further encumbrance,

sale, transfer, assignment or conveyance is voluntary, by reason or operation of law or is otherwise made;

(d) if without the consent of Lender any Improvement or the Equipment (except for the normal replacement of the Equipment) is removed, demolished or materially altered, or if the Mortgaged Property is not kept in good condition and repair;

(e) if Borrower shall fail to comply with any requirement or order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over the Mortgaged Property within thirty (30) days from the issuance thereof, or the time period set forth therein;

(f) if Borrower shall be in default with respect to its obligations under Paragraph 9 of this Mortgage beyond any applicable grace period and/or after the giving of any applicable notice as stated in Paragraph 9;

(g) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Lender upon request, or if on application of Lender two (2) or more fire insurance companies lawfully doing business in the State of New York refuse to issue Policies;

(h) if Borrower fails to pay Lender on demand for all Premiums and/or Taxes paid by Lender pursuant to this Mortgage, together with any late payment charge and interest thereon calculated at the Default Rate;

(i) if without the consent of Lender any Lease is canceled or modified or if any portion of the Rents is paid for a period of more than one (1) month in advance or if any of the Rents are further assigned;

(j) if any representation or warranty of Borrower or in any certificate, report, financial statement or other instrument furnished in connection with the making of the Note, this Mortgage or any Loan Document, shall prove false or misleading in any material respect;

(k) if Borrower, any principal, shareholder, member or officer in Borrower or becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors, files a petition in bankruptcy, voluntarily is adjudicated insolvent or bankrupt or admits in writing the inability to pay debts as they mature, petitions or applies to any tribunal for or consents to or does not contest the appointment of a receiver, trustee, custodian or similar officer;

(l) if a petition is filed or any case, proceeding or other action is commenced against Borrower, against any principal, shareholder, member or officer of Borrower seeking to have an order for relief entered against it as debtor or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or other relief under any law relating to bankruptcy, insolvency, arrangement, reorganization, receivership or other debtor relief under any law or statute of any jurisdiction, whether now or hereafter in effect, or an order, judgment or decree is entered appointing, with or without the consent of Borrower, of any such principal, shareholder, member or officer of Borrower, a receiver, trustee, custodian or similar officer for Borrower, for any such principal, shareholder or officer of Borrower, or for any substantial part of any of the properties of Borrower, of any such principal, shareholder, member

or officer of Borrower, and if any such event occurs, such petition, case, proceeding, action, order, judgment or decree is not be dismissed within sixty (60) days after being commenced;

(m) if the Mortgaged Property shall become subject (i) to any tax lien, other than a lien for Taxes not due and payable, or (ii) to any lis pendens, notice of pendency, stop order, notice of intention to file mechanic's or materialman's lien, mechanic's or materialman's lien or other lien of any nature whatsoever and the same shall not either be discharged of record or in the alternative insured over to the satisfaction of Lender by the title company insuring the lien of this Mortgage within a period of thirty (30) days after the same is filed or recorded, and irrespective of whether the same is superior or subordinate in lien or other priority to the lien of this Mortgage and irrespective of whether the same constitutes a perfected or inchoate lien or encumbered on the Mortgaged Property or is only a matter of record or notice;

(n) if Borrower shall continue to be in default under any of the other terms, covenants or conditions of this Mortgage beyond any applicable cure period;

(o) if Borrower creates or incur any additional debt (other than trade debt incurred in the normal and ordinary course of business) without obtaining the prior written consent of Lender in each instance;

(p) if Borrower encumbers or pledges, or permits any liens to be filed against the Mortgaged Premises or any interest of any nature whatsoever against its assets without obtaining the prior consent of Lender in each instance;

(q) the termination of existence, dissolution, winding up, or liquidation of Borrower;

(r) if there is any material, adverse change in the financial condition of Borrower from the date hereof; or

(s) if Borrower allows any person or entity, other than Borrower, to occupy or operate any business at the Premises without entering into a lease that has been approved by Landlord.

22. Remedies Available. If a default occurs under this Mortgage, and such default has not been cured within any applicable grace or cure period, then this Mortgage is subject to foreclosure as provided by law and Lender may, at its option and by or through a trustee, nominee, assignee or otherwise, to the fullest extent permitted by law, exercise any or all of the following rights, remedies and recourses, either successively or concurrently:

(a) Acceleration. Accelerate the maturity date of the Note and declare any or all of the Debt to be immediately due and payable without any presentment, demand, protest, notice or action of any kind whatever (each of which is hereby expressly waived by Borrower), whereupon the same will become immediately due and payable. Upon any such acceleration, payment of such accelerated amount will constitute a prepayment of the principal balance of the Note and any applicable prepayment fee provided for in the Note will then be immediately due and payable.

(b) Entry on the Mortgaged Property. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard

to the adequacy of its security, enter upon and take possession of the Mortgaged Property, or any part thereof, without force or with such force as is permitted by law and without notice or process or with such notice or process as is required by law unless such notice and process is waivable, in which case Borrower hereby waives such notice and process, and do any and all acts and perform any and all work which may be desirable or necessary in Lender's judgment to (i) complete any unfinished demolition or construction on the Premises including the utilization of any plans and specifications to complete any pending application for development, subdivision, zoning or other governmental approvals, (ii) preserve the value, marketability or rentability of the Mortgaged Property, (iii) increase the income therefrom, (iv) manage and operate the Mortgaged Property, or (v) protect the security hereof and all sums expended by Lender therefore will be immediately due and payable to Lender by Borrower on demand and will be secured hereby and by all of the other Loan Documents securing all or any part of the Debt.

(c) Collect Rents and Profits. With or without taking possession of the Mortgaged Property, sue or otherwise collect the Rents, including those past due and unpaid.

(d) Appointment of Receiver. Upon, or at any time prior or after, initiating the exercise of any power of sale, instituting any judicial foreclosure or instituting any other foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Mortgaged Property, as a matter of strict right and without notice to Borrower and without regard to the adequacy of the Mortgaged Property for the repayment of the Debt or the solvency of Borrower or any person or persons liable for the payment of the Debt, and Borrower does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Lender, but nothing herein is to be construed to deprive Lender of any other right, remedy or privilege Lender may now have under the law to have a receiver appointed, provided, however, that, the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation will not impair or in any manner prejudice the rights of Lender to receive payment of the Rents pursuant to other terms and provisions hereof. Any such receiver will have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Mortgaged Property upon such terms and conditions as said receiver may deem to be prudent and reasonable. Such receivership will, at the option of Lender, continue until full payment of all of the Debt or until title to the Mortgaged Property has passed by foreclosure sale under this Mortgaged or deed in lieu of foreclosure.

(e) Foreclosure. Immediately commence an action to foreclose this Mortgage or to specifically enforce its provisions or any of the Debt pursuant to the statutes in such case made and provided and sell the Mortgaged Property or cause the Mortgaged Property to be sold in accordance with the requirements and procedures provided by such statutes in a single parcel or in several parcels at the option of Lender. In the event foreclosure proceedings are filed by Lender, all expenses incident to such proceeding, including, but not limited to, attorneys' fees and costs, will be paid by Borrower and secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. The Debt and all other obligations secured by this Mortgage, including, without limitation, attorneys' fees and any other amounts due and unpaid to Lender under the Loan Documents, may be bid by Lender in the event of a foreclosure sale hereunder. In the event of a judicial sale pursuant to a foreclosure decree, it is understood and agreed that Lender or its assigns may become the purchaser of the Mortgaged Property or any part thereof.

Borrower covenants and agrees that upon a default of this Mortgage or any Loan Document, Lender will have the right to sell the Premises and the Premises may be foreclosed, at the option of Lender, in the manner described by Article 14 of the Real Property Actions and Proceedings Law by non-judicial proceeding for foreclosure by power of sale.

(f) Other. Exercise any other right or remedy available hereunder, under any of the other Loan Documents or at law or in equity.

23. Right to Cure Defaults. If default in the performance of any of the covenants of Borrower occurs, Lender may, at its discretion, remedy the same and for such purpose shall have the right to enter upon the Mortgaged Property or any portion thereof without thereby becoming liable to Borrower or any person in possession thereof holding under Borrower. If Lender shall remedy such a default or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, the costs and expenses thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this paragraph, shall be paid by Borrower to Lender upon demand. All such costs and expenses incurred by Lender in remedying such default or in appearing in, defending, or bringing any such action or proceeding shall be paid by Borrower to Lender upon demand, with interest (calculated for the actual number of days elapsed on the basis of a 360-day year) at the maximum interest rate permitted under applicable law (the "**Default Rate**"). To the extent any of the aforementioned costs or expenses paid by Lender after default by Borrower shall constitute payment of (i) Taxes, (ii) Premiums, (iii) expenses incurred in upholding the lien of this Mortgage, including, but not limited to, the costs and expenses of any litigation to collect the Debt or to prosecute, defend, protect or preserve the rights and the lien created by this Mortgage, or (iv) any amount, cost or charge to which Lender becomes subrogated, upon payment, whether under recognized principles of law or equity, or under express statutory authority, then, and in each such event, such costs, expenses and amounts, together with interest thereon at the Default Rate, shall be added to the Debt and shall be secured by this Mortgage. **Notwithstanding anything to the contrary contained in this Mortgage, the maximum amount of the principal indebtedness secured by this Mortgage at execution or which under any contingency may become secured by this Mortgage is Three Million Five Hundred Thousand and 00/100 (\$3,500,000.00 Dollars, plus all interest and amounts expended by Lender after default by Borrower, as hereinabove set forth in this paragraph.**

24. Appointment of Receiver. Lender, in any action to foreclose this Mortgage or upon the actual or threatened waste to any part of the Mortgaged Property or upon the occurrence of any default hereunder, shall be at liberty, without notice, to apply for the appointment of a receiver of the Rents, and shall be entitled to the appointment of such receiver as a matter of right, without regard to the value of the Mortgaged Property as security for the Debt, or the solvency or insolvency of any person then liable for the payment of the Debt.

25. Non-Waiver. The failure of Lender to insist upon strict performance of any term of this Mortgage shall not be deemed to be a waiver of any term of this Mortgage. Borrower shall not be relieved of Borrower's obligation to pay the Debt at the time and in the manner provided for its payment in the Note and this Mortgage by reason of (i) failure of Lender to comply with any request of Borrower to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or any other Loan Document, (ii) the release, regardless of consideration, of the whole or any part of the Mortgaged Property or any other security for the Debt, or (iii) any

agreement or stipulation between Lender and any subsequent owner or owners of the Mortgaged Property or other person extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or any other Loan Document without first having obtained the consent of Borrower, and in the latter event, Borrower shall continue to be obligated to pay the Debt at the time and in the manner provided in the Note and this Mortgage, as so extended, modified and supplemented, unless expressly released and discharged from such obligation by Lender in writing. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, encumbrance, right, title or interest in or to the Mortgaged Property, Lender may release any person at any time liable for the payment of the Debt or any portion thereof or any part of the security held for the Debt and may extend the time of payment or otherwise modify the terms of the Note or this Mortgage, including, without limitation, a modification of the interest rate payable on the principal balance of the Note, without in any manner impairing or affecting this Mortgage or the lien thereof or the priority of this Mortgage, as so extended and modified, as security for the Debt over any such subordinate lien, encumbrance, right, title or interest. Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Mortgage. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every additional right and remedy now or hereafter afforded by law. The rights of Lender under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

26. Liability. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

27. Construction. The terms of this Mortgage shall be construed in accordance with the laws of the State of New York.

28. Security Agreement; Financing Statement. (a) This Mortgage constitutes both a real property mortgage and a "security agreement," within the meaning of the Uniform Commercial Code, and the Mortgaged Property includes both real and personal property and all other rights and interest, whether tangible or intangible in nature, of Borrower in the Mortgaged Property. Borrower by executing and delivering this Mortgage has granted to Lender, as security for the Debt, a security interest in the Equipment. If any Event or Default occurs under the Note or this Mortgage, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Equipment or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Equipment. Upon request or demand of Lender, Borrower shall at its expense assemble the Equipment and make it available to Lender at a convenient place acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the Equipment and in enforcing its rights hereunder with respect to the Equipment. Any notice of sale, disposition or other intended action by Lender with respect to the Equipment sent to Borrower in accordance with the provisions of this Mortgage at least seven (7) days prior to the date of any such sale, disposition or other action, shall constitute reasonable notice to Borrower, and the method of sale or disposition or other intended action set

forth or specified in such notice shall conclusively be deemed to be commercially reasonable within the meaning of the Uniform Commercial Code unless objected to in writing by Borrower within five (5) days after receipt by Borrower of such notice. The proceeds of any sale or disposition of the Equipment, or any part thereof, may be applied by Lender to the payment of the Debt in such order, priority and proportions as Lender in its discretion shall deem proper. If any change shall occur in Borrower's name, Borrower shall promptly cause to be filed at its own expense, new financing statements as required under the Uniform Commercial Code to replace those on file in favor of Lender.

(b) Borrower shall defend the title to the Equipment against all claims and demands whatsoever. Borrower shall keep the Equipment free and clear of all liens, charges, encumbrances, taxes and assessments, and shall pay all taxes, assessments and fees relating to the Equipment. Upon request by Lender, Borrower shall furnish further assurances of title, execute any further instruments and do any other acts necessary to effectuate the purposes and provisions of this Section. Borrower shall not sell, exchange, assign, transfer or otherwise dispose of the Equipment, and shall not encumber, hypothecate, mortgage, create a lien on or security interest in the Equipment, without the prior written consent of Lender, in each instance. The risk of loss of the Equipment at all times shall be borne by Borrower. Borrower shall keep the Equipment in good repair and condition and shall not misuse, abuse or waste the Equipment or allow the Equipment to deteriorate except for normal wear and tear.

(c) Borrower at all times shall maintain: (i) insurance covering the Equipment and all other property of Borrower against loss or damage by fire and other hazards; (ii) insurance against liability on account of damage to persons and property; (iii) all insurance required under applicable workmen's compensation laws; and (iv) insurance covering such other risks as Lender reasonably may request. Such insurance shall be in amounts satisfactory to Lender, shall be maintained with responsible insurance carriers, shall name Borrower and Lender as their interests may appear as insured, and shall provide for at least fifteen (15) days notice to Lender prior to cancellation. Borrower, from time to time, upon Lender's written request, promptly shall furnish or cause to be furnished to Lender evidence of the maintenance of all insurance required to be maintained hereunder, including such originals or copies of policies, certificates of insurance, riders and endorsements relating thereto and proof of payment of Premiums as Lender may request. If Borrower shall fail to maintain any such insurance, Lender may, but shall not be obligated to, do so at the expense of Borrower, in addition to the other rights and remedies of Lender. Borrower hereby appoints Lender the attorney of Borrower for purposes of obtaining, adjusting and canceling any such insurance and endorsing settlement drafts, and hereby assigns to Lender all sums which may become payable under such insurance, including returned Premiums and dividends, as additional security for the Debt.

(d) Borrower shall maintain the Equipment in good repair, working order and condition, subject to normal wear and tear, and make all repairs, replacements, additions and improvements thereto. In the event of loss, damage or destruction of any item of Equipment, Borrower, at its sole cost and expense, and at Lender's sole option, shall either (i) repair such item, returning it to its previous condition, unless it is damaged beyond repair, or (ii) replace such item with a like item acceptable to Lender, in good condition and of equivalent value, which shall then be included within the term "Equipment" as used herein.

(e) The Equipment shall be kept at the Premises unless Borrower shall have obtained the prior written consent of Lender for its removal to another location. Lender shall have the right to enter upon the Premises at any reasonable time, and from time to time, to inspect the Equipment.

(f) Borrower, at its own cost and expense, shall execute and deliver to Lender any financing statements, and shall procure for Lender any other documents, necessary or appropriate to protect the security interest granted to Lender hereunder against the rights and interests of third parties, and shall cause the same to be duly recorded and filed in all places necessary to perfect the security interest of Lender in the Equipment. In the event that any recording or re-filing hereof (or filing of any statements of continuation or assignment of any financing statement) is required to protect and preserve such security interest, Borrower, at its own cost and expense, shall cause the same to be re-recorded and/or re-filed at the time and in the manner requested by Lender. Borrower hereby authorizes Lender to file or re-file any financing statements or continuation statements with respect to the security interest granted pursuant to this Section which at any time may be required or appropriate, although the same may have been executed only by Lender, and to execute such financing statement on behalf of Borrower. Borrower irrevocably designates Lender Secured Party, as its-agent, representative and designee, and attorney-in-fact for Borrower Debtor for the aforesaid purposes.

(g) Upon the occurrence of an Event of Default, Lender shall have all rights and remedies provided by the Uniform Commercial Code in effect in the State of New York on the date hereof. In addition to, or in conjunction with, or substitution for such rights and remedies, Lender may at any time and from and after the occurrence of an Event of Default hereunder:

(i) with or without notice to Borrower, foreclose the security interest created herein by any available judicial procedure, or take possession of the Equipment, or any portion thereof, with or without judicial process, and enter the Premises for the purpose of taking possession of or removing the same, or rendering the same unusable, or disposing of the Equipment on the Premises, and Borrower agrees not to resist or interfere therewith;

(ii) require Borrower to prepare, assemble or collect the Equipment, at Borrower's own expense, and make the same available to Lender at such place as Lender may designate, whether at the Premises or elsewhere;

(iii) sell, lease or otherwise dispose of all or any part of the Equipment whether in its then condition or after further preparation, in Borrower's name or in its own name, or in the name of such party as Lender may designate, either at public or private sale (at which Lender Party shall have the right to purchase), in lots or in bulk, for cash or for credit, with or without representations or warranties, and upon such other terms as Lender, in its sole discretion, may deem advisable; and seven (7) days written notice of such public sale date or dates after which private sale may occur, or such lesser period of time in the case of an emergency, shall constitute reasonable notice hereunder;

(iv) execute and deliver documents of title, certificates of origin, or other evidence of payment, shipment or storage of any Equipment or proceeds on behalf of and in the name of Borrower;

(v) remedy any default by Borrower, without waiving such default, and any monies expended in so doing shall be chargeable with interest at the Default Rate to Borrower and added to the Debt; and

(vi) apply for an injunction to restrain a breach or threatened breach of this Section by Borrower.

The Mortgage shall also serve as a financing statement as provided for in the Uniform Commercial Code.

29. Further Acts, etc. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto Lender the property and rights hereby mortgaged or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage and, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Mortgaged Property.

30. Headings, etc. The headings and captions of various paragraphs of this Mortgage are for convenience of reference only and are not to be construed as defined or limiting, in any way, the scope or intent of the provisions hereof.

31. Filing of Mortgage, etc. Borrower forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect, preserve and perfect the lien hereof upon, and the interest of Lender in, the Mortgaged Property. Borrower will pay all filing, registration and recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property, and any instrument of further assurance, and all Federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance. Borrower shall hold harmless and indemnify Lender, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

32. Usury Laws. This Mortgage and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance due under the Note at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by law to contract or agree to pay. If by the terms of this Mortgage or the Note, Borrower is at any time required or obligated to pay interest on the principal balance due under the Note at a rate in excess of such maximum rate, the rate of interest under the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note.

33. Sole Discretion of Lender. Except as may otherwise be expressly provided to the contrary, wherever pursuant to the Note, this Mortgage, or any other document or instrument now or hereafter executed and delivered in connection therewith or otherwise with respect to the loan secured hereby, Lender exercises any right given to it to consent or not consent, or to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to consent or not consent, or to approve or disapprove, or to decide that arrangements or terms are satisfactory or not satisfactory, shall be in the sole and absolute discretion of Lender and shall be final and conclusive.

34. Reasonableness. If at any time Borrower believes that Lender has not acted reasonably in granting or withholding any approval or consent under the Note, this Mortgage, or any other Loan Document or instrument now or hereafter executed and delivered in connection therewith or otherwise with respect to the Loan, as to which approval or consent either (i) Lender has expressly agreed to act reasonably, or (ii) absent such agreement, applicable law would nonetheless require Lender to act reasonably, then Borrower's sole remedy shall be to seek injunctive relief or specific performance, and no action for monetary damages or punitive damages shall in any event or under any circumstance be maintained by Borrower against Lender.

35. Recovery of Sums Required To Be Paid. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

36. Actions and Proceedings. Lender shall have the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, determines should be brought to protect its interest in the Mortgaged Property.

37. Inapplicable Provisions. If any term, covenant or condition of this Mortgage shall be held to be invalid, illegal or unenforceable in any respect, this Mortgage shall be construed without such provision.

38. Duplicate Originals. This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

39. Certain Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided in this Mortgage, words used in this Mortgage shall be used interchangeably in singular or plural form and the term "**Borrower**" shall mean each of Borrower and any subsequent owner or owners of the Mortgaged Property or any part thereof or interest therein; the term "**Lender**" shall mean Lender or any subsequent holder of the Note; the term "**Note**" shall mean the Note or any other evidence of indebtedness secured by this Mortgage and any and all modifications, amendments, extensions, renewals, restatements, consolidations and/or replacements thereof;; the term "**person**" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, or other entity; the term "**Mortgaged Property**" shall include any portion of the Mortgaged Property or interest therein; and the term "**Debt**" shall mean all sums secured by this Mortgage; and the term "**default**" shall mean the occurrence of any default by Borrower or other person in the observance or performance of any of the terms, covenants or provisions of the Note or this Mortgage on the part of Borrower or such other person to be observed or performed without regard to whether such default constitutes or would constitute upon notice or lapse of time, or both, an Event of Default under this Mortgage. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

40. Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Lender to Borrower, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Lender to Borrower.

41. No Oral Change. This Mortgage may only be modified, amended or changed by an agreement in writing signed by Borrower and Lender, and may only be released, discharged or satisfied of record by an agreement in writing signed by Lender. No waiver of any term, covenant or provision of this Mortgage shall be effective unless given in writing by Lender and if so given by Lender shall only be effective in the specific instance in which given. Borrower acknowledges that the Note, this Mortgage, and the other Loan Documents set forth the entire agreement and understanding of Borrower and Lender with respect to the Loan and that no oral or other agreements, understanding, representation or warranties exist with respect to the Loan other than those set forth in the Note, this Mortgage, and the other Loan Documents.

42. Absolute and Unconditional Obligation. Borrower acknowledges that Borrower's obligation to pay the Debt in accordance with the provision of the Note and this Mortgage is and shall at all times continue to be absolute and unconditional in all respects, and shall at all times be valid and enforceable irrespective of any other agreements or circumstances of any nature whatsoever which might otherwise constitute a defense to the Note or this Mortgage or the obligation of Borrower thereunder to pay the Debt or the obligations of any other person relating to the Note or this Mortgage or the obligations of Borrower under the Note or this Mortgage or otherwise with respect to the Loan, and Borrower absolutely, unconditionally and irrevocably waives any and all right to assert any defense, setoff, counterclaim (except any counterclaim that would be waived if not asserted) or crossclaim of any nature whatsoever with respect to the obligation of Borrower to pay the Debt in accordance with the provisions of the Note and this Mortgage or the obligations of any other person relating to the Note or this Mortgage or obligations

of Borrower under the Note or this Mortgage or otherwise with respect to the Loan in any action or proceeding brought by Lender to collect the Debt, or any portion thereof, or to enforce, foreclose and realize upon the lien and security interest created by this Mortgage or any other Loan Document.

43. Trust Fund. Pursuant to Section 13 of the Lien Law of New York, Borrower shall receive the advances secured hereby and shall hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of any improvement and shall apply such advances first to the payment of the cost of any such improvement on the Mortgaged Property before using any part of the total of the same for any other purpose.

44. Non-Residential Property. This Mortgage does not cover real property principally improved by one or more structures containing in the aggregate six (6) or less residential dwelling units having their own separate cooking facilities.

45. Waiver of Trial by Jury. Borrower hereby irrevocably and unconditionally waives, and Lender by its acceptance of the Note and this Mortgage irrevocably and unconditionally waives, any and all rights to trial by jury in any action, suit or counterclaim arising in connection with, out of or otherwise relating to the Note, this Mortgage any other Loan Document.

46. Waiver of Statutory Rights. Borrower shall not and will not apply for or avail itself of any appraisement, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws to the full extent that Borrower may do so under applicable law. Borrower for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshaled upon any foreclosure of the lien of this Mortgage and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. Borrower hereby waives for itself and all who may claim through or under it, and to the full extent Borrower may do so under applicable law, any and all rights of redemption from sale under any order of decree of foreclosure of this Mortgage or granted under any statute now existing or hereafter enacted.

47. Brokerage. Borrower covenants and agrees that no brokerage commission or other fee, commission or compensation is to be paid by Lender on account of the Loan or other financing obligations evidenced by the Note and/or secured by this Mortgage and Borrower agrees to indemnify Lender against any claims for any of the same.

48. Indemnity. Anything in this Mortgage or the other Loan Documents to the contrary notwithstanding, Borrower shall indemnify and hold Lender harmless and defend Lender at Borrower's sole cost and expense against any loss or liability, cost or expense (including, without limitation, title insurance premiums and charges and reasonable attorneys' fees and disbursements of Lender's counsel, whether in-house staff, retained firms or otherwise), and all claims, actions, proceedings and suits arising out of or in connection with (i) any ongoing matters arising out of the transaction contemplated hereby, the Debt, this Mortgage, the Note, the Loan Documents or any instrument now or hereafter executed and/or delivered in connection with the Debt and/or the Mortgaged Property, including, but not limited to, all costs of reappraisal of the Mortgaged Property

or any part thereof, whether required by law, regulation, Lender or any governmental or quasi-governmental authority, (ii) any amendment to, or restructuring of, the Debt and this Mortgage, the Note or any of the other Loan Documents, and (iii) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Mortgage or the Note or any of the other Loan Documents, whether or not suit is filed in connection with the same, or in connection with Borrower becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding. All sums expended by Lender shall be payable on demand and, until reimbursed by Borrower pursuant hereto, shall be deemed additional principal of the Debt and secured hereby and shall bear interest at the Default Rate. The obligations of Borrower under this paragraph shall, notwithstanding any exculpatory or other provisions of any nature whatsoever set forth in the Loan Documents, constitute the personal recourse undertakings, obligations and liabilities of Borrower.

49. Enforceability. This Mortgage was negotiated in the State of New York, and made by Borrower and accepted by Lender in the State of New York, and the proceeds of the Loan were disbursed from the State of New York, which State the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby, and in all respects, including, without limiting the generality of the foregoing, matters of construction, validity and performance, this Mortgage and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and performed in such State and any applicable laws of the United States of America. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be unenforceable or prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such unenforceability, prohibition or invalidity, without invalidating the remaining provisions of this Mortgage.

50. Relationship. The relationship of Lender to Borrower hereunder is strictly and solely that of lender and borrower and nothing contained in the Note, this Mortgage, any other Loan Document or instrument now or hereafter executed and delivered in connection therewith or otherwise in connection with the Loan is intended to create, or shall in any event or under any circumstance be construed as creating, a partnership, joint venture, tenancy-in-common, joint tenancy or other relationship of any nature whatsoever between Lender and Borrower other than as lender and borrower and between Borrower and Lender as mortgagor and Lender.

51. Multiple Security. If (a) the Premises shall consist of one or more parcels, whether or not contiguous and whether or not located in the same county, or (b) in addition to this Mortgage, Lender shall now or hereafter hold one or more additional mortgages, liens or other security (directly or indirectly) for the Debt upon other property in the State of New York, then to the fullest extent permitted by law, Lender may, at its election, commence or consolidate in a single foreclosure action all foreclosure proceedings against all such collateral securing the Debt (including the Mortgaged Property), which action may be brought or consolidated in the courts of any county in which any of such collateral is located. Borrower acknowledges that the right to maintain a consolidated foreclosure action is a specific inducement to Lender to extend the Debt, and Borrower expressly and irrevocably waives any objections to the commencement or consolidation of the foreclosure proceedings in a single action and any objections to the laying of venue or based on the grounds of forum non conveniens which it may now or hereafter have.

Borrower has duly executed this Mortgage the day and year first above written.

IONA PREPARATORY SCHOOL

By: _____

Name:

Title:

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

On the _____ day of _____ in the year 2012 before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT A

(Description of Premises)

MORTGAGE AND SECURITY AGREEMENT

(\$3,500,000.00)

From
Iona Preparatory School

_____, a _____ with offices at

To
Christian Brothers Institute

a New York not-for-profit corporation having an office at **33 Pryer Terrace, New Rochelle, New York 10804**

Dated _____, ____, 2012

Location: 173 Stratton Road, New Rochelle, New York ; and
The vacant land on the north side of Stratton Road New Rochelle, New York

TAX MAP DESIGNATION

State:	New York
County:	Westchester
Block:	3001
Lots:	320

And

State:	New York
County:	Westchester
Block:	3064
Lots:	1

RECORD AND RETURN TO:

Tarter Krinsky & Drogin LLP

1350 Broadway, 11th Floor
New York, New York 10018
Attn: Anthony Dougherty, Esq.

EXHIBIT E

PERMITTED EXCEPTIONS

1. Zoning and building regulations, ordinances, and requirements adopted by any governmental or municipal authority having jurisdiction thereof, and amendments and additions thereto now in force and effect, which relate to the Premises, and are not violated by the current use thereof.

2. State of facts shown on an accurate survey of the Premises, and any additional state of facts said survey brought down to date would show, provided such additional state of facts do not render title to unmarketable.

3. Any and all laws, statutes, ordinances, codes, regulations or requirements, including, without limitation, building, zoning and other land use restrictions, ordinances, and regulations, affecting the Premises adopted by the City, County or Borough in which the Premises lie or by any other governmental authority having jurisdiction thereof, and all amendments or additions thereto now, or which will at the time of Closing be, in force and effect and which are not violated by the existing structures or present use thereof and do not render title unmarketable;

4. Encroachments of improvements on adjoining properties upon the Premises and encroachments of improvements on the Premises on adjoining properties and streets; and variations between tax lot lines and lines of record title.

5. Rights of utility companies to lay, maintain and repair pipes, lines, conduits, cable boxes and other installations on, under and across the Premises and any rights, easements and licenses in favor of, or agreements with, any public utility company, including but not limited to, gas, electricity, telephone, telegraph and cable television services and private sewer agreements, if any.

6. All notes or notices of or violations of law or municipal ordinances, orders or requirements noted in or issued by any state or municipal departments having jurisdiction, now or hereafter against or affecting the Premises, except as provided herein.

7. Subject to adjustment as herein provided, tax liens, water and sewer charges, assessments and vault charges, and the liens of any of the foregoing.

8. Covenants, agreements, rights of way, licenses, easements and restrictions of record, if any, to the extent not otherwise described in this Exhibit C, provided that the same are not violated by the current Improvements and do not prohibit the present uses of the Premises.

9. Consents by Seller or any former owner of the Premises for the erection of any structure or structures on, under or above any street or streets on which the Premises may abut.

10. Encroachments of stoops, areas, roof cornices, window trims, vent pipes, cellar doors, steps, columns and column bases, flue pipes, signs, piers, lintels, window sills, fire escapes, ledges, fences, coping, retaining walls and yard walls, if any, upon any street or highway or adjoining the Premises, provided that Purchaser's title insurer shall insure that such projections or encroachments may remain undisturbed so long as the Improvements shall stand at no additional cost to Purchaser.

11. Possible lack of right in Seller to maintain vaults, vault lights, coal chutes or excavations beyond the building line, whether above or below the sidewalk.

12. Liens for Emergency Repairs, unpaid inspection fees and unpaid license and permit fees, not shown by the public records.

13. The standard exceptions and provisions contained in the form of insuring agreement employed by the Title Insurer.

14. The Service Contracts.

15. The existence of possible party walls.

16. Such other liens, claims, encumbrances, exceptions and matters as any reputable title insurance company authorized to do business in the State of New York shall be willing to (A) omit as exceptions to coverage or (B) except with insurance against collection out of or enforcement against the Premises with respect to Purchaser's insurance policy, and omit as exceptions to coverage with respect to any lender's mortgage insurance policy, in either case without additional payment or premium required to be made by Purchaser, unless Seller elects to pay such additional payment or premium on behalf of Purchaser.

17. Variations between description herein and tax map description.

EXHIBIT F

FORM OF DEED

RECORDING REQUESTED BY,
AND WHEN RECORDED RETURN TO:

BARGAIN AND SALE DEED

THIS INDENTURE, made as of the _____ day of _____, 200____ by
_____ LLC ("Grantor"), a _____ New York not-for-profit corporation, having
an address at _____ and _____ LLC ("Grantee"), a _____
limited liability company, having an address at _____.

WITNESSETH, that Grantor, for and in consideration of Ten (\$10.00) Dollars
and other good and valuable consideration paid by Grantee, the receipt whereof is hereby
acknowledged, hereby grants and releases to Grantee all that certain plots, pieces or parcels of
land, together with the buildings and improvements thereon erected, situate, lying and being in
the City of New York, County of New York, State of New York, more particularly described on
Exhibit A attached hereto and made a part hereof.

TOGETHER with all right, title and interest, if any, of the Grantor in and to any
streets and roads abutting the above described premises to the center lines thereof; TOGETHER
with the appurtenances and all the estate and rights of the Grantor in and to said premises; TO
HAVE AND TO HOLD the premises herein granted unto the Grantee forever.

AND, Grantor, in compliance with Section 13 of the Lien Law, covenants that
Grantor will receive the consideration for this conveyance and will hold the right to receive such
consideration as a trust fund to be applied first for the purpose of paying the cost of the
improvement and will apply the same first for the purpose of paying the cost of the improvement
before using any part of the total of the same for any other purpose.

Wherever in this instrument any party shall be designated or referred to by name
or general reference, such designation is intended to and shall have the same effect as if the
words "successors and assigns" had been inserted after each and every such designation.

IN WITNESS WHEREOF, the undersigned have executed this Deed as of the date first above written.

By: _____

Name: _____

Title: _____

Street Address: _____

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On this ___ day of _____, in the year 200___ before me, the undersigned personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

NOTARIAL SEAL

My Commission Expires:

EXHIBIT G

FORM OF BILL OF SALE

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, _____, a _____ limited liability company (the "Seller"), hereby grants, bargains, sells, transfers, assigns, and conveys to _____, a _____ limited liability company (the "Purchaser"), all of Seller's right, title and interest to all personal property (whether tangible, intangible or otherwise) now at, in or upon or used in connection with the premises located at _____, New York, New York (the "Land") including, without limitation, all tangible personal property upon the Land or within the improvements located thereon, including specifically, without limitation, appliances, furniture, carpeting, draperies and curtains, tools and supplies, and other items of personal property, (excluding cash and accounts receivable) related to, used in connection with, or required for the operation of the Land and the improvements, but excluding any business and trade fixtures, machinery, and equipment belonging to any tenant of the building in their capacity solely as tenant and located within the space leased to that tenant and all materials that are used or useful in the leasing and marketing of the Property (collectively, the "Personal Property"), but specifically excluding from the Personal Property all property owned by tenants, if any, to have and to hold the Personal Property unto Purchaser, its successors and assigns, forever.

Seller grants, bargains, sells, transfers and delivers the Personal Property in its "AS IS" condition, WITH ALL FAULTS, IF ANY, and makes no representations or warranties, direct or indirect, oral or written, express or implied.

EXECUTED as of the day and year first above written.

SELLER:

By: _____
Name: _____
Title: _____