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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 COLLEGE 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 College ("Iona"), as more particularly described in the Agreement of Purchase and Sale (together with the related sale documents, the "Purchase Agreement"), (b) scheduling an auction (the "Auction") (if a qualified competing bid (other than Iona's) is timely received) and a sale hearing (the "Sale Hearing"), and (c) 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 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 Houses (as defined below) to Iona for a total consideration of \$5,000,000 (or to such entity that submits a qualified bid for at least \$5,100,000) and establish procedures for the sale, including approving bid procedures and bid protections to Iona as the stalking horse bidder.

2. While CBI and Iona share some common trustees, CBI submits that the transaction contemplated in the Purchase Agreement is not an “insider transaction.”

3. Iona is an independent, coeducational, nonsectarian, liberal arts, not-for-profit institution of higher education chartered by the Board of Regents of the University of the State of New York.

4. Iona’s charter provides that its governing body is its board of trustees. Iona’s by-laws of currently state that the board of trustees shall consist of not fewer than five (5) nor more than thirty-seven (37) persons, one of whom shall be the president.

5. As presently constituted, there are thirty (30) trustees, only four (4) of whom are religious Brothers of the Edmund Rice Christian Brothers North American Province. The remaining trustees are all lay persons.

6. Two (2) of the four (4) religious Brothers are also trustees of CBI, both of whom abstained from Iona's decision making process vis-à-vis the purchase of the Houses.

7. Additionally, CBI is placing the Purchase Agreement to the test of the broader public marketplace via the imposition of the proposed Sale Procedures in the hope that higher and better offers are generated for the Houses.

8. CBI (and its counsel) have expended substantial amounts of time and effort negotiating the Purchase Agreement with Iona. 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

9. 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).

10. 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

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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

17. CBI owns the following properties which are the subject of this motion (collectively the “Houses”):

- (a) **33 Beechmont Drive, New Rochelle, NY 10804**
Section: 3
Block: 1015
Lot Number: 14
Acreage: situated on a 1.08-acre parcel

- (b) **71 Beechmont Drive, New Rochelle, NY 10804**
Section: 3
Block: 1015
Lot Number: 32
Acreage: situated on a 0.83-acre parcel

- (c) **21 Pryer Terrace, New Rochelle, NY 10804**
Section: 3
Block: 1024
Lot Number: part of lot 21
Acreage: “It is situated on a 1.52-acre parcel located on Pryer Terrace which also includes 33 Pryer Terrace and excess vacant land.

- (d) **33 Pryer Terrace, New Rochelle, NY 10804**
Section: 3
Block: 1024
Lot Number: part of lot 21
Acreage: “It is situated on a 1.52-acre parcel located on Pryer Terrace which also includes 21 Pryer Terrace and excess vacant land.

- (e) **29 Montgomery Place, New Rochelle, NY 10804**
Section: 3
Block: 1015
Lot Number: 58
Acreage: situated on a 0.68-acre parcel

(f) **53 Montgomery Place, New Rochelle, NY 10804**

Section: 3
Block: 15
Lot Number: 71
Acreage: situated on a 1.25-acre parcel

18. The Houses are single family houses located either on or adjacent to Iona's campus. The Houses are currently utilized as Brothers' residences and are generally in average condition and have not been upgraded. One of the Houses located at 33 Pryer Terrace, is currently utilized as CBI's office headquarters.

A. Iona College

19. By way of background, Iona was founded in 1940 by the Christian Brothers. Today, however, although Iona remains dedicated to academic excellence in the tradition of the Christian Brothers and American Catholic higher education, Iona and the Christian Brothers are legally independent institutions and, as such, share only a vestige relationship.

20. Iona is private, liberal arts, nonsectarian college with a student body of approximately 3,000 full-time undergraduate students. The college occupies approximately 35 acres on or about North Ave in New Rochelle, New York.

B. Iona's Decision to Purchase the Houses

21. Since the Petition Date, the Debtor has been formulating a comprehensive real estate disposition plan. As this Court is aware, the Debtor marketed and sold the property utilized by Rice High School in New York City. In addition, the Debtor recently obtained authorization of this Court to sell certain property located at 173 Stratton Road, New Rochelle, New York and adjacent vacant land across therefrom to Iona Preparatory School. Because of the location of the Houses, all contiguous to Iona's campus, the Debtor believes Iona is a natural buyer. After careful consideration by its board of trustees and its administration, Iona indicated

to CBI its interest in purchasing the Houses. After negotiations were completed, Iona's board of trustees approved the purchase of the Houses. Brothers Hugh O'Neill and Raymond J. Vercruyse are trustees of both Iona and CBI. The duality of interest was disclosed to Iona's board and, as such, both Brothers abstained from any discussion the board had regarding the purchase of the Houses and further abstained from Iona's vote to approve the purchase of the Houses from CBI.

22. As discussed hereinabove, Brothers Hugh O'Neill and Raymond J. Vercruyse are trustees of Iona and CBI. The duality of interest was disclosed to CBI's trustees and, as such, both Brothers abstained from any discussion CBI's board had regarding the sale of the Houses and further abstained from the CBI's vote to approve the sale of the Houses to Iona.

C. Summary of Purchase Agreement

23. The salient terms of the Purchase Agreement are as follows:¹

Purchase Price: The purchase price for the Houses is \$5 million – consisting of \$5 million in cash with \$500,000 due upon execution of the Purchase Agreement (the "Down Payment") and Four Million Five Hundred Thousand and 00/100 (\$4,500,000.00) Dollars at Closing, subject to the adjustments and prorations set forth in the Purchase Agreement (the "Closing Balance").

Assets to be Sold :

- (i) those certain parcels of land (the "Land") described on Exhibit A to the Purchase Agreement, which includes the Houses;
- (ii) All improvements situated on the Land (the "Improvements");
- (iii) The streets, roads, lands, and alleys in front of and adjacent to the Land;

¹ 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 "A."** Additionally, capitalized terms contained in this section that are not otherwise defined, shall have the meaning ascribed to such term in the Purchase Agreement.

- (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) 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;
- (vii) 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 Houses; and
- (viii) Seller’s interest in all licenses, permits and warranties which relate to the Real Property and which may be assigned by Seller to Purchaser.

24. The Purchase Agreement provides that Iona acknowledges that a certain number of the Debtor’s Brothers currently reside in the Houses and Iona has agreed to accept title to the Houses subject to the Brothers’ right to continue to live in the Houses pursuant to a leasing arrangement whose terms are more fully set forth in the Purchase Agreement.

25. The Purchase Agreement requires CBI to promptly move this Court for an order authorizing the sale of the Houses pursuant to the Purchase Agreement.

D. Proposed Sale Procedures

26. CBI desires to receive the greatest value for the Houses. Although CBI believes the terms of the Purchase Agreement are fair and reasonable and reflect the highest and best value for the Houses, it nevertheless desires to place the Purchase Agreement to the test of the broader public marketplace in order to determine whether higher and better offers are generated

for the Houses.² 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 Houses while affording appropriate protection to Iona. 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 Houses 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.

27. As part of the marketing efforts, the sale will be subject to a 45 day marketing period, which shall include listing the Houses on the Westchester County Multiple Listing Service and placing for sale by owner signs outside each House; advertising (up to \$5,000) in local papers for the first two weeks; conducting two open houses on weekends; and showing the Houses on reasonable notice after a request by an interested party.

28. 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 "B"**:

Determination of "Qualified Bidder" Status. Any potential bidder who wishes to submit a bid with respect to the Houses 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, 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 Houses in their entirety for a cash price equal to or greater than \$5,100,000;

² The Debtor believes that a bulk sale of the Houses for \$5,000,000, as set forth in the Purchase Agreement, is the highest and best bid and that selling the Houses on an individual basis would result in substantially reduced sale proceeds.

- (ii) states that the bidder is prepared to enter into a legally binding purchase and sale agreement for the acquisition of the Houses 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 Purchase Agreement”) and a marked Modified Purchase Agreement reflecting the variations from the Purchase Agreement (a standard residential real estate sale agreement is also suitable);
- (iv) states that the bidder’s offer is irrevocable until the closing of the purchase of the Houses 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 Houses or otherwise participating in connection with such bid;
- (vii) is accompanied by a cash deposit or cashier’s check in the amount of \$510,000 (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 Houses, 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 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 **October 22, 2012, at 4:00 p.m. (EST)**.

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

Bid Deadline. All Qualified Bids must be submitted by no later than **October 15, 2012, at 12:00 P.M. (EST)** (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), the Seller shall conduct an auction with respect to the Houses (the "Auction"). The Auction shall take place on **October 26, 2012, at 10:00 a.m. (EST)** 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, and Qualified Bidders may participate at the Auction;
- (ii) Only Iona and other Qualified Bidders shall be entitled to make any subsequent bids at the Auction;
- (iii) Iona 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 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 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, unless otherwise modified at the Auction;
- (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 (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) CBI will arrange for the actual bidding at the Auction to be transcribed.

Sale Hearing. The Successful Bid (or Iona if no Qualified Bid is received) will be subject to approval by the Bankruptcy Court. The hearing to approve the sale of the Houses to the Successful Bidder (the "Sale Hearing") will take place on **November 1, 2012, at 10:00 a.m. (EST)**, 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 **November 30, 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

29. 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 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 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 is Within the Debtor's Sound Business Judgment

30. 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).

31. 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).

32. 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).

33. Here, each of the four factors have been satisfied. First, there is more than adequate business justification to sell the Houses to Iona and to enter into the Purchase Agreement. In order to raise monies needed to fund CBI's reorganization plan, it is essential that CBI dispose of these non-core assets. As set forth above, the Houses are located either on or adjacent to Iona's campus and the market for the sale of older houses on a college campus is somewhat limited. If the Debtor listed the Houses separately through one or more real estate brokers, it is highly unlikely that the sale proceeds would exceed the bulk purchase price of \$5,000,000. There would also be cost to the estate of paying a brokerage commission, not to mention seeking approval of individual house sales. Furthermore, Iona expressed an interest in purchasing all of the Houses and the purchase price is consistent with recent appraisals. Additionally, the Purchase Agreement provides that Brothers may maintain their residences at the Houses following closing of the sale, which will ensure that the Brothers have a place to live.

As this Court is aware, the average age of the Debtor's Brothers is approximately 70 years old and the Debtor needs to provide housing for these Brothers in their twilight years. Finally, although CBI has other assets, CBI's will need to raise additional monies to fund its reorganization plan. In short, the bulk sale of the Houses to Iona will accomplish two important goals – monetize the Debtor's real estate holdings and enable the Brothers to continue to reside at the Houses.

34. With respect to the second factor, Iona has offered substantial value for the Houses 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 to pay \$5,000,000 for the Houses. CBI respectfully submits that such consideration is both fair and reasonable.³ Furthermore, to dispel any doubt, the sale of the Houses to Iona is subject to competing bids, thereby enhancing CBI's ability to receive the highest and best value for the Houses. 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.

35. As to the third factor, CBI and Iona are proceeding in good faith. Indeed, despite sharing some common trustees, CBI submits that Iona 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 took measures to protect the interests of their respective institutions by having

³ The purchase price is consistent with a recent appraisals obtained by Iona. 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 appraisals. In order not to chill bidding, the appraisals have not been submitted in connection with this Sale Motion.

Brothers Hugh O'Neill and Raymond J. Vercruysse abstain from discussions and votes of approval thereby avoiding any real or perceived conflicts of interest issues.

36. 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 Houses.

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

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

38. 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).

39. The Purchase Agreement is the product of extensive arms'-length negotiations between CBI and Iona. 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 Houses is the result of good faith arms'-length negotiations and (ii) Iona or the Successful Bidder is entitled to all of the protections of Bankruptcy Code § 363(m).

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

40. While CBI believes that the Houses 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 non-bankruptcy 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 Houses “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).

41. To the extent that any liens exist on the Houses, CBI is confident that it will obtain any necessary consent on or before the Sale Hearing, thereby satisfying Bankruptcy Code § 363(f)(2).⁴ Additionally, CBI is confident that the proceeds from the sale of the Houses will exceed the value of any lien on the Houses, thereby satisfying Bankruptcy Code § 363(f)(3).

⁴ The Debtor does not believe any liens exist against the Houses and all net sale proceeds will be made available to the Debtor’s bankruptcy estate.

D. Extraordinary Provisions

42. While CBI does not believe that Iona is an insider, out of an abundance of caution, and as required pursuant to the amended Guidelines for the Conduct of Asset Sales, CBI makes the following disclosures “to ensure the fairness of the sale process and the proposed transaction.” Amended Guidelines at ID1.⁵

43. After careful consideration by its board of trustees and its administration, Iona indicated to CBI its interest in purchasing the Houses. After negotiations were completed, Iona’s board of trustees approved the purchase of the Houses. Brothers Hugh O’Neill and Raymond J. Vercruyse are trustees of Iona and CBI. The duality of interest was disclosed to Iona’s board and, as such, both Brothers abstained from any discussion Iona’s board had regarding the purchase of the Houses and further abstained from Iona’s vote to approve the purchase of the Houses from CBI.

44. As discussed hereinabove, Brothers Hugh O’Neill and Raymond J. Vercruyse are trustees of Iona and CBI. The duality of interest was disclosed to CBI’s trustees and, as such, both Brothers abstained from any discussion CBI’s board had regarding the sale of the Houses and further abstained from CBI’s vote to approve the sale of the Houses to Iona.

45. 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 Houses. As discussed above, the Sale Procedures were developed consistent with CBI’s objective of promoting active

⁵ 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.

bidding that will result in the highest and best offer the marketplace can sustain for the Houses while affording appropriate protection to Iona. 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 Houses 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.

NO PRIOR REQUEST

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

NOTICE AND PUBLICATION

47. 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; 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").

48. 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; (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 Houses; (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 Houses; (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").

49. 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.

50. 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 Houses 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 September 19, 2012.

51. 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 “D”**): after a hearing on shortened notice (a) approving the Sale Procedures; (b) scheduling an Auction and Sale Hearing; and (c) approving the Notice of Auction and Sale Hearing. In addition, CBI respectfully requests that this Court at the Sale Hearing enter an order: (a) authorizing the CBI to sell the Houses 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
August 23, 2012

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