Hearing Date: December 18, 2024 at 2:00 p.m.
Objections Due By: December 11, 2024 at 4:00 p.m.

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
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In re:

SHELTERING ARMS CHILDREN AND FAMILY SERVICES, INC.

Chapter 11

Case No. 24-41037 (JMM)

Debtor.
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DEBTOR'S MOTION FOR ENTRY OF AN ORDER: (A) APPROVING THE DEBTOR'S PRIVATE SALE OF ITS REAL PROPERTY LOCATED AT 2749 UNIVERSITY AVENUE, BRONX, NEW YORK 10468, FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, AND (B) GRANTING RELATED RELIEF

Sheltering Arms Children and Family Services, Inc. ("**Sheltering Arms**" or the "**Debtor**")[1], as debtor and debtor-in-possession in this chapter 11 case (the "**Chapter 11 Case**"), by and through its attorneys, Garfunkel Wild, P.C., hereby brings this motion (the or this "**Motion**") for the entry of an order: (a) approving the Debtor's private sale of its real property located at 2749 University Avenue, Bronx, New York 10468 (the "**Property**"), free and clear of all liens, claims, encumbrances, and other interests, and (b) granting related relief. In support of this Motion, the Debtor respectfully represents as follows:

[1] The last four digits of the Debtor's federal tax identification number are 9095.

SUMMARY OF RELIEF REQUESTED

1. As the Court is aware, prior to the commencement of this Chapter 11 case the Debtor maintained a wide array of innovative and compassionate social services programs, including several residential facilities for developmentally disabled adults under the auspices of the New York State Office for People with Developmental Disabilities ("**OPWDD**"). One of those residential facilities was housed at the Property. In order to best assure the continued operation of the residential facility located at the Property, the Debtor worked with OPWDD to transition the operation of that program to Rising Ground, Inc. ("**Rising Ground**" or the "**Purchaser**"). In connection with that transition, on or about June 30, 2023, the Debtor entered into a triple net lease for the Property so that the Rising Ground, and more importantly the resident clients, could remain in the homes.

2. In connection with the negotiation and execution of the program transition and triple net lease, the Debtor, together with Rising Ground and OPWDD, negotiated certain key terms for the sale of the Property to Rising Ground. Subsequent to the filing of this Chapter 11 case, the Debtor continued to work with both Rising Ground and OPWDD to work through various remaining issues pertaining to such a sale and, by this Motion, the Debtor is seeking Bankruptcy Court approval of a private sale of the Property to Rising Ground.

JURISDICTION

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105(a) and 363 of Title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), Rule 6004-1 of the Local Bankruptcy Rules (the "**Local Rules**"), Administrative Order No. 557 of the United States Bankruptcy Court for the

Eastern District of New York (the "**Sale Guidelines**"), and sections 510 and 511 of the New York State Not-For-Profit Corporation Law (the "**NFPCL**").

GENERAL BACKGROUND

4. On March 7, 2024 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

5. The Debtor remains in possession of its assets and operations and continues to manage its business as a debtor-in-possession pursuant to section 1107 and 1108 of the Bankruptcy Code.

6. No examiner, trustee, or creditors' committee has been appointed.

7. The factual background regarding the Debtor, including its current and historical business operations and the factors which precipitated the filing of the Debtor's Chapter 11 Case, are set forth in detail in the Affidavit of Judith Pincus Pursuant to Local Rule 1007-4 and in Support of First Day Motion (the "**Pincus Affidavit**") [**ECF 11**], which is relied upon in connection with the relief requested herein. In the interest of brevity, the facts and statements set forth in the Pincus Affidavit are incorporated herein by reference.

RELIEF REQUESTED

8. As noted above, prior to the Petition Date, the Debtor transferred a residential program operated at the Property to the Purchaser. Purchaser currently occupies the Property pursuant to a triple net Lease Agreement, which provides, among other things, for all expenses relating to the Property to be paid by the Purchaser.

9. The Debtor owns a fee interest in the Property, which is more particularly described in the Purchase Agreement (as defined below). The Property is subject to a mortgage lien (the "**Mortgage**") in favor of First Commerce LLC as successor to Citibank N.A. ("**Mortgage Lender**").

10. The Debtor has entered into a Contract of Sale, dated as of November 15, 2024 (the "**Purchase Agreement**"), with Rising Ground, which provides for the sale of the Property to the Purchaser (the "**Sale**") for $1,175,000.00 (the "**Purchase Price**") and other good and valuable consideration, as more fully described in the Purchase Agreement. A true and correct copy of the Purchase Agreement is annexed hereto as **Exhibit A**.[2]

11. By this Motion, the Debtor seeks entry of an Order: (a) approving the Sale, as described and contemplated by the Purchase Agreement, free and clear of all liens, claims, encumbrances, and other interests; and (b) granting related relief.

THE PURCHASE AGREEMENT

12. The following is a summary of the material terms of the Purchase Agreement.[3]

(a) Purchase Price: $1,175,000.00.

(b) Deposit: $50,000.00.

(c) Bankruptcy Court Approval: Closing of the Sale shall be subject to the approval of the Bankruptcy Court (the "**Bankruptcy Court Approval**") which approval shall include approval pursuant to sections 510 and 511 of the NFPCL.

(d) Financing: The Closing is contingent on Purchaser receiving a Prior Property Approval from OPWDD for both the agreed Purchase Price as well as the Renovation Budget, which includes amounts deemed necessary for the future operation of the facility.[4]

(e) Closing: Closing shall take place upon the earlier of the date upon which all closing conditions are satisfied and/or waived by the applicable party or the date which is no later than nine (9) months from Bankruptcy Court approval of this sale.

(f) No Reliance on Warranties or Representations: The Property will be conveyed by the Debtor to, and accepted by the Purchaser on an "as is where is"

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[2] Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Purchase Agreement.

[3] This summary of the Purchase Agreement is provided for the convenience of the Court and parties-in-interest. In the event of any inconsistency between the summary set forth in this Motion and the terms of the Purchase Agreement, the terms of the Purchase Agreement shall govern.

[4] Both the Debtor and the Purchaser have been in regular contact with OPWDD and the Debtor anticipates that the Prior Property Approval and related financing can be obtained in the time periods provided.

basis, except as expressly provided in the Purchaser Agreement and any order granting this Motion.

13. The Purchase Agreement, which is based on separate appraisals obtained by the Debtor and OPWDD and is the product of arm's-length negotiations between the Debtor and the Purchaser, is fair and reasonable and in the best interests of the Debtor's estate, its creditors, and other parties-in-interest.

14. Pursuant to the Sale Guidelines, the Debtor is required to highlight any "extraordinary provisions" including the use of sale proceeds without further Court order. Here, in order to curtail the ongoing accrual of interest, the Debtor intends to utilize a portion of the proceeds of the sale to satisfy the outstanding Mortgage obligations secured by the Property. In addition, and subject to confirmation of a chapter 11 plan, the Debtor intends that the sale of the Property be exempt from any transfer or stamp taxes, in accordance with section 1146(c) of the Bankruptcy Code.

BASIS FOR RELIEF REQUESTED

15. The Debtor seeks the approval of a private sale of the Property to the Purchaser, in accordance with the Purchase Agreement and pursuant to sections 105(a) and 363 of the Bankruptcy Code and applicable non-bankruptcy law, including, without limitation, sections 510 and 511 of the NFPCL free and clear of all liens and claims, interests and encumbrances, except as otherwise set forth in the Purchase Agreement. This relief is appropriate and in line with the Debtor's mission given the Purchaser's current operation at the Property of the Debtor's former group home for persons with developmental disabilities and its commitment to continue such operation under the auspices of OPWDD. In addition, the request for a private sale is premised on the good faith nature of the negotiations by and among the Debtor, the Purchaser and OPWDD, as

well the adequacy of the consideration being received by the estate, which is supported by appraisals,

A. <u>The Sale of the Property is an Exercise of the Debtor's Sound Business Judgment</u>

16. Bankruptcy Code section 363(b) governs transactions outside the ordinary course of business involving property of the debtor's estate and provides, in relevant part, that, "[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).

17. Furthermore, Bankruptcy Rule 6004(f)(1) allows for a debtor to conduct such a transaction by private sale. *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998) (stating that the debtor has authority to conduct public or private sales of estate property). Courts may allow a chapter 11 debtor to sell assets outside the ordinary course of business by private sale when the debtor demonstrates that the sale is permissible pursuant to section 363(b) of the Bankruptcy Code. *See, e.g., Palermo v. Pritam Realty, Inc. (In re Pritam Reality, Inc.),* 233 B.R. 619 (D.P.R. 1999) (upholding the bankruptcy court's approval of a private sale conducted by a chapter 11 debtor); *In re MF Glob. Inc.*, 535 B.R. 596, 608 (Bankr. S.D.N.Y. 2015) (approving a private sale of a chapter 11 debtor's assets where the standards of section 363(b) were met); *In re Condere Corp.*, 228 B.R. 615 (Bankr. S.D. Miss. 1998) (same); *In re Wieboldt Stores, Inc.*, 92 B.R. 309 (N.D. Ill. 1988) (affirming the right of a chapter 11 debtor to transfer assets by private sale); *In re Embrace Systems Corp.*, 178 B.R. 112, 123 (Bankr. W.D. Mich. 1995) (citing *In re Blue Coal Corp.*, 168 B.R. 553, 564 (Bankr.M.D.Pa.1994)) ("A large measure of discretion is available to a bankruptcy court in determining whether a private sale should be approved.").

18. A debtor's sale or use of property of the estate outside the ordinary course of business should be approved by the Court if the debtor can demonstrate a sound business justification for the proposed transaction. *See In re Iridium Operating LLC*, 478 F.3d 452, 466 (2d

Cir. 2007) ("In this Circuit, the sale of an asset of the estates under § 363(b) is permissible if the 'judge determining [the] § 363(b) application expressly find[s] from the evidence presented before [him or her] at the hearing [that there is] a good business reason to grant such an application.'" (citing *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 772 F.2d 1063, 1071 (2d Cir. 1983)); *Licensing by Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380, 388 (2d Cir. 1997) (same).

19. It should also be noted, that when a Debtor is a not-for-profit corporation, special considerations arise with respect to the analysis of the business justifications supporting a section 363 sale including, without limitation, considerations of the Debtor's mission. *In re Federation Employment and Guidance Center, Inc. d/b/a FEGS*, Case No. 15-71074 (REG) (Bankr. E.D.N.Y. Feb. 6, 2018) [ECF 1050, ¶¶ 7, 9] (Order confirming chapter 11 plan providing for private sale of Debtor's assets in accordance with its mission); *In re United Healthcare Sys., Inc.*, No. CIV. A. 97-1159(NHP), 1997 WL 176574, at *5 (D.N.J. Mar. 26, 1997) (citations omitted) ("When analyzing an articulated business reason for the sale, the bankruptcy court must also take into consideration the fact that a debtor is a charitable institution."); *cf. In re HHH Choices Health Plan*, LLC, 554 B.R. 697 (Bankr. S.D.N.Y. 2016) (Approving the sale of substantially all the assets of a not-for-profit corporation to one bidder over another, based on several considerations, including: (1) that the sale to the approved bidder was, on the whole, better for the groups who depended on services provided by the not-for-profit; (2) sale to the approved bidder was "more consistent with the mission of the company;" and (3) deference to the decision of the company's board.). In addition, Bankruptcy Code section 105(a) grants the Court the authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. §105(a). This provision is "the basis for a broad exercise of power

[by the Court] in the administration of a bankruptcy case." *In re Flores*, 291 B.R. 44, 54 (Bankr. S.D.N.Y. 2003); *In re Lionel Corp.*, 722 F.2d 1063, 1069 (2d Cir. 1983) ("To further the purposes of Chapter 11 reorganization, a bankruptcy judge must have substantial freedom to tailor his orders to meet differing circumstances.").

20. Under the facts and circumstances of this case, the private sale of the Property to the Purchaser should be approved. The Debtor's proposed private sale achieves a substantial benefit to its creditors, by bringing in excess of $750,000 into the estate after satisfaction of the Mortgage secured by Property. Additionally, the Sale of the Property should be permitted by private sale as the Purchaser is currently operating the Debtor's former programs at the Property, and the private sale of the Property will allow this to continue, which will benefit the Debtor, its estate, its mission, and its former client population.

21. Based upon the foregoing, the Debtor submits that the sale of the Property through a private sale to the Purchaser offers the greatest benefit to the Debtor's estate, and is an exercise of the Debtor's sound business judgment.

B. <u>The Property Should be Sold Free and Clear of Liens, Claims, Encumbrances and Interests</u>

22. Pursuant to section 363(f) of the Bankruptcy Code, a trustee may sell property under Bankruptcy Code section 363(b) free and clear of liens, claims and encumbrances if one of the following conditions is satisfied:

> (i) applicable non-bankruptcy law permits the sale of the property free and clear of such interest; (ii) the entity holding the lien, claim or encumbrance consents to the sale; (iii) the interest is a lien and the price at which such property to be sold is greater than the aggregate value of all liens on the property; (iv) the interest is in bona fide dispute; or (v) the entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of its interest.

11 U.S.C. § 363(f); *see In re Smart World Tech., LLC*, 423 F.3d 166, 169 n.3 (2d Cir. 2005) ("Section 363 permits sales of assets free and clear of claims and interests…. It thus allows [a

purchaser] to acquire assets [from a debtor] without any accompanying liabilities."). As section 363(f) of the Bankruptcy Code is written in the disjunctive, the satisfaction of any one of the requirements enumerated in that provision suffices to permit the sale of the Property free and clear of all liens, claims, rights, interests or encumbrances. *See, e.g.*, *Abir v. Stern*, No. 09 cv 2872 (SJF), 2010 WL 1170060, at *2 (E.D.N.Y. Mar. 22, 2010); *In re Dundee Equity Corp*., 1992 WL 53743, at *4 (Bankr. S.D.N.Y. Mar. 6, 1992); *Citicorp Homeowners Servs., Inc. v. Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988); *In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002); *In re Westgate*, No. 07-17091, 2008 WL 3887607, at *2 (Bankr. D.N.J. Aug. 19, 2008).

23. Specifically, the Debtor proposes that any liens, claims or encumbrances asserted against the Real Estate be transferred to and attach to the proceeds of the sale of the assets and such other amounts payable to the Debtors under the final Sale Agreement, subject to the rights, claims, defenses, and objections, if any, of all interested parties with respect thereto. In addition to the Mortgage, to the extent any non-consensual liens or judgments exist (including the Mortgage, each an "**Encumbrance**" and, together with any other unknown encumbrances, collectively, the "**Encumbrances**"), the Debtor nonetheless believes the Property can be sold free and clear of such Encumbrances, based on one or more provisions of section 363(f) of the Bankruptcy Code.

24. Specifically, section 363(f)(2) is satisfied as to those parties that consent or do not object to the proposed sale. Those parties with an interest in the property, including the Mortgage Lender[5], will be given sufficient opportunity to object to the relief requested by the Debtor, and any such entity that does not object to the sale of the Property should be deemed to have consented. S*ee In re Enron Corp.*, No. 01-16034, 2004 WL 5361245 at *2 (Bankr. S.D.N.Y. Feb. 5, 2004) (order deeming all parties who did not object to proposed sale to have consented under section

[5] The Debtor reserves the right to satisfy the Mortgage at, or in connection with, the closing of the Sale.

363(f)(2)); *In re Enron Corp.*, No. 01- 16034, 2003 WL 21755006 at *2 (Bankr. S.D.N.Y. July 28, 2003) (same).

25. In addition, section 363(f)(5) is satisfied. Bankruptcy Code section 363(f)(5) is satisfied by the Sale Agreement because: (a) any entity holding an Encumbrance on the Property could be compelled to accept a monetary satisfaction of its Encumbrance; and (b) the Debtor proposes that any Encumbrance on the Property will attach to the net proceeds of the sale of the Property which greatly exceed the Encumbrances, subject to all claims and defenses that the Debtor and its estate may possess with respect thereto, with the same priority, validity and extent such Encumbrance had on the Petition Date. As a result, the sale of the Property free and clear of all Encumbrances satisfies section 363(f)(5) of the Bankruptcy Code.

26. For these reasons, any parties in interest that assert Encumbrances will be adequately protected by having their Encumbrances attach to the proceeds of the sale in the same order of priority, and with the same validity, force and effect that such parties had prior to the sale of the Property, subject to any claims and defenses that the Debtor and its estate may possess with respect thereto. Accordingly, section 363(f) of the Bankruptcy Code authorizes the transfer and conveyance of the Property free and clear of all liens, claims, encumbrances and all other interests.

27. Based upon all of the foregoing, sufficient cause exists for the sale of the Property free and clear of all of the Encumbrances, including, but not limited to, the Mortgage, with such Encumbrances to attach to the proceeds of the sale with the same priority, validity and extent that existed on the Petition Date.

C. The Purchaser Should be Afforded All Protections Under Section 363(m) of the Bankruptcy Code as a Good Faith Purchaser

28. Section 363(m) of the Bankruptcy Code protects a good faith purchaser's interest in property purchased from the estate notwithstanding that the sale conducted under section 363(b)

may later be reversed or modified on appeal. Specifically, section 363(m) states that: The reversal or modification on appeal of an authorization under [section 363(b)] ... does not affect the validity of a sale ... to an entity that purchased ... such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale ... were stayed pending appeal. 11 U.S.C. § 363(m); *see also Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994) ("Section 363(m) ... provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal"); *In re Stein & Day, Inc.*, 113 B.R. 157, 162 (Bankr. S.D.N.Y. 1990) ("pursuant to 11 U.S.C. § 363(m), good faith purchasers are protected from the reversal of a sale on appeal unless there is a stay pending appeal") (citations omitted).

29. The Second Circuit has indicated that a party would have to show fraud or collusion between a buyer and the debtor-in-possession or trustee in order to demonstrate a lack of good faith. *See Kabro Assocs. of West Islip, LLC, v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276, (2d Cir. 1997) ("[t]ypically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the [buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders" (quotation marks and citations omitted)); *see also In re Angelika Films 57th, Inc.*, Nos. 97 Civ. 2239 (MBM), 97 Civ. 2241 (MBM), 1997 WL 283412, at *7 (S.D.N.Y. May 29, 1997); In re Bakalis, 220 B.R. 525, 537 (Bankr. E.D.N.Y. 1998).

30. Here, the Purchaser and the Debtor have satisfied the requirements of section 363(m) of the Bankruptcy Code. The Purchase Agreement is the result of arm's-length, good-faith negotiations between the Debtor and the Purchaser, and each party has been represented by their respective professionals. The Debtor submits that the Purchaser is a "good faith" purchaser

within the meaning of section 363(m) of the Bankruptcy Code and should be entitled to the protections provided for thereunder. Accordingly, the Debtor requests that the Court make a finding that the Purchaser is entitled to the protections of section 363(m) of the Bankruptcy Code.

D. Authorization for the Debtor to Dispose of the Property Pursuant to Sections 510 and 511 of the New York State Not-For-Profit Corporation Law

I. The Bankruptcy Court Can Approve the Disposition of the Property Pursuant to Sections 510 and 511 of the New York State Not-For-Profit Corporation Law

31. The Debtor, is a tax-exempt not-for-profit entity under the Internal Revenue Code. Accordingly, pursuant to section 363(d) of the Bankruptcy Code, the sale, use, or lease of property under section 363(b) of the Bankruptcy Code is required to comply with applicable non-bankruptcy law. 11 U.S.C. § 363(d). As such the Debtor must satisfy applicable not-for-profit laws in connection with the proposed disposition of the Property, notably sections 510 and 511 of the NFPCL. N.Y. Not-for-Profit Corp. Law §§ 510, 511.

32. Pursuant to NFPCL § 510, since the Debtor is a memberless charitable not-for-profit corporation, with less than twenty-one (21) board members, the transfer of all or substantially all of its assets must be approved by the affirmative vote of at least two-thirds of the members of its board of directors and it must obtain court approval of the same. *Id.* The Board previously approved the transaction.

33. The United States Bankruptcy Court for the Southern District of New York analyzed the interplay between section 363(d) of the Bankruptcy Code and sections 510 and 511 of the NFPCL, noting that sections section 363(d) was added to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("**BAPCPA**"), which also contained an additional provision, section 1221(e) of BAPCPA, an enforceable part of the statute governing the interpretation of section 363(d), but which otherwise does not appear in the

Bankruptcy Code. *In re HHH Choices Health Plan, LLC,* 554 B.R. 697, 700 (Bankr. S.D.N.Y. 2016) (citing Pub. L. No. 109–8, § 1221(e) (2005)). Section 1221(e) of BAPCPA states, as a rule of construction, that:

> Nothing in this section shall be construed to require the court in which a case under chapter 11 of title 11, United States Code, is pending to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.

Pub. L. No. 109–8, § 1221(e) (2005).

34. While outside of bankruptcy a transfer of assets by a not-for-profit entity requires the approval of the New York State Supreme Court pursuant to sections 510 and 511 of the NFPCL, the court in *HHH Choices* held that, in a bankruptcy case, any determination that would be made by a state court under section 511 of the NFPCL becomes a determination to be made by the bankruptcy court. As Judge Wiles expressly states in *HHH Choices*:

> [C]learly, the amendments to the Bankruptcy Code do not mean that that state court approval is still required because section 1221(e) of the BAPCPA explicitly says otherwise; it says I cannot interpret those provisions of the amended statute to require the approval of any other court for the transfer of property. My interpretation of the statute is that substantive state law requirements are applicable, but that I am the one who is supposed to apply them, not the New York State Court. Not that that has turned out to be such an easy or welcome task in this particular case; nevertheless, it is my obligation. Similarly, my judgments on these issues are subject to appeal to the district court and higher courts, but I do not believe they are subject to review or to reconsideration or challenge or veto by a state court.

HHH Choices, 554 B.R. at 700.

35. Accordingly, by this Motion, the Debtor is seeking approval of the disposition of the Property pursuant to sections 510 and 511 of NFPCL.

II. The Proposed Transaction Satisfies the Standard to Approve the Disposition of the Property Under Section 511 of the New York State Not-For-Profit Corporation Law

36. Section 511 of the NFPCL requires the application of a two-prong test before authorizing the transaction. *Church of God of Prospect Plaza v. Fourth Church of Christ, Scientist,*

of Brooklyn, 76 A.D.2d 712, 717 (2d Dep't 1980), *aff'd*, 54 N.Y.2d 742 (1981). First, the consideration and the terms of the transaction must be fair and reasonable to the corporation. N.Y. Not-for-Profit Corp. Law § 511(d). To do this, it is necessary to look at the fair market value at the time the transaction was agreed to. *See*, *e.g.*, *Wolkoff v. Church of St. Rita*, 132 Misc.2d 464, 471 (Sup. Ct. Richmond County 1986), *aff'd*, 133 A.D.2d 267 (2d Dep't 1987) (holding that the current market value, in the absence of special circumstances, is the most reliable index for calculating what constitutes fair consideration for the sale of real property, and the date for determining such value is the date of the contract); *see also Scher v. Yeshivath Makowa Corp.*, 54 A.D.3d 839, (2d Dep't 2008); *Application of Church of St. Francis De Sales of New York City*, 110 Misc.2d 511, 512 (Sup. Ct. New York County 1981) (holding that a court must look at fair market value when contract was made, not at the date of petition).

37. Here, as mentioned above, the Purchaser is currently operating the Debtor's former programs at the Property. Allowing the Sale of the Property to the Purchaser will allow the Purchaser to continue operating the Debtor's former programs at the Property and is therefore in the best interests of the Debtor, its estate, the Debtor's former client population, and parties in interest. Additionally, the Purchase Agreement is the result of arm's-length, good-faith negotiations between the Debtor and the Purchaser, is based on separate appraisals obtained by the Debtor and OPWDD, and each party has been represented by their respective professionals. Given this, the Debtor believes that the Purchase Price is fair and reasonable in light of the circumstances and therefore satisfied the first prong of the analysis under section 510 and 511 of the NFPCL.

38. The second prong requires that the purposes of the corporation be promoted through the transfer of assets. N.Y. Not-for-Profit Corp. Law § 511(d). "The second prong of the test requires the court to determine that the sale would benefit the corporation or that the best

interest of its members would be promoted thereby[,]" and the "court may consider whether corporate purposes would have been served or the best interests of the membership promoted at the time the contract was made, but it should be guided primarily by whether those ends would be realized in light of conditions prevailing at the time the issue is presented to the court." *Church of God of Prospect Plaza*, 76 A.D.2d at 717.

39. As discussed by the bankruptcy court in *HHH Choices*, there is no clear guidance under New York case law on how to balance the two prongs of section 511(d) of NFPCL but that the consideration of paying creditors as much as possible and serving the mission of the corporation, "are supposed to be taken into account and balanced in a reasonable way, and with no other requirement or particular weight to be applied." *HHH Choices*, 554 B.R. at 704.

40. Here, as mentioned above, the Purchaser is currently operating the Debtor's former programs at the Property. Allowing the Sale of the Property to the Purchaser will allow the Purchaser to continue operating the Debtor's former programs at the Property while simultaneously bringing in excess of $750,000 to the estate after satisfaction of the Mortgage, and is therefore in the best interests of the Debtor, its estate, the Debtor's former client population, and parties in interest. As such, the Debtor submits that the proposed Sale is fair and reasonable in light of the circumstances of this case. Accordingly, it is the position of the Debtor that the substantive requirements of section 511 of the NFPCL have been met.

III. This Motion Satisfies the Procedural and Notice Requirements of Section 511 of the New York State Not-For-Profit Corporation Law

41. In addition to the substantive requirements discussed above, sections 511(a)-(c) of the NFPCL impose procedural and notice requirements with respect to a petition by a not-for-profit corporation to transfer all or substantially all of its assets. Specifically, section 511(a) of the NFPCL requires that such a petition set forth:

> 1. The name of the corporation, the law under or by which it was incorporated.
>
> 2. The names of its directors and principal officers, and their places of residence.
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> 3. The activities of the corporation.
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> 4. A description, with reasonable certainty, of the assets to be sold, leased, exchanged, or otherwise disposed of, or a statement that it is proposed to sell, lease, exchange or otherwise dispose of all or substantially all the corporate assets more fully described in a schedule attached to the petition; and a statement of the fair value of such assets, and the amount of the corporation's debts and liabilities and how secured.
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> 5. The consideration to be received by the corporation and the disposition proposed to be made thereof, together with a statement that the dissolution of the corporation is or is not contemplated thereafter.
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> 6. That the consideration and the terms of the sale, lease, exchange or other disposition of the assets of the corporation are fair and reasonable to the corporation, and that the purposes of the corporation, or the interests of its members will be promoted thereby, and a concise statement of the reasons therefor.
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> 7. That such sale, lease, exchange or disposition of corporate assets, has been recommended or authorized by vote of the directors in accordance with law, at a meeting duly called and held, as shown in a schedule annexed to the petition setting forth a copy of the resolution granting such authority with a statement of the vote thereon.
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> 8. Where the consent of members of the corporation is required by law, that such consent has been given, as shown in a schedule annexed to the petition setting forth a copy of such consent, if in writing, or of a resolution giving such consent, adopted at a meeting of members duly called and held, with a statement of the vote thereon.
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> 9. A request for court approval to sell, lease, exchange or otherwise dispose of all or substantially all the assets of the corporation as set forth in the petition.

N.Y. Not-for-Profit Corp. Law § 511(a).

42. The Debtor submits that the Motion, which incorporates the Pincus Affidavit, contains most of the information required by section 511(a) of the NFPCL, and that the names and residences of its directors and principal officers appears in the Debtor’s Statement of Financial Affairs [**ECF 64**]. With respect to section 511(a)(7) of the NFPCL, the resolution of the Debtor’s board of directors which authorized the commencement of this Chapter 11 Case, and was included

with the Debtor's voluntary chapter 11 petition, also authorized the sale of substantially all of the Debtor's assets through this Chapter 11 Case, including, but not limited to, the Property [**ECF 1**].

43. With respect to notice, section 511(b) of the NFPCL requires a minimum fifteen (15) day notice period to the New York State Attorney General and section 511(c) of the NFPCL requires notice upon all of a petitioner's creditors. The Debtor submits that: (a) the Motion is being served on the attorney general pursuant to Bankruptcy Rule 2002(a)(2) with a minimum of twenty-one (21) days' notice; and (b) that creditors are sufficiently noticed pursuant to the *Amended Order Establishing Case Management Procedures* [**ECF 39**] (the "**Case Management Order**") previously entered by the Court and that such notice is more than the minimum notice required under section 511 the NFPCL. The Debtor further respectfully submits that noticing all creditors in this Chapter 11 Case will cause unnecessary confusion and will drain the estate's limited resources.

44. For the foregoing reasons, the Debtor submits that this Motion, together with the information previously filed in this Chapter 11 Case, are sufficient to satisfy the procedural and notice provisions of section 511 of the NFPCL.

45. Accordingly, as the Debtor has satisfied the substantive, procedural, and notice requirements of sections 510 and 511 of the NFPCL, the Debtor respectfully requests that the Court enter an order approving the disposition of the Property pursuant to sections 510 and 511 of the NFPCL.

E. Exemption from New York State Real Estate Transfer Taxes Subject to Confirmation of a Chapter 11 Plan

46. The Debtor seeks a tax exemption, subject to confirmation of a chapter 11 plan. Once a plan has been confirmed, the Debtor submits that the sale of the Property will be entitled to exemption from New York State real estate transfer tax because they are being pursued under

the Bankruptcy Code and are an integral part of the chapter 11 plan to be filed in that it will maximize creditor recoveries. Specifically, the transfer of the Property will be exempt from New York City real property transfer tax under section 1146(a) of the Bankruptcy Code. Section 1146(a) states: "The issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of this title, may not be taxed under any law imposing a stamp tax or similar tax." 11 U.S.C. § 1146(a). *See generally, In re NEW 118th, Inc.*, 398 B.R. 791, 797-98. (Bankr. S.D.N.Y. 2009) (the transfers of real property pursuant to a sale under section 363 qualified for this exception even though the section 363 sale occurred pre-confirmation and the transfer of real property is necessary to the consummation of a plan).

47. Here, the proceeds of the sale of the Property will be an important component of consummation of the plan. Accordingly, the Debtor respectfully requests that the Court make findings that affirm these conclusions. *See, e.g., In re Long Beach Medical Center, et al.*, Case No. 14-70593 (AST) (Bankr. E.D.N.Y.) [ECF 184] (pre-confirmation section 363 sale was exempt from New York real estate transfer tax).

F. <u>Request for Waiver of Fourteen Day Stay Period Under Bankruptcy Rule 6004(h)</u>

48. Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). The Debtor respectfully requests a waiver of the fourteen day stay period set forth in Bankruptcy Rule 6004(h) to allow the time within which the conditions to the Closing of the Sale to begin immediately, thereby accelerating the process of consummating the Sale of Property to the Purchaser.

NOTICE

49. Notice of this Motion has been given to: (a) the parties on the Master Service List (as defined in the Case Management Order); (b) the Office of the New York State Attorney General; (c) counsel to OPWDD; (d) the Mortgage Lender; and (e) counsel to the Purchaser.

NO PRIOR REQUEST

50. No prior motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form annexed hereto as **Exhibit B**, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: Great Neck, New York
November 22, 2024

GARFUNKEL WILD, P.C.

By: /s/ Adam T. Berkowitz
Adam T. Berkowitz, Esq.
Michael D. Goldberg, Esq.
111 Great Neck Road
Great Neck, New York 11021
Telephone: (516) 393-2200
Facsimile: (516) 466-5964

Counsel for the Debtor
and Debtor-in-Possession

Exhibit A

Purchase and Sale Agreement

(See Attached)

CONTRACT OF SALE

Jointly Prepared by the Real Property Section of the New York State Bar Association, the New York State Land Title Association, the Committee on Real Property Law of the Association of the Bar of the City of New York and the Committee on Real Property Law of the New York County Lawyers' Association. (11/00)

CONSULT YOUR LAWYER BEFORE SIGNING THIS CONTRACT.

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

WARNING: PLAIN LANGUAGE. No representation is made that this form of contract for the sale and purchase of real estate complies with Section 5-702 of the General Obligations Law ("Plain Language").

CONTRACT OF SALE made as of **November 15, 2024** between

EPISCOPAL SOCIAL SERVICES OF NEW YORK, INC., n/k/a SHELTERING ARMS CHILDREN AND FAMILY SERVICES, INC.

Address: 2 Park Avenue, New York, N.Y. 10016.

Social Security Number/Fed. I. D. No(s): hereinafter, collectively, called "Seller" and

RISING GROUND, INC.

Address: **1333 Broadway, 8th Floor, New York, N.Y. 10018-1120**

Social Security Number/Fed. I. D. No(s): hereinafter called "Purchaser."

The parties hereby agree as follows:

1. **Property.** Seller shall sell and convey and Purchaser shall purchase the property, together with all buildings and improvements thereon known as: Street Address: 2749 University Avenue, Bronx, N.Y. 10468 ("Property" or "Premises").
Tax Map Designation: **See Attached Schedule A**
Together with Seller's ownership and rights, if any, to land lying in the bed of any street or highway, opened or proposed, adjoining the Property to the center line thereof, including any right of Seller to any unpaid award by reason of any taking by condemnation and/or for any damage to the Property by reason of change of grade of any street or highway. Seller shall deliver at no additional cost to Purchaser, at Closing (as hereinafter defined), or thereafter, on demand, any documents that Purchaser may reasonably require for the conveyance of such title and the assignment and collection of such award or damages. The sale shall take place in accordance with the terms and conditions of this Agreement as reflected in the Order of the of the Bankruptcy Court with jurisdiction over the proceeding, entitled Sheltering Arms Children and Family Services, Inc., Debtor (1-24-41037-jmm) ("Proceeding"). The effective date of this Agreement shall be the date that the Bankruptcy Court shall approve the terms and conditions of the sale herein ("Effective Date")

2. **Personal Property.** Subject to Article 49 herein, this sale also includes all fixtures and articles of personal property now attached ~~or appurtenant~~ to the Property, which are of de minimis value. All such items if and to the extent existing within Property on the date hereof shall be accepted in their "as is" condition on the date hereof, wear and tear excepted.

3. **Purchase Price.** The purchase price is **$1,175,000.00** payable as follows:
   (a) on the signing of this contract ("Contract" or "Agreement"), by Purchaser's good check, payable to the Escrowee (as hereinafter defined), subject to collection, or by wire transfer to Escrowee's account the receipt of which is hereby acknowledged, to be held in escrow pursuant to paragraph 6 of this contract (the "Down payment"): $50,000.
   (b) balance at Closing in accordance with the terms herein:$1,125,000.

4. **Down payment in Escrow.** (a) Seller's attorney ("Escrowee") shall hold the Down payment in escrow in a segregated bank account, as follows: at **Bank of America, 100 West 33rd Street, New York, NY 10001 ("BOA")** until Closing or sooner termination

of this contract and shall pay over or apply the Down payment in accordance with the terms of this paragraph. Escrowee shall hold the Down payment in a non-interest-bearing account for the benefit of the parties. Upon such disbursement in accordance with the terms of this paragraph, Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

(a) The parties acknowledge that, Escrowee is acting solely as a stakeholder at their request and for their convenience and that Escrowee shall not be liable to either party for any act or omission on its part unless taken or suffered in bad faith or in willful disregard of this contract or involving gross negligence on the part of Escrowee. Seller and Purchaser jointly and severally (with right of contribution) agree to defend (by attorneys selected by Escrowee), indemnify and hold Escrowee harmless from and against all costs, claims and expenses (including reasonable attorneys' fees) incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith or in willful disregard of this contract or involving gross negligence on the part of Escrowee.

(b) Escrowee may act or refrain from acting in respect of any matter referred to herein in full reliance upon and with the advice of counsel which may be selected by it (including any member of its firm) and shall be fully protected in so acting or refraining from acting upon the advice of such counsel.

(c) Escrowee acknowledges receipt of the Down payment by check subject to collection or by wire transfer, as applicable, and Escrowee's agreement to the provisions of this paragraph by signing in the place indicated on the signature page of this contract.

(d) Escrowee or any member of its firm shall be permitted to act as counsel for Seller in any dispute as to the disbursement of the Down payment or any other dispute between the parties whether or not Escrowee is in possession of the Down payment and continues to act as Escrowee and shall not be disqualified from representation by reason of its position at Escrowee.

(e) Escrowee shall be liable to Purchaser for loss of the Down Payment except for any loss caused by the willful misconduct or gross negligence of BOA.

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

(a) Omitted;

(b) Wire transfer or Good bank check of Purchaser drawn on or official check issued by any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York, unendorsed and payable to the order of Seller, or as Seller may otherwise direct upon reasonable prior written notice by email to Purchaser;

(c) As to money other than the purchase price payable to Seller at Closing, uncertified check of Purchaser up to the amount of $500.00; and

(d) As otherwise agreed to in writing by Seller or Seller's attorney.

6. **Permitted Exceptions.** The Property is sold and shall be conveyed subject to the following, provided the same do not render title unmarketable or prevent the use of the Property:

(a) Zoning, environmental and subdivision laws and regulations, and landmark, historic or wetlands designation, provided that they are not violated by the existing buildings and improvements erected on the property or their use, to the extent that the title insurer will not defend against such encroachments;

(b) Consents for the erection of any structures on, under or above any streets on which the Property abut;

(c) Encroachments of stoops, areas, cellar steps, trim and cornices, if any, upon any street or highway

(d) The other matters, if any, including survey exceptions, set forth in a Rider attached.

(e) Notwithstanding anything herein to the contrary but subject to the first sentence of this section, Purchaser shall take as is title to the Property, including all encumbrances, except for any mortgage(s) currently encumbering the Property and for such encumbrances or impositions placed on the Property by Seller from and after the commencement of the Proceeding which are not discharged by the order of the Bankruptcy Court approving the sale herein ("Sale Order").

7. **Omitted.**

8. **Seller's Representations.** (a) Seller represents and warrants to Purchaser that:

(i) Subject to the approval of the Bankruptcy Court, and Seller obtaining a written order pursuant to Sections 510 and 511 of the New York State Not-For-Profit Corporation Law, or the equivalent in the Proceeding, which may be the Sale Order, Seller has the full right, power and authority to sell, convey and transfer the same in accordance with the terms of this contract;

(ii) Seller is not a "foreign person," as that term is defined for purposes of the Foreign Investment in Real Property Tax Act, Internal Revenue Code ("IRC") Section 1445, as amended, and the regulations promulgated thereunder (collectively "FIRPTA");

(iii) Seller covenants and warrants that all of the representations and warranties set forth in this contract shall be true and correct at Closing.

(v) None of Seller's covenants, representations, warranties or other obligations contained in this Contract shall survive Closing.

9. **Condition of Property.** Purchaser acknowledges and represents that Purchaser is fully aware of the physical condition and state of repair of the Property and of all other property included in this sale, including environmental conditions of the Property, based on Purchaser's own inspection and investigation thereof, and that Purchaser is entering into this contract based solely upon such inspection and investigation and not upon any information, data, statements or representations, written or oral, as to the physical condition, state of repair, use, cost of operation or any other matter related to the Property or the other property included in the sale, given or made by Seller or its representatives, and shall accept the same "as is" in their present condition and state of repair, subject to reasonable use, wear, tear and natural deterioration between the date hereof and the date of closing (except as otherwise set forth in paragraph 16(e) and any Riders attached to this Contract), without any reduction in the purchase price or claim of any kind for any change in such condition by reason thereof subsequent to the date of this contract. As Purchaser is in possession of the Property, the conveyance of any rights of inspection are moot. Purchaser further represents and warrants that Purchaser has been in sole and exclusive possession of the Property since the commencement of the Lease and accepts the Property in its state and condition as of the date hereof and the Closing and has not permitted any third party to occupy the Premises by or through the rights of Purchaser other than the individuals residing at the Property pursuant to the governmental program being operated by the Purchaser.

10. **Insurable Title.** Seller shall give and Purchaser shall accept such title as any **title insurance company licensed in the State of New York** , shall be willing to approve and insure in accordance with its standard form of title policy approved by the New York State Insurance Department, subject only to the matters provided for in this contract and in accordance with Section 383 of the Bankruptcy Code.. In the event that there are encumbrances that need to be removed to convey insurable title, Seller hall undertake reasonable efforts to remove same, provided that Seller shall not have to expend more than $5,000 in connection therewith.

11. **Closing, Deed and Title.** (a) "Closing" means the settlement of the obligations of Seller and Purchaser to each other under this contract, including the payment of the purchase price to Seller, and, if required by the Sale Order, the delivery to Purchaser of a separate **bargain and sale deed with no covenants** in proper statutory short form for record, duly executed and acknowledged, so as to convey to Purchaser fee simple title to the Property, free of all encumbrances, except as otherwise herein stated. The deed shall contain a covenant by Seller as required by subd. 5 of Section 13 of the Lien Law unless otherwise addressed in the Sale Order.

(a) If Seller is a corporation, it shall deliver to Purchaser at the time of Closing (i) a resolution of its Board of Directors authorizing the sale and delivery of the deed, and (ii) a certificate by the Secretary or Assistant Secretary of the corporation certifying such resolution and setting forth facts showing that the transfer is in conformity with the requirements ~~of Section 909 of the Business Corporation Law~~ of Section 509 of the New York Not-for-Profit Corporation Law. The deed in such case shall contain a recital sufficient to establish compliance with that Section.

12. **Closing Date and Place.** Subject to the provisions of paragraph 55 of the Rider, Closing shall take place in escrow by mail at the office of Purchaser's title company.

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

(a) The accuracy, as of the date of Closing, of the representations and warranties of Seller made in this contract.

(b) The delivery by Seller to Purchaser of a certificate stating that Seller is not a foreign person, which certificate shall be in the form then required by FIRPTA, or a withholding certificate from the I.R.S. If Seller fails to deliver the aforesaid certificate or if Purchaser is not entitled under FIRPTA to rely on such certificate, Purchaser shall deduct and withhold from the purchase price a sum equal to 10% thereof (or any lesser amount permitted by law) and shall at Closing remit the withheld amount with the required forms to the Internal Revenue Service.

(c) The delivery of the Property and all building and improvements comprising a part thereof in the same condition as exists as of the Closing Date subject to the lease between Seller as landlord and Purchaser as tenant, dated as of June 30, 2023 ("Lease").

(d) The delivery by the parties of any other affidavits or approvals or court orders required as a condition of recording the deed, including, but not limited to a written order pursuant to Sections 510 and 511 of the New York State Not-For-Profit Corporation Law authorizing the sale of the Property, which may be the Sale Order.

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

15. **Apportionments and Other Adjustments; Water Meter and Installment Assessments.** (a) There shall be no apportionments at Closing in light of the fact that Purchaser has been in possession of the Property since the date of the Lease and has assumed responsibility for all obligations thereunder.

16. **Allowance for Unpaid Taxes, etc.** See Rider.

17. **Intentionally Omitted.**

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

(a) Purchaser shall order an examination of title in respect of the Property from a title company licensed or authorized to issue title insurance by the New York State Insurance Department or any agent for such title company within twenty (20) days after the execution of this contract Purchaser shall cause a copy of the title report and of any additions thereto to be delivered to the attorney(s) for Seller promptly after receipt thereof, but in no event less than thirty (30) days prior to the Closing Date.

(b) If required by the Title Company, Seller agrees to execute, acknowledge and deliver a standard and customary owner's title affidavit at Closing as modified for a debtor in chapter 11 and such other matters as the Title Company may reasonably require in order to issue a policy of title insurance to Purchaser in the manner required under this Agreement.

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

20. **Defaults and Remedies.** (a) If Purchaser defaults hereunder, Seller's sole remedy shall be to receive and retain the Down payment as liquidated damages, it being agreed that Seller's damages in case of Purchaser's default might be impossible to ascertain and that the Down payment constitutes a fair and reasonable amount of damages under the circumstances and is not a penalty and Purchaser and Seller shall have no further rights or obligations under this contract, except those expressly provided herein to survive the termination of this contract.

(a) If Seller defaults hereunder, Purchaser shall have such remedies as Purchaser shall be entitled to either (i) terminate this Agreement and receive a return of the Escrow Deposit or (ii) or obtain specific performance of Seller's obligations hereunder (it being expressly acknowledged by Purchaser that the remedy of specific performance is an appropriate remedy in the event of a default by Seller under this contract), provided that any action for specific performance shall be commenced within sixty (60) days after such default.

21. **OMITTED.**

22. **Notices.** Any notice or other communication ("Notice") shall be in writing and either (a) sent by either of the parties hereto or by their respective attorneys who are hereby authorized to do so on their behalf or by the Escrowee, return receipt requested, registered or certified mail, postage prepaid and email to the parties set forth below; or

(a) delivered in person or by overnight courier, with receipt acknowledged, to the respective addresses given in this contract for the party and the Escrowee, to whom the Notice is to be given, or to such other address as such party or Escrowee shall hereafter designate by Notice given to the other party or parties and the Escrowee pursuant to this paragraph. Each Notice mailed shall be deemed given on the third business day following the date of mailing the same, except that any notice to Escrowee shall be deemed given only upon receipt by Escrowee and each Notice delivered in person shall be deemed given when delivered (or if refused, the date of such refusal), and each Notice delivered by overnight courier shall be deemed given on the first business day following deposit with the overnight courier service marked for next-day delivery; or

(b) sent by telecopier and email to each party and its respective attorneys. Each Notice by telecopier and email shall be deemed given when transmission is confirmed by the sender's telecopier machine for telecopier and by acknowledged receipt by e-mail. A copy of each Notice sent to a party shall also be sent to the party's attorney. The attorneys for the parties are hereby authorized to give and receive on behalf of their clients all Notices and deliveries.

Notice to Seller: Attn: Judith Pincus

With a copy to: Golenbock Eiseman Assor Bell & Peskoe LLP, 711 Third Avenue, New York, New York 10017 Attn: David M. Rubin, Esq.

Notice to Purchaser: Attn: Laura Grossfield Birger

With a copy to: Cullen & Dykman LLP, 333 Earle Ovington Blvd., 2nd Floor, Uniondale, New York 1553, Attn: Konstantine Traganas, Esq.

Notice to Escrow Agent: Golenbock Eiseman Assor Bell & Peskoe LLP, 711 Third Avenue, New York, New York 10017 Attn: David M. Rubin, Esq.

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

23. **Broker.** Seller and Purchaser each represents and warrants to the other that it has not dealt with any real estate broker in connection with this sale other than NONE. Seller and Purchaser shall each indemnify and defend each other against any costs, claims and expenses, including reasonable attorneys' fees, arising out of the breach on their respective parts of any representation or agreement contained in this paragraph. The provisions of this paragraph shall survive Closing or, if Closing does not occur, the termination of this contract.

24. **Miscellaneous.** (a) All prior understandings, agreements, representations and warranties, oral or written, between Seller and Purchaser are merged in this contract; it completely expresses their full agreement and has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this contract.

(a) Neither this contract nor any provision thereof may be waived, changed or cancelled except in writing. This contract shall also apply to and bind the heirs, distributees, legal representatives, successors and permitted assigns of the respective parties. The parties hereby authorize their respective attorneys to agree in writing to any changes in dates and time periods provided for in this contract.

(b) Any singular word or term herein shall also be read as in the plural and the neuter shall include the masculine and feminine gender, whenever the sense of this contract may require it.

(c) The captions in this contract are for convenience of reference only and in no way define, limit or describe the scope of this contract and shall not be considered in the interpretation of this contract or any provision hereof.

(d) This contract shall not be binding or effective until duly executed and delivered by Seller and Purchaser.

(e) Seller and Purchaser shall comply with IRC reporting requirements, if applicable. This subparagraph shall survive Closing.

(f) Each party shall, at any time and from time to time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other in order to carry out the intent and purpose of this contract. This subparagraph shall survive Closing.

(g) This contract is intended for the exclusive benefit of the parties hereto and, except as otherwise expressly provided herein, shall not be for the benefit of, and shall not create any rights in, or be enforceable by, any other person or entity.

(h) If applicable, the complete and fully executed disclosure of information on lead-based paint and/or lead-based paint hazards is attached hereto and made apart hereof.

IN WITNESS WHEREOF, this contract has been duly executed by the parties hereto.

Seller:
EPISCOPAL SOCIAL SERVICES OF NEW YORK, INC., n/k/a SHELTERING ARMS CHILDREN AND FAMILY SERVICES, INC.

Signed by:
By: Judith Pincus
5187E06FE3C445D...
Judith Pincus
Chief Wind Down Officer

Purchaser:
RISING GROUND, INC.

By: Alan Mucatel (Nov 15, 2024 10:11 EST)
Alan Mucatel
Chief Executive Officer

Attorney for Seller:
Golenbock Eiseman Assor
Bell & Peskoe LLP
711 Third Avenue
New York, NY 10017
Attn: David M. Rubin
Tel: 212-907-7371
drubin@golenbock.com

Attorney for Purchaser:
Cullen and Dykman LLP
333 Earle Ovington Blvd., 2nd Floor
Uniondale, New York 11553
Attn: Konstantine Traganas
Tel: 516-296-9160
ktraganas@cullenllp.com

Receipt of the Down payment is acknowledged and the undersigned agrees to act in accordance with the provisions of paragraph 4 above.

Escrowee:

Golenbock Eiseman Assor Bell & Peskoe LLP

By:______________________________
Name:
Title:

IN WITNESS WHEREOF, this contract has been duly executed by the parties hereto.

Seller:
EPISCOPAL SOCIAL SERVICES OF NEW YORK, INC., n/k/a SHELTERING ARMS CHILDREN AND FAMILY SERVICES, INC.

Signed by:
Judith Pincus
5187506FE3C445D...

By: ______________________
Judith Pincus
Chief Wind Down Officer

Purchaser:
RISING GROUND, INC.

By: ______________________
Alan Mucatel (Nov 15, 2024 10:11 EST)
Alan Mucatel
Chief Executive Officer

Attorney for Seller:
Golenbock Eiseman Assor Bell & Peskoe LLP
711 Third Avenue
New York, NY 10017
Attn: David M. Rubin
Tel: 212-907-7371
drubin@golenbock.com

Attorney for Purchaser:
Cullen and Dykman LLP
333 Earle Ovington Blvd., 2nd Floor
Uniondale, New York 11553
Attn: Konstantine Traganas
Tel: 516-296-9160
ktraganas@cullenllp.com

Receipt of the Down payment is acknowledged and the undersigned agrees to act in accordance with the provisions of paragraph 4 above.

Escrowee:

Golenbock Eiseman Assor Bell & Peskoe LLP

By: ______________________
Name:
Title:

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4941190.4

RIDER TO CONTRACT OF SALE

SELLER:	**Episcopal Social Services of New York, Inc., n/k/a Sheltering Arms Children and Family Services, Inc.**
PURCHASER:	**Rising Ground, Inc.**
PREMISES:	**2749 University Avenue, Bronx, N.Y.**
DATED:	**November 15, 2024**

29. In the event of any conflict or inconsistency between the terms of the pre-printed Contract and this Rider to Contract of Sale (hereinafter the "Rider"), the terms and conditions of this Rider shall prevail.

30. Purchaser and Seller each represent and warrant that to their respective knowledge that, at Closing, each: (i) has no judgments and/or tax warrants against it that would impact the sale of the Property; (ii) there is no litigation pending to which it is a party which could affect the ability of Purchaser or Seller to consummate the transactions contemplated in the Contract and Rider; (iii) there is no litigation threatened against it or which it may institute which may pertain to the sale of the Property which will not be discharged against the Property by the Sale Order or such subsequent Court order.

31. Supplementing paragraph 9 and paragraph 13 in the pre-printed Contract said Premises are sold and are to be conveyed subject to:

i. Matters set forth in the pre-printed Contract annexed hereto.

ii. Any state of facts shown on an accurate and updated survey of the Premises provided same does not render title uninsurable.

iii. Minor variations of up to six inches, if any, between: (i) tax lot lines and the record lines; (ii) fences, retaining walls, hedges, shrubbery and the like, and lines of record title.

iv. All easements, covenants, and restrictions of record provided they do not prohibit present use of the Premises.

v. Any other matters Purchaser's title insurance company may raise as an exception to title provided the same does not render title uninsurable and Purchaser's title insurance company will insure against, or insure against collection or enforcement out of the Premises.

vi. All present and future zoning, building, environmental and other laws, ordinances, codes, restrictions and regulations of all governmental authorities having jurisdiction with respect to the Property, including, without limitation, landmark designations and all zoning variances and special exceptions, if any.

vii. Subject to paragraph 18 in the pre-printed Contract, all presently existing and future liens for unpaid real estate taxes, water charges and sewer rents not yet due and payable.

viii. Unpaid installments of assessments not due and payable on or before the Closing Date.

ix. Rights, if any, of utility companies to operate and maintain lines, cables, pipes, poles, distribution boxes and equipment in, over and upon the Premises.

x. Consents of record as of the date hereof by the 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.

xi. Revocability or lack of right to maintain vaults, coal chutes, excavations or sub-surface equipment beyond the line of the Premises.

xii. Subject to the pre-printed Contract, violations of laws, regulations, ordinances, orders or requirements, if any, noted or issued by any governmental or municipal department or authority having jurisdiction over the Premises, including, but not limited to, sidewalk notices and violations, elevator violations, boiler violations, fire violations, environmental violations, sanitary violations and other building violations (collectively, "Violations").

xiii. Standard exclusions from coverage contained in the 2006 ALTA Owner's Policy.

32. Supplementing the Contract: (a) It is expressly understood by Purchaser that Seller has not made and does not make (except as expressly set forth herein) any representations and/or warranties as to the physical condition, operation or any other matter relating to the Premises, or to any of the personal property or fixtures delivered in connection therewith, and Seller is not bound by any statements, representations or information that may have been made to Purchaser by anyone, pertaining to the Premises unless set forth herein. Purchaser has made or caused to be made such inspection of the Premises as Purchaser deems necessary to satisfy themselves with respect to the condition of the Premises and its operation and of the personal property, appliances and fixtures to be transferred hereunder. Purchaser further agrees to take the Premises, the personal property, appliances and fixtures being conveyed hereunder "as is." Seller has no obligation to remove any personal property from the Premises.

(b) If Seller defaults hereunder and Purchaser has not sought relief from the Bankruptcy Court seeking specific performance on or before the sixtieth (60) day after the default, Purchaser shall be deemed to have waived its right to specific performance and Purchasers sole remedy shall be to obtain the return of the Down payment.

33. Supplementing paragraph 21(b) in the pre-printed Contract, if Seller should be unable or unwilling to convey title subject to and in accordance with this Contract subject to Purchaser's limited remedy of specific performance, the sole obligation of Seller shall be to refund to Purchaser the Down payment hereunder and upon making of such refund, this Contract shall wholly cease and terminate except those, if any, which are herein specifically stated to survive the termination

of this Contract and neither party shall have any further claim against the other, by reason of this Contact. Seller shall have no obligation to expend more than $5,000.00 to cure any title defect.

34. Omitted.

35. Purchaser represents and warrants that Purchaser is in negotiation with the Office for People with Developmental Disabilities ("OPWDD") to secure the Purchase Price in accordance with the terms herein. The parties further acknowledge that Purchaser shall not condition the purchase herein on any further commitment from OPWDD beyond (x) the Purchase Price set forth herein and (y) the renovation budget that OPWDD has proposed to date ("Renovation Budget"). The commitment of OPWDD to fund the Purchase Price and the Renovation Budget shall be conditions to the Closing. Purchaser shall proceed to complete the application and approval of the Prior Property Approval for the Purchase Price and Renovation Costs from OPWDD ("PPA") promptly after the date of execution of this Agreement and advise Seller of its actions and progress at such times as Seller shall request an update.

36. The acceptance of a deed by Purchaser shall be deemed to be a full performance and discharge of every agreement and obligation on the part of the Seller to be performed pursuant to the provisions of this Contract, except those, if any, which are herein specifically stated to survive the delivery of the deed.

37. In the event the check given as a deposit on this Contract is returned for any reason, the Seller, after two (2) business days' written notice to Purchaser, shall have the option of canceling this Contract and all obligations of the parties under this Contract shall be deemed to be canceled and this Contract will be null and void.

38. Purchaser acknowledges it has a right to a summary of the heating and/or cooling bills or a complete set of said bills pursuant to the provisions of the Truth in Heating Law (Section 17-103 of the New York Consolidated Laws, Energy Law). Purchaser waives its right to copies of said bills or a summary thereof and acknowledges that it has not requested them in connection with this transaction by reason of the fact that Purchaser has been in occupancy of the Property for an extended period of time.

39. The respective attorneys of the parties, as herein identified, are hereby authorized: (a) to give any notice which the party is required to give or may give in the manner prescribed under this Contract; (b) to agree to adjournments of the Closing of Title or agree to extensions of the time periods as provided herein; and (c) to initial any changes in this Contract after execution thereof by the parties hereto.

40. This Contract shall not be effective for any purpose unless and until Seller has executed and delivered to Purchaser a fully executed counterpart hereof; and such Contract is approved by the Sale Order.

41. This Contract may be executed in any number of separate counterparts, each of which shall be deemed original, but all of which taken together shall constitute one and the same contract.

42. With regard to the Residential Lead-Paint Hazard Reduction Act of 1992 and such rules and regulations as have been or may be promulgated by the United States Department of Housing and Urban Development and/or its office of Lead Hazard Control, or by the State of New York on this subject, Seller specifically states that during the period in which Seller was in possession of the Premises, they did not conduct any tests of any kind or nature for lead or any other toxic substance and that Seller has no knowledge of the presence (or absence) of lead-based paint or any other toxic or hazardous materials in the Premises which the Seller may have the duty to repair or maintain. As a material condition of this Contract, the Seller and Purchaser covenant and agree to execute and deliver the "Disclosure of Information on Lead-Based Paints and/or Lead-Based Paint Hazard" in the form annexed hereto as Exhibit B, and will mark or initial the following paragraphs thereof, which Seller or Purchaser, as the case may be, represents to be true: (a)(second box); (b)(second box); and (e)(second box). In addition, Purchasers acknowledge receipt of the EPA Pamphlet entitled "Protect your Family From Lead In Your Home".

43. Except as may be specifically set forth herein, there are no contingencies or conditions to Purchaser's performance under this Contract.

(a) The parties hereto hereby designate Seller or Seller's attorney as the "real estate broker" or "real estate reporting person" within the meaning of Section 6045(e) of the Internal Revenue Code of 1986 (the "Code"), as amended, and the regulations promulgated thereunder, for the transaction contemplated by this contract. At or prior to Closing of title under this contract, the parties hereto shall execute and deliver, and shall cause their respective agents and attorneys to execute and deliver, all such documents and instruments as may be necessary or appropriate to effectuate the foregoing designation. In the event that a Uniform Settlement Statement, as described in Section 2603 of Title 12 of the United States Code, and the regulations promulgated thereunder, is prepared and furnished to the Purchaser, and such Uniform Settlement designates a settlement agent, the provisions of this subparagraph 43(a) shall be of no force or effect.

(b) Purchaser and Seller shall furnish any and all information, including, without limitation, their respective taxpayer identification numbers or social security numbers, that may be necessary or appropriate in order to enable the "real estate broker" or "real estate reporting person'" within the meaning of Section 6045(e) of the Code and the regulations promulgated thereunder, to comply with the reporting requirements of Section 6045(e) of the Code. The obligations of Purchaser and Seller under this subparagraph 43(b) shall survive the Closing of title under this Contract.

44. The risk of loss or damage by fire or other casualty to the Property until the time of delivery of the deed is assumed by Purchaser. Between the date of this Contract and the Closing, Purchaser, pursuant to the Lease, shall maintain hazard insurance on the Property with "Agreed Value" provisions or otherwise with coverage amounts adequate to restore the Property to substantially the same condition as existed immediately prior to any casualty, damage or loss. In the event that such casualty, damage or loss occurs prior to the delivery of the deed to the Purchaser pursuant to the terms of this Contract, the parties shall, nevertheless, proceed to close and, at the closing, subject to any applicable liens or encumbrances, the insurance proceeds shall be paid over the Purchaser.

45. Purchaser agrees that Purchaser is obligated to pay the mansion tax, if applicable, and, if applicable, Purchaser shall deliver an unendorsed bank check in payment thereof at the Closing. Seller agrees to make such certifications as are required by law on the TP-584.

47. Omitted.

48. Notwithstanding anything herein or elsewhere to the contrary, Seller's deposit of the Down payment into an escrow account shall not constitute a partial performance or acceptance of the Contract, it being acknowledged by the parties hereto that the Contract is binding on the Purchaser upon an exchange of executed Agreements and deposit of the Down payment and binding upon the Seller, upon approval of the Bankruptcy Court to the sale herein. ("Bankruptcy Court Approval").

49. Seller shall convey to Purchaser at the Closing, without additional consideration, all personal property located within or on the Premises as of the date of the commencement of the Lease, without any representations or warranties except for a warranty of title.

50. Omitted

51. Other than as set forth herein, Seller and Purchaser each acknowledge and agree that each of the parties shall be responsible for its own costs and expenses, including the costs and expenses of counsel, accountant and advisors incurred in connection with this Contract and all costs for the preparation, filing and obtaining any and all approvals of the governmental agencies necessary for the transfer of the governmental agency approved and funded programs currently operated by Seller at the Property (the "Programs") to Purchaser, whether or not the transfer of the Programs or the Closing occurs.

52. Omitted.

53. The parties hereto acknowledge that Seller and Purchasers are parties to the Lease, a copy of which is annexed hereto as Exhibit A. Purchaser and Seller agree that Seller's obligation to close shall, in addition to any other contingencies contained in the Contract, be contingent on Purchaser's material compliance with the terms of the Lease. Upon closing, the Lease shall be extinguished and merged into the title. Purchaser shall pay rent to the date of Closing.

54. Omitted.

55. Supplementing paragraph 59 below, Purchaser shall have six months from the date of Bankruptcy Court Approval to secure all conditions to Closing set forth herein ("Commitment Date"), provided, however, either party hereto, no less than ten (10) days prior to the Commitment Date may, by notice to the other party, extend the Commitment Date to a date thirty (30) days subsequent to the Commitment Date in which event the Commitment Date shall be adjourned to the later date ("Extension Date"). If the conditions to Closing are not met by the Commitment Date or the Extension Date, unless the parties agree otherwise, either party may terminate this Agreement by notice to the other party in which event this Agreement shall be null and void; and Purchaser shall be entitled to the return of its Down Payment. In the event neither party gives such notice of termination within the time periods provided, Purchaser shall have sixty days (60) within

which to purchase the Premises ("Closing Date"). In the event Purchaser fails to purchase the Premises by the Closing Date, Purchase shall be in breach of the Agreement and Seller's sole right to recover damages shall be limited to retention of the Down Payment as its damages for such breach. Time shall be of the essence. Upon execution of this Contract, Purchaser agrees that it shall use commercially reasonable efforts to engage with OPWDD to secure OPWDD's commitment as required in Article 35.

56. Omitted.

57. Omitted.

58. Seller and Purchaser each represents that it has obtained written approval of this Contract by its Board of Trustees or Directors, as applicable, and its members, if any, consistent with the by-laws of Seller or Purchaser, as applicable.

59. The terms hereof and the sale of the Premises are subject in all respects to the approval of the Bankruptcy Court. The Seller shall use its reasonable efforts to obtain entry of the Sale Order to provide for a private sale of the Premises to the Purchaser. In the event that the Bankruptcy Court does not approve a private sale of the Premises, the Seller shall work with the Purchaser to obtain alternative relief from the Bankruptcy Court to consummate the transaction anticipated by the Contract, including the approval by the Bankruptcy Court of an auction sale of the Premises with the Purchaser serving as a stalking horse bidder.

[NO FURTHER TEXT ON THIS PAGE.]

IN WITNESS WHEREOF, each of the parties hereto has set its hand as of the day and date first above written.

SELLER:	PURCHASER:
EPISCOPAL SOCIAL SERVICES OF NEW YORK, INC., N/K/A SHELTERING ARMS CHILDREN AND FAMILY SERVICES, INC.	RISING GROUND, INC.
By: Signed by: Judith Pincus 5187E06FE3C445D...	By:
Judith Pincus Chief Wind Down Officer	Name: Alan Mucatel Title: Chief Executive Officer

5077569.1

DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT and/or LEAD-BASED PAINT HAZARDS SALES

Lead Warning Statement
Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the Purchaser with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the Purchaser of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller's Disclosure
(a) Presence of lead-based paint and/or lead-based paint hazards *(Check (i) or (ii) below):*
☐ (i) Known lead-based paint and/or lead-based paint hazards are present in the housing *(explain)*.

☐ (ii) Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the seller *(Check (i) or (ii) below):*
☐ (i) Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing *(list documents below)*.

☐ (ii) Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Purchaser's Acknowledgment
(c) Purchaser has received copies of all information listed above.
(d) Purchaser has received the pamphlet *Protect Your Family from Lead in Your Home.*
(e) Purchaser has *(check (i) or (ii) below)*:
☐ (i) received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or
☐ (ii) waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Agent's Acknowledgment *(initial)*
(f) Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy
The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Seller:	Purchaser:
EPISCOPAL SOCIAL SERVICES OF NEW YORK, INC., N/K/A SHELTERING ARMS CHILDREN AND FAMILY SERVICES, INC.	RISING GROUND, INC.
By: Signed by: Judith Pincus 5187E06FE3C445D...	By: Alan Mucatel (Nov 15, 2024 09:54 EST)
Date: 11/15/2024	Date:________

University Contract execution copy

Final Audit Report 2024-11-15

Created:	2024-11-15
By:	Laura Birger (lbirger@risingground.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAJzBk0hbRWJ5CAqExcErOn-17KZLkVhBW

"University Contract execution copy" History

Document created by Laura Birger (lbirger@risingground.org)
2024-11-15 - 3:03:43 PM GMT

Document emailed to Alan Mucatel (amucatel@risingground.org) for signature
2024-11-15 - 3:03:47 PM GMT

Email viewed by Alan Mucatel (amucatel@risingground.org)
2024-11-15 - 3:04:45 PM GMT

Document e-signed by Alan Mucatel (amucatel@risingground.org)
Signature Date: 2024-11-15 - 3:11:04 PM GMT - Time Source: server

Agreement completed.
2024-11-15 - 3:11:04 PM GMT

Exhibit B

Proposed Form of Order

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
---x
In re:

SHELTERING ARMS CHILDREN AND FAMILY SERVICES, INC.

Debtor.
---x

Chapter 11

Case No. 24-41037 (JMM)

ORDER: (A) APPROVING THE DEBTOR'S PRIVATE SALE OF ITS REAL PROPERTY LOCATED AT 2749 UNIVERSITY AVENUE, BRONX, NEW YORK 10468, FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, AND (B) GRANTING RELATED RELIEF

Upon the motion (the "**Motion**")[5] [**ECF __**], of Sheltering Arms Children and Family Services, Inc., ("**Sheltering Arms**" or the "**Debtor**"), as a debtor and debtor-in-possession in the above referenced chapter 11 case (the "**Chapter 11 Case**"), for entry of an order, pursuant to sections 105(a) and 363 of Title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), Local Rule 6004-1, and the Sale Guidelines: (a) approving the private sale (the "**Sale**") of the Debtor's real property located at 2749 University Avenue, Bronx, New York 10468 (the "**Property**"), free and clear of all liens, claims, encumbrances and other interests, all as provided in the Purchase Agreement by and among the Debtor and Rising Ground, Inc. (the "**Purchaser**"); and (b) grating related relief; all as described more fully in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and due and appropriate notice of the Motion having been provided under the circumstances of this case and as set forth in the Motion, and it appearing that no other or further notice of the

[5] Capitalized terms used herein, unless herein defined, shall be used with the meanings ascribed to such terms in the Motion.

Motion need be provided; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtor, its estate and all parties in interest; and upon the record of the hearing held by the Court on the Motion on December 18, 2024 (the "**Hearing**"); and just cause having been established at the Hearing; and all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY FOUND AND DETERMINED THAT:

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

B. Good and sufficient notice of the relief sought by the Motion has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief requested in the Motion has been afforded to interested persons and entities, including: (i) all parties requiring service pursuant to the *Amended Order Establishing Case Management Procedures* (the "**Case Management Order**"), entered on March 19, 2024 [**ECF 39**]; (ii) all parties who have an ownership interest in the Property or a Lien on the Property; and (iii) any parties previously having viewed the property or contacted the Broker regarding the Property (collectively, the "**Notice Parties**").

C. A reasonable opportunity to object or otherwise be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities.

D. The sale of the Property pursuant to the Purchase Agreement is authorized pursuant to section 363(b)(1) of the Bankruptcy Code and Bankruptcy Rule 6004(f). A sale of the Property outside the ordinary course of business and the use of the sale proceeds by the Debtor represents the sound business judgment of the Debtor and its board of directors, and is appropriate in light of the facts and circumstances surrounding the Sale and this Chapter 11 Case.

E. The sale of the Property by means of a private sale is allowed pursuant to Bankruptcy Rule 6004(f)(1) and is appropriate in light of the facts and circumstances surrounding the Sale and this Chapter 11 Case.

F. The Debtor has full corporate power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and to consummate the transactions contemplated therewith, and no consents or approvals, other than those expressly provided for in the Purchase Agreement, are required for the Debtor to consummate the Sale.

G. Approval of the Purchase Agreement and the consummation of the Sale, including, without limitation, the effectuation of such by private sale, is in the best interests of the Debtor, its estate, creditors, and other parties in interest. The terms and conditions of the Purchase Agreement are fair and reasonable. The Purchaser's offers for the purchase of the Property, as set forth in the Purchase Agreement, is: (i) fair and reasonable, (ii) the highest or otherwise best offer for the Property in light of the charitable mission of the Debtor, (iii) will provide a greater recovery for the Debtor's creditors than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

H. The Purchase Agreement was negotiated, proposed and entered into by and among the Debtor and the Purchaser, and approved by their respective boards, without collusion, in good faith, from arm's-length bargaining positions, and was a proper exercise of the respective board's fiduciary obligations. The Purchaser is not an "insider" of the Debtor, as that term is defined in section 101(31) of the Bankruptcy Code. Neither the Debtor, nor the Purchaser, has engaged in any conduct that would cause or permit the Purchase Agreement to be avoided under section 363(n) of the Bankruptcy Code. Specifically, the Purchaser has not acted in a collusive manner with any person and the purchase price was not controlled by any agreement with unrelated third parties.

I. The Purchaser does not constitute a successor to either of the Debtor or its estate. The sale of the Property does not amount to a consolidation, merger, or *de facto* merger of the Purchaser and the Debtor or its estate. The Debtor has complied with section 363(f) of the Bankruptcy Code because one or more of the standards set forth in sections 363(f)(1)-(5) has been satisfied with regard to each such lien, claim, interest, or other encumbrance. Those non-Debtor parties with liens, claims, or other encumbrances in the Property who did not file a timely objection, or who withdrew such objections, are deemed to have consented to the sale of the Property free and clear of those non-Debtor parties' respective interests in the Property pursuant to section 363(f)(2) of the Bankruptcy Code. Except as provided in the Purchase Agreement, the transfer of the Property will be a legal, valid, and effective transfer of the Property, and will vest the Purchaser with all right, title, and interest of the Debtor in and to the Property, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, free and clear of all liens, claims, interests, obligations, rights, and encumbrances, with all such liens, claims or encumbrances to attach to the proceeds of the Sale in the order of their priority, with the same validity, force and effect which they now have as against the Property, subject to any claims and defenses, setoffs or rights of recoupment the Debtor may possess with respect thereto. Therefore, except as specifically provided in the Purchase Agreement, and consistent with section 363(f) of the Bankruptcy Code, the Purchaser shall have no liability for any claims arising out of or related to the Sale or transfer of the Property or arising from claims against the Debtor or its estate or any liabilities or obligations of the Debtor and/or its estate, under the laws of the United States, any state, territory, possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, in any theory of law or equity including, without limitation, any laws affecting antitrust, successor, transferee or vicarious liability. Except as specifically provided in the Purchase Agreement or herein, all persons and entities asserting or holding any claims against or interests in the Property (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), howsoever arising, shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such claims or interests against the Purchaser.

J. The Sale of the Property is in accordance with applicable non-bankruptcy law as required by section 363(d) of the Bankruptcy Code. Specifically, the Sale of the Property complies with sections 510 and 511 of New York Not-for-Profit Corporation Law.

K. Legal and Factual Bases. The legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

General Provisions

1. The findings of fact set forth above and conclusions of law stated herein shall constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

2. All objections, if any, to the Motion or the relief granted herein that have not been withdrawn, settled, or waived, and all reservations of rights included in such objections, are hereby overruled on the merits with prejudice.

3. The Sale, including, without limitation, the effectuation of such by private sale, and all of the terms and conditions contemplated by the Purchase Agreement, are hereby

authorized and approved pursuant to, *inter alia*, sections 105(a) and 363(b) of the Bankruptcy Code. The Purchaser is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code. The Sale complies with applicable non-bankruptcy law, including sections 510 and 511 of the New York Not-for-Profit Corporation Law. Pursuant to section 363(b) of the Bankruptcy Code, the Debtor is authorized and directed to consummate the Sale pursuant to and in accordance with the terms and conditions of the Purchase Agreement. The Debtor is authorized and directed to execute and deliver, and 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 and effectuate the provisions of this Order and the transactions approved hereby.

4. Except as otherwise provided in the Purchase Agreement, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, upon the Closing, the Property shall be transferred to the Purchaser free and clear of all liens, claims or encumbrances in the Property, with all such liens, claims or encumbrances to attach to the net proceeds of the Sale in the order of their priority, with the same validity, force and effect which they now have as against the Property, subject to any claims and defenses, setoffs or rights of recoupment the Debtor may possess with respect thereto. Except as specifically provided in the Purchase Agreement, all persons and entities (and their respective successors and assigns) including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade, and other creditors, asserting or holding any claims against or interests in the Debtor, the Property, or with respect to the transfer of the Property to the Purchaser (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), howsoever arising, hereby are forever barred, estopped, and permanently enjoined from asserting,

prosecuting, or otherwise pursuing such claims or interests against the Purchaser and/or its affiliates, designees, assignees, successors, properties, or assets. Except as otherwise provided in the Purchase Agreement, effective upon the Closing, the Purchaser shall have no liability for any Claims (as defined in section 101(5) of the Bankruptcy Code) against the Debtor or its estate.

Additional Provisions

5. Prior to, or upon the Closing of the Sale, the Debtor's creditors will execute such documents and take all other actions as may be reasonably necessary to release their interests, if any, in the Property as such interests, liens, claims and/or other encumbrances may have been recorded or may otherwise exist.

6. Except as otherwise provided in the Purchase Agreement, this Order: (a) shall be effective as a determination that, upon the Closing, all liens existing with respect to the Debtor and/or the Property prior to the Closing have been unconditionally released, discharged, and terminated solely as to the Purchaser and the Property, and that the conveyances described herein have been effected, and (b) shall be binding upon all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, 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 in or to the Property.

7. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens,* or other documents or agreements evidencing interests with respect to the Debtor and/or the Property 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 satisfaction, releases of all interests which the person or entity has with respect to the Debtor, the Property: or otherwise, then: (a) the Debtor or the Purchaser is hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Property, and (b) the Purchaser and/or the Debtor is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all interests and liens in, solely against, and solely with respect to the Property. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, and local governmental agency, department, or office.

8. The Purchase Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of this Court, provided that any such modification, amendment or supplement does not: (a) materially change the terms of the Purchase Agreement, (b) modify the express terms of this Order, or (c) have a material adverse effect on the Debtor's estate, and the Debtor shall provide reasonable advance notice of any such modification to the Office of the United States Trustee.

9. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted with respect to the Debtor to the extent necessary, without further order of the Court to allow the Purchaser to: (a) give the Debtor any notice provided for in the Purchase Agreement, and (b) take any and all actions permitted by the Purchase Agreement and ancillary agreements in accordance with the terms and conditions thereof.

10. Pursuant to section 1146(a) of the Bankruptcy Code, the Sale shall be exempt from all New York State and New York City real estate transfer tax, including, but not limited to, New York City real property transfer tax.

11. Each and every federal, state, and local governmental agency, recording office or department and all other parties, persons or entities is hereby directed to accept this Order and any and all documents and instruments necessary and appropriate for recordation as conclusive evidence of the free and clear and unencumbered transfer of title to the Property conveyed to the Purchaser.

12. The terms and provisions of the Purchase Agreement and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its estate, creditors, the Purchaser, and any of such parties' respective affiliates, designees, successors, and assigns, and shall be binding in all respects upon all of the Debtor's creditors, and all persons and entities receiving notice of the Motion, notwithstanding any subsequent appointment of any trustee(s), examiner(s), or receiver(s) under any Chapter of the Bankruptcy Code or any other law, and all such provisions and terms shall likewise be binding on such trustee(s), examiner(s), or receiver(s) and shall not be subject to rejection or avoidance by the Debtor, its estate, creditors, or any trustee(s), examiner(s), or receiver(s).

13. The provisions of this Order are non-severable and mutually dependent. The failure specifically to include 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 this Court that the Purchase Agreement be authorized and approved in their entirety.

14. As provided by Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon its entry, and the sale approved by this Order may close immediately upon entry of this Order, notwithstanding any otherwise applicable waiting periods.

15. This Court retains jurisdiction on all matters pertaining to the relief granted herein, including to interpret, implement, and enforce the terms and provisions of this Order and the Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects.