

conditions are hereby canceled. This Agreement may only be changed, modified or amended by an agreement in writing, signed by the parties hereto.

16. **Waiver.** Any waiver of any provision hereof must be in writing and shall be effective only in the specific instance and for the specific purpose for which such waiver is given. No failure on the part of either party hereto to exercise, and no delay in exercising, any right, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

17. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

18. **Lead-Based Paint.** The Purchaser hereby waives any right to have a lead-based paint inspection and test of the Real Property. Every buyer 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. The Purchaser hereby acknowledges receipt from the Seller of the pamphlet entitled "Protect Your Family from Lead in Your Home"

attached hereto as Exhibit M and the Lead-Based Paint and Lead-Based Hazard Disclosure Form attached hereto as Exhibit N.

19. **Neutral Construction.** Each party hereto acknowledges and agrees that: (a) the provisions of this Agreement have been drafted by, and fully and completely negotiated between, the parties hereto and their respective attorneys; (b) neither this Agreement, nor any provision hereof, shall be deemed to have been drafted solely by either party hereto or his or its attorneys; and (c) no ambiguity determined to exist herein shall be construed against either party hereto by reason of such party, or his or its attorneys, being deemed to have been the sole author thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first above written.

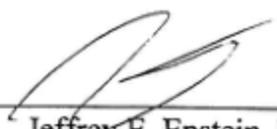
THE SELLER:



Leslie H. Wexner

THE PURCHASER:

NES, LLC

By: 

Jeffrey E. Epstein, Member

LIST OF ATTACHMENTS

Schedule A - Legal Description of Real Property

Exhibit B - Nominee Agreement

Schedule C - Personal Property

Exhibit D - Note

Exhibit E - Guaranty

Schedule F – Allocation of Purchase Price

Schedule G –Intentionally Omitted

Exhibit H - Assignment of Beneficial Interest

Exhibit I - Bill of Sale

Exhibit J - Existing Title Insurance Policy

Exhibit K - Intentionally Omitted

Exhibit L - Existing Survey

Exhibit M - Protecting Your Family From Lead in Your Home

Exhibit N - Lead-Based Paint Hazard Disclosure Form

Schedule A

ALL that certain lot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of 71st Street distant 225 feet easterly from the corner formed by the intersection of the easterly side of 5th Avenue with the northerly side of 71st Street; running

thence Easterly along the northerly side of 71st Street 50 feet;

thence Northerly and parallel with 5th Avenue 102 feet 2 inches to the center line of the block between 71st and 72nd Streets;

thence Westerly along said center line and parallel with 71st Street 50 feet;

thence Southerly and parallel with 5th Avenue 102 feet 2 inches to the northerly side of 71st Street at the point or place of the Beginning.

Exhibit B

Nominee Agreement – Attached

NOMINEE AGREEMENT

THIS NOMINEE AGREEMENT (the "Agreement") is entered as of this ~~25th~~ day of August, 1989 between Nine East 71st Street Corporation, a New York corporation ("Nominee"), and Leslie H. Wexner ("Principal").

W I T N E S S E T H:

WHEREAS, Principal wishes to purchase certain real estate more fully described on Exhibit A attached hereto and incorporated by reference herein commonly known as 9 East 71st Street, New York, New York (the "Property"); and

WHEREAS, Principal has requested Nominee to purchase the Property on behalf of Principal, as Principal's nominee, in accordance with the terms and conditions of the Contract of Sale dated June 23, 1988 between Birch Wathen School, Inc. as seller and Leslie H. Wexner as purchaser, a copy of which is attached hereto as Exhibit B and incorporated by reference herein (the "Contract"); and

WHEREAS, Nominee is engaged in the business of holding title to real estate as nominee for others and not on its own behalf; and

WHEREAS, Nominee wishes to purchase the Property as Principal's nominee in accordance with the terms and conditions of the Contract.

NOW THEREFORE, Nominee and Principal, intending to be legally bound, hereby agree as follows:

Section 1. Purchase. Nominee shall acquire record title to the Property in accordance with the terms and conditions of the Contract, as nominee for Principal. Nominee has not advanced, will not advance and is not required to advance any part or all of the funds necessary to acquire, hold or maintain the Property. Principal shall be exclusively responsible for payment of the consideration and expenses for the acquisition, retention and maintenance of the Property.

Section 2. Ownership. Nominee shall hold record title to the Property solely as nominee for Principal. Nominee shall have no beneficial right, title, ownership or interest in the Property or in the rents, income or benefits therefrom, irrespective of whether Nominee shall have executed, at the direction of Principal, mortgages, bonds, leases or other agreements or obligations relating to the Property. Nominee shall promptly remit to Principal any rents, income or other benefits from the Property, including without limitation, the proceeds of any condemnation action. Nominee shall

take no action with respect to the Property except as directed by Principal and shall take all action with respect to the Property as may be so directed by Principal.

Section 3. Insurance. Principal shall insure the Property together with all improvements thereto against such losses and in such amounts as the Principal deems necessary. Principal hereby releases Nominee from any obligation to insure the Property. In addition, Principal shall maintain insurance against liability for bodily injury to, death of or damage to the property of any person with respect to the Property under the policy of general comprehensive liability insurance presently in effect with respect to the Property. Each such policy shall contain an endorsement naming Nominee as an additional insured under such policy. Nominee shall take action with respect to all policies of insurance, including without limitation, title insurance with respect to the Property solely for the benefit of Principal. Nominee shall take only such action and shall take all action under any such policy of insurance as Principal may direct and at Principal's sole expense. Nominee shall promptly remit to Principal the proceeds of any such insurance policy.

Section 4. Assignment or Transfer. Upon demand by Principal, Nominee shall promptly convey title to the Property to Principal or to any person designated by Principal, by deed in form acceptable to Principal with warranties against any acts by Nominee other than liens or other encumbrances created with the consent or at the direction of Principal or those which may accrue or attach hereafter by reason of the nonpayment of taxes or other assessments made by any governmental authority which may attach upon the Property by operation of law or which Principal may permit to come into effect. Nominee will cause such deed or deeds to be executed and acknowledged by its duly authorized officers, and Nominee will take such other action as may be necessary to vest record title to the Property in Principal or any person so designated, but all without expense to Nominee.

Section 5. Liens. Nominee will not encumber or subject the Property or title thereto to any liens or other encumbrances, except as otherwise provided herein.

Section 6. Indemnity by Principal. Principal shall indemnify and hold harmless Nominee from and against any and all claims, liabilities, damages, losses, costs and expenses, including, without limitation, reasonable counsel fees, resulting from Nominee holding record title to the Property or any other action or inaction by Nominee at the request or direction of Principal.

Section 7. Reimbursement. Principal shall reimburse Nominee for all costs and expenses incurred by Nominee on behalf of Principal hereunder.

Section 8. Term. This Agreement shall commence on the date first written above and shall continue until terminated by one party by written notice to the other party. In the event this Agreement is terminated, Nominee shall retain all payments made by Principal hereunder.

Section 9. Successors and Assigns. All covenants, agreements, representations and warranties made herein shall survive the execution and delivery of this instrument and shall bind and inure to the benefit of the parties hereto and the respective successors and assigns of the parties hereto, whether so expressed or not.

Section 10. Headings. Section headings used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

Section 11. Governing Law. This Agreement shall be governed and construed exclusively by the provisions hereof and in accordance with the laws of the State of New York applicable to contracts to be performed therein, as the same may from time to time exist.

Section 12. Notices. Any consent, waiver, notice, demand, request or other instrument required or permitted to be given under this Agreement shall be deemed to have been properly given when delivered in person or sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed if to either party hereto, to the address set forth beside such party's signature to this Agreement. Either party may change its address for notices by notice in the manner set forth above.

Section 13. Entire Agreement. This Agreement sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements and understandings relating to the subject matter hereof. No representation, promise, inducement or statement of intent has been made by either party which is not embodied in this instrument, and neither party shall be bound by or liable for any alleged representation, promise, inducement or statement of intention not embodied herein.

The parties hereto have caused this instrument to be duly executed as of the day and year first above written.

NOMINEE:

NINE EAST 71ST STREET CORPORATION

By: Harold L. Levin
HAROLD L. LEVIN
VICE PRESIDENT AND TREASURER

ADDRESS FOR NOTICES:

[REDACTED]

PRINCIPAL:

LESLIE H. WEXNER

By: Harold L. Levin
HAROLD L. LEVIN
ATTORNEY IN FACT

ADDRESS FOR NOTICES:

[REDACTED]

By: Richard W. Rubenstein
RICHARD W. RUBENSTEIN
ATTORNEY IN FACT

Schwartz, Kelm, Warren &
Rubenstein

[REDACTED]

0524Q
08/23/89

Exhibit A

ALL that certain lot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of 71st Street distant 225 feet easterly from the corner formed by the intersection of the easterly side of 5th Avenue with the northerly side of 71st Street; running

thence Easterly along the northerly side of 71st Street 50 feet;

thence Northerly and parallel with 5th Avenue 102 feet 2 inches to the centre line of the block between 71st and 72nd Streets;

thence Westerly along the said center line and parallel with 71st Street 50 feet;

thence Southerly and parallel with 5th Avenue 102 feet 2 inches to the northerly side of 71st Street at the point or place of Beginning.

EXHIBIT B

CONTRACT OF SALE

This Contract of Sale (the "Contract") made the 23rd day of June, nineteen hundred and eighty-eight, between Birch Wathen School, Inc., a not-for-profit educational corporation having an address at 9 East 71st Street, New York, New York 10021, hereinafter described as "Seller", and Leslie H. Wexner, an individual having an address at [REDACTED] hereinafter described as "Purchaser".

WITNESSETH, that Seller agrees to sell and convey, and Purchaser agrees to purchase, all that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as more particularly set forth on Exhibit A attached hereto and made a part hereof (the "Premises"), together with all right, title and interest of Seller in and to any easements, rights of way, appurtenances and improvements which attach, benefit, relate or are incident to the Premises.

1. This sale includes all right, title and interest, if any, of Seller in and to any land lying in the bed of any street, road or avenue opened or proposed in front of or adjoining said Premises, to the center line thereof, and all right, title and interest of Seller in and to any award made or to be made in lieu thereof and in and to any unpaid award for damage to said Premises by reason of change of grade of any street and Seller will execute and deliver to Purchaser, on closing of title, or thereafter, on demand, all proper instruments for the conveyance of such title and the assignment and collection of any such award. This provision shall survive the delivery of the deed.

2. The price is Thirteen Million Two Hundred Thousand Dollars (\$13,200,000.00) (the "Purchase Price") payable as follows: \$1,320,000.00 (the "Downpayment") by clean, irrevocable and unconditional commercial letter of credit (the "Letter of Credit") to be delivered to Escrow Agent (as hereinafter defined) as soon as possible after the date hereof (but in no event later than June 29, 1988) following receipt by Escrow Agent of four (4) fully executed counterparts of this Contract, and the balance of the Purchase Price of \$11,880,000.00 in cash or good certified check payable to the order of Seller on the Closing Date (as hereinafter defined). In the event Escrow

Agent does not receive the Letter of Credit by 5 [redacted] on June 29, 1988, Purchaser shall be in default hereunder and Seller may resort to any available legal and equitable remedies on account thereof. Within two (2) business days after receipt of the Letter of Credit, Escrow Agent is hereby directed by Seller and Purchaser to "break" escrow and forward one (1) fully executed copy of the Contract to Seller and two (2) copies thereof to Purchaser's attorneys, at which time the Letter of Credit shall be held by Escrow Agent as hereinafter set forth. The Letter of Credit beneficiary shall be Battle Fowler, as Escrow Agent, and it shall be issued by Citibank, [redacted] (the "Bank"), shall be in form and substance satisfactory to Seller and shall expire no later than the date which shall be thirty days after the Closing Date; provided, however, that in the event the closing of title hereunder shall be adjourned to, or is scheduled to occur on, a date subsequent to thirty days prior to the expiration of the Letter of Credit, either (i) Purchaser shall deliver to Escrow Agent not later than fifteen days prior to the expiration date of the Letter of Credit either a substitute letter of credit drawn on the same bank and in the same form as the Letter of Credit except that the substitute letter of credit shall expire no earlier than September 30, 1990 (which substitute letter of credit shall be treated in the same manner as the Letter of Credit pursuant to the provisions of this Contract) or an amendment to the Letter of Credit extending its expiration date to September 30, 1990, or (ii) failing such delivery to Escrow Agent, as to which time shall be of the essence, Escrow Agent is hereby irrevocably instructed by Seller and Purchaser to draw on the Letter of Credit by presentation to the Bank of the original Letter of Credit, a sight draft which states the Letter of Credit number and a certificate signed by a partner of Escrow Agent, stating the following: "Battle Fowler is entitled to draw upon this letter of credit pursuant to that certain contract, dated June 23, 1988, between Birch Wathen School, Inc., as seller, and Leslie H. Wexner, as purchaser", but without presentation by Escrow Agent of any other document, statement or authorization and Escrow Agent shall retain the monies received by drawing upon said Letter of Credit, in escrow, pursuant to the provisions of this Contract (which monies shall be treated in the same manner as the Letter of Credit pursuant to the provisions of this Contract). Any attempt to enjoin or otherwise interfere with or prohibit the draw by Escrow Agent under the Letter of Credit in accordance with this Contract by or on behalf of Purchaser or the Bank shall constitute a default by Purchaser hereunder.

3. Said Premises are sold and are to be conveyed subject to:

- (a) Zoning regulations and ordinances, and building and land use restrictions of the city, town or village in which the Premises lie which are not violated by existing structures;
- (b) Consents by Seller or any former owner of the Premises for the erection of any structure or structures on, under or above any street or streets on which said Premises may abut;
- (c) Encroachments of stoops, areas, cellar steps, trim, cornices, coping, railings, retaining walls, foundations, windows, ornamental projections, sidewalk elevators, fences and sidewalks, if any, upon any street or highway;
- (d) Covenants, restrictions and agreements listed on Exhibit B attached hereto and made a part hereof;
- (e) Any state of facts an accurate survey would show provided that same does not render title unmarketable, except as otherwise provided in this Contract;
- (f) Variations between fences, area walls, retaining walls, steps, hedges, shrubs, trees and record lines of title;
- (g) Utility and telephone company rights and easements to maintain, install or remove poles, wires, cables, pipes, boxes and other facilities and equipment in, over and upon the Premises;
- (h) Possible lack or revocable nature of the right, if any, to maintain or use any space, facilities or appurtenances outside the lines of the Premises whether on, over or under the ground including, without limitation, all vaults, marquees, signs and sidewalk openings;
- (i) Party walls and party wall agreements;
- (j) Easements that affect any land in the bed of any street, road, or avenue, opened or proposed, in front of or adjoining the Premises;
- (k) Rights and easements for the installation, maintenance and replacement of water mains and sewer lines and facilities and equipment in, over and upon the Premises;
- (l) Any violations of law or municipal ordinances, regulations, orders or requirements which have been noted in, or issued by, the departments of building, fire, labor, health or other federal, state, county or municipal departments,

having jurisdiction against or affecting the Premises (collectively, the "Violations") through the date of closing of title and any Violations caused by Purchaser's Renovation Work (as hereinafter defined). Notwithstanding anything to the contrary set forth in this subparagraph 3(1) hereof, Seller shall be obligated to cure (i) any Violations which are required to be cured by reason of Seller's operation of a school on the Premises (other than the Violations shown on the municipal department violations search set forth on Exhibit C attached hereto and made a part hereof), except to the extent same would be cured in connection with a "gut rehabilitation" renovation of the Premises prosecuted to completion and culminating in a permanent certificate of occupancy for such renovated improvement (the "Rehabilitation") and (ii) any Violations which, if not cured or curable by the Rehabilitation, would expose Seller to criminal liability (other than the Violations shown on the municipal department violations search set forth on Exhibit C attached hereto and made a part hereof). With respect to any other Violations noted or issued against the Premises through the date of closing of title not shown on Exhibit C, which Violations would not be cured by the Rehabilitation, Seller shall pay the actual costs and expenses incurred by Purchaser to cure and remove of record such Violations, as evidenced by paid receipts and/or cancelled checks provided to Seller, up to a maximum aggregate amount of One Hundred Thousand Dollars (\$100,000.00). Said One Hundred Thousand Dollars (\$100,000.00) shall be deposited with Escrow Agent at closing of title to be held in escrow pursuant to the terms of this Contract, and shall be disbursed to Purchaser in accordance with the terms of this subparagraph from time to time within two years after the closing of title upon delivery by Purchaser to Escrow Agent and to Seller, simultaneously, of a notice stating that Purchaser has cured certain specified Violations, a copy of which will be enclosed with said notice, and stating the amount expended by Purchaser to cure said Violations, together with copies of paid receipts and/or cancelled checks with respect to the amount expended to cure such Violations. In the event Seller fails to contest such payment to Purchaser by written notice delivered to Escrow Agent and to Purchaser, simultaneously, which notice is received by Escrow Agent within fifteen days of receipt of Purchaser's notice as aforesaid, then Purchaser shall be entitled to receive, and Escrow Agent shall deliver to Purchaser, the amount requested by Purchaser in said notice. Any monies still held in escrow by Escrow Agent on the date which shall be two years after the date of closing of title pursuant to this Contract shall be promptly released by Escrow Agent to Seller, together with interest earned thereon, if any.

(m) Any latent or patent defects in the Premises;

(n) All obligations affecting the Premises incurred under the Emergency Repairs provisions of the Administrative Code of the City of New York (the "Administrative Code") (Sections 564-18.0, etc.);

(o) Designation of Premises as a landmark, landmark site or historic district by instrument dated May 19, 1981 and recorded on July 2, 1982 in Reel 629 at Page 739;

(p) The restricted use of the Premises as provided in Chapter 3 of the Administrative Code (Sections 25-30, et. seq.);

(q) Street vault charges, together with interest and penalties thereon, if any;

(r) Those items noted on the municipal department violations search and the certificate of occupancy search as more particularly set forth on Exhibit C attached hereto and made a part hereof.

Subparagraphs (a) through (r) of this Paragraph 3 are hereinafter collectively referred to as the "Exceptions".

4. The following are to be apportioned:

(a) Taxes and sewer rents, if any, on the basis of the fiscal year for which assessed.

(b) Water charges on the basis of the calendar year.

(c) Fuel oil, if any, at the Premises on the date as of which adjustments shall be made or within twenty days of the date of closing of title shall be adjusted at the cost per gallon price last charged to Seller, as reflected in Seller's last bill, plus applicable sales tax. The amount of fuel is to be estimated in writing by the fuel company then supplying Seller.

5. If there be a water meter on the Premises, Seller shall furnish a reading to a date not more than thirty days prior to the time herein set for closing of title, and the unfixed meter charge and the unfixed sewer rent, if any, based thereon for the intervening time shall be apportioned on the basis of such last reading.

6. At closing of title, Seller shall deliver the usual Bargain and Sale Deed With Covenant Against Grantor's

Acts (the "Deed") in proper statutory short form for recording, duly executed and acknowledged so as to convey to Purchaser the fee simple of the said Premises, free of all encumbrances, except as herein stated, and shall contain the covenant required by subdivision 5 of Section 13 of the Lien Law. Purchaser's acceptance of the Deed shall be deemed to be an acknowledgement by Purchaser that Seller has fully complied with, performed and discharged all of Seller's obligations, representations, warranties, covenants and agreements hereunder, and thereafter Seller shall have no further liability with respect thereto, excepting the post-closing adjustments and such other obligations as are herein specifically stated to survive the closing of title.

7. If Seller is a corporation, it will deliver to Purchaser at the time of the delivery of the deed hereunder a resolution of its Board of Trustees authorizing the sale and delivery of the deed and a certificate by the Secretary or Assistant Secretary of the corporation certifying such resolution and, if required by law, setting forth facts showing that the conveyance is in conformity with such law as may be applicable to not-for-profit educational corporations. The Deed in such case shall contain a recital sufficient to establish compliance with applicable law.

8. At the closing of title Seller shall deliver to Purchaser a certified check to the order of the recording officer of the county in which the deed is to be recorded for the amount of the documentary stamps to be affixed thereto in accordance with Article 31 of the Tax Law and a certified check to the order of the appropriate county officer for any other tax payable by reason of the delivery of the deed, and a return, if any be required, duly signed and sworn to by Seller; and Purchaser also agrees to sign and swear to the return, provided that Purchaser has approved the information set forth on the return as true and correct, which approval shall not be unreasonably withheld or delayed, and to cause the check and the return to be delivered to the appropriate county officer promptly after the closing of title.

9. In addition, Seller shall at the closing of title deliver to Purchaser a certified check to the order of the Commissioner of Finance for the amount of the Real Property Transfer Tax imposed by Title II of Chapter 46 of the Administrative Code of the City of New York and will also deliver to Purchaser the return required by the said statute and the regulations issued pursuant to the authority thereof, duly signed and sworn to by Seller; Purchaser agrees to sign and swear to the return, provided that Purchaser has approved the information set forth

on the return as true and correct, which approval shall not be unreasonably withheld or delayed, and to cause the check and the return to be delivered to the City Register promptly after the closing of title.

10. All sums paid by Purchaser on account of this Contract, including, without limitation, the Letter of Credit, or the proceeds thereof, as the case may be, are hereby made and declared to be liens against the Premises.

11. Seller shall have the right to remove from the Premises all fixtures and articles of personal property used in connection with said Premises except for plumbing and heating fixtures.

12. The amount of any unpaid taxes, assessments, water charges and sewer rents which Seller is obligated to pay and discharge, with the interest and penalties thereon to a date five days after the date of closing of title, may, at the option of Seller, be allowed to Purchaser out of the balance of the Purchase Price, provided official bills therefor with interest and penalties thereon figured to said date are furnished by Seller at the closing of title.

13. If at the date of closing of title there may be any other liens or encumbrances which Seller is obligated to pay and discharge, Seller may use any portion of the balance of the Purchase Price to satisfy the same, provided Seller shall simultaneously either deliver to Purchaser at the closing of title instruments in recordable form and sufficient to satisfy such liens and encumbrances of record together with the cost of recording or filing said instruments. Purchaser, if request is made by Seller within a reasonable time prior to the date of closing of title, agrees to provide at the closing of title separate certified checks as requested, aggregating the amount of the balance of the Purchase Price, to facilitate the satisfaction of any such liens or encumbrances. The existence of any such taxes or other liens and encumbrances shall not be deemed objections to title if Seller shall comply with the foregoing requirements.

14. If a search of the title discloses judgments, bankruptcies or other returns against other persons having names the same as or similar to that of Seller, Seller will on request deliver to Purchaser an affidavit showing that such judgments, bankruptcies or other returns are not against Seller.

15. (a) Seller shall give and Purchaser shall accept such fee simple title to the Premises as is good and marketable and as Commonwealth Land Title Insurance Company or any nationally recognized and reputable title insurance company licensed to do business in the State of New York as selected by Purchaser (the "Title Company"), will approve and insure, at its regular rates, with an owner's policy, without exception except for the Exceptions, the standard "printed form" exceptions to title insurance and other exceptions as do not render title unmarketable and are acceptable to Purchaser as provided in this Contract. Seller shall supply any documents (including prior title insurance policies and existing survey, if any) and/or affidavits reasonably requested by said Title Company and required thereby for the issuance of title insurance policies to Purchaser and Purchaser's mortgagee, if any.

(b) Purchaser shall have a one-time right to deliver to the attorneys for Seller, at least forty-five days prior to the closing of title, a copy of a title report with respect to the Premises prepared by the Title Company, together with a written statement as to any objections to title that Purchaser may have as a result of matters disclosed in said report, other than the Exceptions, which Purchaser is unwilling to accept at the closing of title, provided, however, that such objections to title were noted or issued against the Premises during the period beginning after the date hereof and through and including the date of receipt by Seller of Purchaser's written statement as to objections to title (the "Objections to Title"). Seller is hereby obligated to remove of record any judgments against Seller, mechanics' liens and Objections to Title which Seller has caused or permitted to be filed of record against the Premises, but only if same are evidenced by a writing or writings executed by Seller, including, but not limited to, mortgages ("Seller Title Objections"); provided, however, Seller shall not be obligated to pay, bond, or otherwise remove from record any judgments entered against Seller in any action or proceeding to the extent such judgments require payment, including interest and penalties thereon, of Five Hundred Thousand Dollars (\$500,000.00) or more in the aggregate, including other judgments against Seller. With respect to Objections to Title other than those described in the preceding sentence, Seller shall remove the same, except that Seller is hereby obligated to spend, in the aggregate, not more than the positive difference between (x) Five Hundred Thousand Dollars (\$500,000.00) and (y) the amount Seller is obligated to spend in the preceding sentence to pay, bond or remove from record judgments against Seller. Seller shall be entitled to an adjournment of the Closing Date for a reasonable period of time (not to exceed sixty days) in order to eliminate any Objections

to Title. In the event Seller cannot eliminate the Objections to Title by the Closing Date, as adjourned hereunder, Purchaser shall have the option to either (A) terminate this Contract by written notice to Seller and Escrow Agent, and, if Seller fails to contest Purchaser's claim by written notice to Escrow Agent received by Escrow Agent within ten (10) days after receipt of Purchaser's notice as aforesaid, then Escrow Agent shall return to Purchaser the Letter of Credit and Seller shall reimburse Purchaser for the reasonable expenses of examination of title, municipal searches and the preparation and updates of surveys, if any, incurred by Purchaser, and thereupon this Contract shall terminate and neither party shall have further rights or obligations hereunder, or (B) Purchaser may accept title to the Premises at closing subject to the remaining Objections to Title, provided, however, that Purchaser shall be entitled to an abatement of the Purchase Price equal to the positive difference between (x) Five Hundred Thousand Dollars (\$500,000.00) and (y) all amounts spent by or on behalf of Seller on account of paying, bonding or otherwise removing from record judgments and Objections to Title other than the Seller Title Objections (excluding judgments).

16. The closing of title pursuant to this Contract (the "Closing") shall take place at the offices of Battle Fowler, 280 Park Avenue, New York, New York 10017, or at such other place as may be fixed in writing by the parties or otherwise as provided herein. The "Closing Date" shall be any date from and including September 1, 1989, as same may be extended by Seller pursuant to the terms of this Contract, to and including September 1, 1990, of which Seller gives Purchaser at least thirty days' prior written notice, which Closing Date may be made "time of the essence" to Purchaser or Seller, as the case may be, by the other party hereto, only after the party as to whom "time of the essence" is being sought shall have elected to adjourn the September 1, 1989 Closing Date or any adjourned Closing Date once, provided, further, that in the event any Closing Date is made time of the essence by Purchaser, such Closing Date may nevertheless be adjourned by Seller from time to time for not more than sixty (60) days in the aggregate if Seller has been using and continues to use diligent efforts to effect a closing by the Closing Date, but, nevertheless, is unable to close title on the premises to which Seller plans to relocate on or about the Closing Date. Purchaser and Seller hereby agree that Seller's obligation to close title pursuant to this Contract is expressly conditioned upon Seller's receipt, within one year after the date hereof, of any court and other approvals and consents to the transaction contemplated by this Contract to the extent required by any federal, state or local law, statute, ordinance or

regulation, or court or administrative order or decree to which Seller is subject ("Seller's Court Approval"). Seller shall use its best efforts to obtain Seller's Court Approval and shall commence to take action to obtain Seller's Court Approval immediately after the date hereof. If Seller is unable to receive Seller's Court Approval within one year after the date hereof, then Purchaser may terminate this Contract at any time thereafter by written notice to Seller and Escrow Agent, and, if Seller fails to contest Purchaser's notice of termination as aforesaid by written notice to Escrow Agent and Purchaser received by Escrow Agent and Purchaser within ten (10) days after receipt of Purchaser's notice as aforesaid, then Escrow Agent shall return to Purchaser the Letter of Credit and Seller shall reimburse Purchaser for the reasonable expenses of examination of title, municipal searches and the preparation and updates of surveys, if any, incurred by Purchaser and, thereupon, this Contract shall terminate and neither party shall have further rights or obligations hereunder.

17. All notices desired or required to be given to Purchaser or Seller shall be sent by (a) certified or registered mail, return receipt requested, postage prepaid, or (b) national prepaid overnight delivery service, or (c) telecopy or other facsimile transmission (followed with hard copy sent by national prepaid overnight delivery service), or (d) personal delivery with receipt acknowledged in writing, directed to Purchaser's address as above set forth with a copy to Schwartz, Kelm, Warren & Rubenstein, [REDACTED], Attention: Richard W. Rubenstein, Esq., telecopy: (614) 224-0360, and to Seller directed to Seller's address as above set forth, with a copy to Battle Fowler, 280 Park Avenue, New York, New York 10017, Attention: Martin L. Edelman, Esq., telecopy: (212) 986-5135. Any notice so sent by certified or registered mail shall be deemed given on the date of receipt or refusal as indicated on the return receipt. All other notices shall be deemed given when actually received or refused by the party to whom the same is directed. A notice may be given either by a party or by such party's attorney, and shall be deemed received or refused by a party when received or refused by such party or party's attorney. The respective attorneys of the parties are hereby authorized to agree to adjournments of the Closing Date.

18. Each party represents and warrants to the other party that it has not hired, retained or dealt with any real estate broker, firm or salesman in connection with the transaction contemplated by this Contract other than David Bates on behalf of Sotheby's International Realty. Each party shall defend, indemnify and hold the other party harmless from and

against any and all claims for brokerage fees or other commissions which may at any time be asserted against the indemnified party founded upon a claim that the aforesaid representation and warranty of the indemnifying party is untrue, together with any and all losses, damages, costs and expenses (including reasonable attorneys' fees and disbursements) relating to such claims or arising therefrom or incurred by the indemnified party in connection with the enforcement of this indemnification provision. Notwithstanding the foregoing, Purchaser shall defend, indemnify and hold Seller harmless from and against any and all claims for brokerage fees or other commissions which may be asserted against Seller by David Bates and/or Sotheby's International Realty, together with any and all losses, damages, costs and expenses (including reasonable attorneys' fees and disbursements) relating to such claims or arising therefrom or incurred by Seller in connection with the enforcement of this indemnification provision. The provisions of this Paragraph shall survive the Closing.

19. Purchaser has inspected the buildings standing on said Premises and is thoroughly acquainted with their condition and agrees to take title "as is" and in their present condition and subject to reasonable wear, tear and natural deterioration between the date hereof and the Closing Date.

20. Purchaser shall have the right to inspect the Premises from time to time and upon reasonable notice during school breaks or recesses or after-school hours, subject, in all events, to the limitation on such activity contained in Paragraph 32. Subject to the rights of Purchaser to enter into the Premises as provided in this Contract, Seller shall retain possession of the Premises until the Closing Date.

21. Seller shall deliver to Purchaser at the Closing (a) the original, if available, or copies of all certificates of occupancy for the Premises and any improvements thereon and (b) all keys to the Premises and any appurtenances thereto, and Seller shall deliver to Purchaser prior to the Closing copies of all guarantees and/or warranty agreements affecting the Premises or any improvements located thereon, the rights under which shall be assigned, to the extent assignable to, and to the extent requested by, Purchaser, on the Closing Date. Seller agrees to deliver possession of the Premises on the Closing Date, vacant, free and clear of all leases and tenancies. Seller shall remove from the Premises all personal property which is not in any way attached to or made a part of the Premises at Seller's sole cost and expense. The provisions of this Paragraph shall survive the Closing.

22. (A) Seller represents and warrants to Purchaser and agrees as of the date hereof that:

(i) A schedule of permits, licenses or certificates with respect to the maintenance of the improvements on the Premises which are, and on the date of the Closing will be, to the extent required, in full force and effect, will be delivered to Purchaser by no later than July 15, 1988;

(ii) To the best of Seller's knowledge, the items noted on Exhibit C attached hereto are the only violations presently noted against the Premises.

(iii) Seller is a not-for-profit educational corporation duly incorporated, validly existing and in good standing under the laws of the State of New York, and has the full corporate power and corporate authority to own its properties and to carry on its business as it is now being conducted;

(iv) Seller has the requisite power and authority to enter into this Contract and to assume and perform its obligations hereunder. The Board of Trustees of Seller has duly taken all action required by law, its certificate of incorporation and bylaws, both as amended, and otherwise, to authorize and approve the execution and delivery of this Contract and the consummation of the transactions herein contemplated. This Contract, when executed and delivered by Seller, will constitute the valid and legally binding obligations of Seller enforceable in accordance with its terms. The foregoing representations are expressly subject to any requirements of law as referred to in Paragraph 16 above;

(v) To the best of Seller's knowledge, no action, suit, claim, investigation or proceeding, whether legal or administrative or in mediation or arbitration, is pending or, to the extent of the present knowledge of Seller, threatened, at law or in equity or admiralty, against Seller with respect to the Premises before or by any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, and there are no judgments, decrees or orders entered on a suit or proceeding against Seller, an adverse decision in which might, or which judgment, decree or order does, adversely affect the Premises or Seller's ability to perform or Purchaser's rights under this Contract, or which seeks to restrain, prohibit, invalidate, set aside, rescind, prevent or make unlawful this Contract or the carrying out of this Contract or the transactions contemplated hereby;