

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:

3324 N. CLARK STREET, LLC,

Debtor

Chapter 11

Case No. 16-30934

Hon. Donald R. Cassling  
Room 619

Hearing Date: November 15, 2016

Hearing Time: 9:30 a.m.

**NOTICE OF MOTION**

To: See Attached Service List

PLEASE TAKE NOTICE THAT on November 15, 2016 at the hour of 9:30 a.m., we shall appear before the Honorable Donald R. Cassling, or any other Judge sitting in his stead in Courtroom No. 619, 219 South Dearborn, Chicago, Illinois, at which time we shall present **MOTION FOR ORDER: (I) AUTHORIZING THE SALE OF THE DEBTOR'S INTEREST IN REAL PROPERTY; AND (II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**, a copy of which is attached hereto a served upon you, and shall pray for the entry of an order in conformity with said pleading, at which time and place you may appear if you so see fit.

**3324 N. CLARK STREET, LLC, Debtor**

By:           /s/ Ariel Weissberg            
One of its attorneys

Ariel Weissberg, Esq. (Attorney No. 03125591)  
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**CERTIFICATE OF SERVICE**

I, Ariel Weissberg, certify that on October 24, 2016, I caused to be served **MOTION FOR ORDER: (I) AUTHORIZING THE SALE OF THE DEBTOR'S INTEREST IN REAL PROPERTY; AND (II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES** to be filed electronically. Notice of this filing was sent to all parties registered with the court's ECF electronic transmission, including to the following parties:

Patrick S. Layng, Esq.  
Office of the U.S. Trustee, Region 11  
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and on October 24, 2016 by first class U.S. mail to the following parties:

Illinois Department of Revenue  
Bankruptcy Section  
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District Director  
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Chicago, IL 60657

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Park Ridge, IL 60068

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IR Design, Inc.  
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Rick Levin & Associates, Inc.  
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Simone Singer Weissbluth  
Revocable Trust  
917 W. Washington, Suite 127  
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Simone Singer Weissbluth  
917 W. Washington, Suite 127  
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The Simone Singer Weissbluth Revocable Trust  
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Chicago, IL 60607

Wintrust Bank  
190 South LaSalle  
Suite 2200  
Chicago, IL 60603

WMW GC, LLC  
917 W. Washington, Suite 127  
Chicago, IL 60607

WMW Investments, LLC  
917 W. Washington, Suite 127  
Chicago, IL 60607

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/s/ Ariel Weissberg  
Ariel Weissberg

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:

3324 N. CLARK STREET, LLC,

Debtor

Chapter 11

Case No. 16-30934

Hon. Donald R. Cassling

Hearing Date: November 15, 2016

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**MOTION FOR ORDER: (I) AUTHORIZING THE SALE OF THE DEBTOR'S INTEREST  
IN REAL PROPERTY; AND (II) AUTHORIZING THE ASSUMPTION AND  
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

NOW COMES Debtor, 3324 N. Clark Street, LLC, Debtor and Debtor-in-Possession herein (the "Debtor"), by its attorneys, Ariel Weissberg and the law firm of Weissberg and Associates, Ltd., and hereby files Debtor's Motion (the "Sale Motion") seeking an Order authorizing the sale of the Debtor's interests in certain real and personal property located at 3324 N. Clark Street, Chicago, Illinois (the "Property") (the "Sale Order"), and the assumption and assignment of certain executory contracts and unexpired leases in connection therewith.

This Sale Motion is made pursuant to Sections 105, 363, and 365 of the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.* (the "Bankruptcy Code"), as well as Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Local Bankruptcy Rules of this Court. This Sale Motion is based on the following memorandum of points and authorities; any additional argument or facts that the Court may permit to be presented at the hearing on the Sale Motion; and the documents and evidence previously submitted to this Court in connection herewith.

**FACTS**

**A. Introduction**

1. On September 28, 2016 ("Petition Date"), the Debtor commenced this case by filing a

voluntary petition in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, seeking to reorganize under Chapter 11 of the Bankruptcy Code.

1. Since the Petition Date, the Debtor has continued in the possession, management and operation of its assets, properties and businesses in accordance with Sections 1107 and 1108 of the Bankruptcy Code.

2. No trustee, examiner, or official committee of unsecured creditors has been appointed.

3. The Court has jurisdiction over the Sale Motion, the underlying sale transaction and the Stalking Horse Agreement pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a), and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue of this case and the Sale Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

**B. Background**

4. The Debtor is the sole owner of beneficial interests in the Chicago Title Land Trust number 8002371267 under trust agreement dated May 9, 2016, which is the titleholder to the real estate and improvements at 3324 N. Clark Street, Chicago, Illinois (the "Property") (Pin:14-20-418-032-0000).

5. The Property is a four story, mixed use property with both commercial and residential uses of approximately 12,000 square feet. Presently, there are two lessees: (a) a sign lease with Big Outdoor Media OPCO pursuant to a lease dated February 25, 2002 with monthly rent equal to \$3,000.00 if there is advertising on the sign and \$2,300.00 per month if there is no advertising on the sign ("Sign Lease"); and, (b) a commercial lease with Daku DR Corporation d/b/a/ Ricci Kapricci Salon pursuant to a lease dated August 12, 2012 with monthly rent equal to \$1,500.00 ("Salon Lease").

**C. Debtor's Loan Arrangements With The Bank**

6. Prior to the Petition Date, the Debtor entered into a loan arrangement with Wintrust Bank (the "Bank"), with respect to the Property evidenced by, among others, the following documents, instruments and agreements (collectively, the "Loan Documents"):

- i. Promissory Note, dated as of July 30, 2015, in the original principal amount of \$1,350,000.00 (the “Note”);
- ii. Mortgage, dated as of July 30, 2015, (the “Mortgage”); and
- iii. Assignment of Leases, dated as of July 30, 2015, relating to the Property (the “Rent Assignment”).

7. In accordance with the terms and conditions of the Loan Documents, the Bank holds a valid, perfected, and unavoidable first lien position against the Property. Moreover, the Mortgages and the Rent Assignments provide the Bank with valid, perfected, and unavoidable first perfected security interests in all leases and tenancies associated with the Property, including all rents, income, receipts, revenues, issues and profits generated by the Property.

**D. Marketing the Property for Sale**

8. The Debtor asserts that it is in the best interests of all constituents that the Property be sold in an auction sale.

9. In order to facilitate the competitive bid solicitation process contemplated herein, the Debtor is seeking to engage and retain Rick Levin and Associates, Inc. (“Broker”) as its exclusive real estate broker to assist the Debtor in formulating and implementing a comprehensive marketing, auction and sale process for the Property. The Broker will establish an electronic data room for interested parties to conduct due diligence, and will otherwise prepare and disseminate comprehensive offering materials to their target audience. The Broker will also actively market the Property to an extensive list of potential interested suitors.

**THE PROPOSED SALE PROCEDURES**

10. The Auction (as herein defined) and sale procedures (the “Sale Procedures”) that will govern the Auction and sale of the Property are set forth in full at Exhibit “1” hereto and incorporated herein.

**A. Bankruptcy Court Approval**

11. Any proposed sale of the Property by the Debtor is specifically subject to approval by the Court, which will approve, among other things, (a) the sale of the Property to the Winning Bidder(s) at the Auction as those terms are defined in paragraphs 11 and 12 of this Motion; and (b) the assumption and assignment of certain executory contracts and unexpired leases in connection with the sale of the Property, including the Sign Lease and the Salon Lease.

**B. Auction**

12. The Broker will coordinate a comprehensive marketing program, following which it will conduct a competitive bid auction (the "Auction") for the Property. In order to become the winning bidder with respect to either of the Property, a Bidder must ("Winning Bidder"): (a) be declared the highest and/or best bid at the conclusion of the Auction, and (ii) such bid must be accepted by the Debtor. Subject to the approval of the Court, the Debtor and the Broker intend to conduct the Auction (the "Auction Date"). The Auction shall be governed by the Sale Procedures. The proposed Auction Date is January 6, 2017.

**C. Bidders**

13. Any person that wishes to participate in the Auction (each, a "Potential Bidder") must become a "Qualified Bidder" by complying with the bid qualification and registration requirements set forth in the Sale Procedures. As a prerequisite to becoming a Qualified Bidder, a Potential Bidder must comply with the following requirements:

- a) offer to purchase all or substantially all of the Property upon the terms and conditions substantially as set forth in the Stalking Horse Agreement;
- b) be accompanied by a clean and duly executed purchase agreement (the "Modified Purchase Agreement");
- c) state that such bidder is financially capable of consummating the transactions contemplated by the Modified Purchase Agreement, and provides written evidence satisfactory to the Debtor demonstrating that such bidder has the financial ability to consummate the purchase of all of the Property;
- d) contain such financial and other information to allow the Debtor to make a reasonable determination as to the bidder's financial and other capabilities to consummate the transactions contemplated by the Modified Purchase Agreement, including, without limitation, such financial and other information setting forth



adequate assurance of future performance under contracts and leases to be assumed pursuant to section 365 of the Bankruptcy Code in a form requested by the Debtor to allow the Debtor to serve, within one (1) business day after such receipt, such information on counter-parties to any contracts or leases being assumed or assumed and assigned in connection with the proposed sale that have requested, in writing, such information;

- e) state that such bidder's offer is irrevocable until the closing of the sale if such Qualifying Bidder is the Winning Bidder;
- f) identifies with particularity each and every executory contract and unexpired lease, the assumption and, as applicable, assignment of which is a condition to closing;
- g) does not request or entitle such bidder to any break-up fee, expense reimbursement, or similar type of payment;
- h) fully discloses the identity of each entity that will be bidding or otherwise participating in connection with such bid, and the complete terms of any such participation;
- i) does not contain any financing contingencies of any kind; (x) provides for expiration of any due diligence contingency on or before the Auction Date (as defined below); and (y) contains evidence that the bidder has received debt and/or equity funding commitments or has financial resources readily available sufficient in the aggregate to consummate the purchase of the Property as provided for in the Modified Purchase Agreement, which evidence is reasonably satisfactory to the Debtor;
- j) includes evidence of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Modified Purchase Agreement; and
- k) provides a purchase deposit equal to ten percent (10%) of the purchase price contained in the Modified Purchase Agreement.

A competing bid that satisfies all the above requirements shall constitute a "Qualifying Bid". The Bank shall automatically be deemed a Qualified Bidder, without the need to make a deposit or satisfy any of the other conditions noted above. The Bank shall further be permitted to exercise its statutory right to credit bid throughout the Auction under Section 363(k) of the Bankruptcy Code.

**D. Due Diligence by Bidders**

14. Following execution of a confidentiality agreement in form and substance acceptable to the Debtor, and prior to the Auction Date, bidders will have the opportunity to conduct reasonable due diligence through a secure data vault maintained by the Broker.

**G. Sale Hearing**

15. The Winning Bid will be subject to approval by the Bankruptcy Court. The hearing to approve the Winning Bid (the “Sale Hearing”) shall take place on February 7, 2017.

**AUTHORITY**

**A. The Standard for Asset Sales – Section 363(b) of the Bankruptcy Code**

16. Section 363(b) of the Bankruptcy Code provides that “[T]he Debtor, 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). The standard for approval of a sale of property of the estate under section 363 is whether there exists some articulated business justification for the proposed transaction, and whether the sale is in the best interests of the debtor, creditors and equity holders. See Walter v. Sunwest Bank (In re Walter), 83 B.R. 14, 19 (9th Cir. BAP 1988) (quoting Institutional Creditors of Continental Airlines, Inc. (In re Continental Airlines, Inc.), 780 F.2d 1223, 1226 (5th Cir. 1986). In making such a determination, courts may look to the following factors:

- a) Whether the assets are increasing or decreasing in value;
- b) Whether the proposed sale will effectuate a *de facto* reorganization;
- c) Whether the assets have been adequately marketed; and
- d) Whether adequate and reasonable notice of the sale was given.

See In re Work Recovery, 202 B.R. 301, 303-04 (Bankr. D. Ariz. 1996); and In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991).

**B. Procedural Requirements – Rules 6004(f) and 2002(c)(1)**

17. Rule 6004(f) of the Federal Rules of Bankruptcy Procedure provides that “[a]ll sales not in the ordinary course of business may be by private sale or by public auction.” F.R.B.P 6004(f). A Debtor is entitled to broad discretion in determining the manner of sale, including whether to sell property by public or private sale. In re Frezzo, 217 B.R. 985, 989 (Bankr. M.D. Pa. 1988) (citing In re Canyon Partnership, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985)).

18. Rule 2002(c)(1) of the Federal Rules of Bankruptcy Procedure further provides that:

[N]otice of a proposed use, sale, or lease of property . . . shall include the time and place of any public sale, the terms and conditions of any private sale, and the time fixed for filing objections.

F.R.B.P. 2002(c)(1).

**C. Sales “Free and Clear” – Section 363(f)**

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

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

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

11 U.S.C. § 363(f). Section 363(f) is written in the disjunctive. Therefore, satisfaction of any one of the five conditions is sufficient to sell property free and clear of any interests in such property.

**D. Assumption and Assignment of Contracts – Section 365**

20. Bankruptcy Code section 365(a) provides:

Except as provided in Section 765 and 766 of this title and in subsection (b), (c), and (d) of this section, the Debtor, subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.

11 U.S.C. § 365(a).

21. Bankruptcy Code section 365(f)(2) also provides:

The Debtor may assign an executory contract or unexpired lease of the debtor only if –

(A) the Debtor assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

**E. Section 105 of the Bankruptcy Code**

22. Bankruptcy Code section 105(a) provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a)

**ARGUMENT**

**A. The Auction is the Best Way to Maximize Value**

23. The Debtor asserts that it is in the best interests of all constituents that the Property be marketed for sale as promptly as possible as provided in this Motion. The conduct of the proposed Auction will result in a final and definitive resolution of the claims of the Bank involving the Property.

**B. The Sale Procedures Will Result in a Fair and Reasonable Price**

24. The Debtor submits that the value of the Property can be best tested in the context of an open and transparent auction with competitive bidding. At the Sale Hearing, the Debtor will present to the Court a bid for the Property that was subjected to a comprehensive and competitive sale process, culminating in the Auction. As a result, the successful bid will represent a fair and reasonable price for the assets. See In re Onouli-Kona Land Co., 846 F.2d 1170 (9<sup>th</sup> Cir. 1988) (upholding the results of a section 363 auction where there was no evidence of bad faith); In re Gucci, 126 F.3d 380 (2<sup>nd</sup> Cir. 1997) ([W]here the purchaser is found to have acted in good faith, the auction price suffices to demonstrate that the purchaser paid value for the assets.); In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3<sup>rd</sup> Cir. 1986) (holding that an auction is sufficient to establish the value of assets except where purchaser did not act in good faith); and In re Alpha Industries, Inc., 84 B.R. 703, 706 (Bankr. Mont. 1988) (“Generally

speaking, an auction may be sufficient to establish that one has paid ‘value’ for the assets of a bankrupt.”).

25. The Sale Procedures are structured so as to produce an open, transparent and vibrant auction process. Bidders who satisfy the Sale Procedures, including the demonstration of their financial ability to consummate a sale will be permitted to bid at the Auction.

**C. The Sale Should be Made “Free and Clear”**

26. The Debtor reasonably believes that at the conclusion of the Auction either the Bank will consent to the sale in issue, or, alternatively, will exercise its credit bid rights under Section 363(k) of the Bankruptcy Code at the conclusion of such Auction, and thus Section 363(f)(2) will be satisfied at the time of any hearing to approve a sale. Also, the Debtor believes that the value of the Property well exceeds the claims of the Bank, and thus, the Bank will be paid in full on its claims pursuant to the sale.

27. As a condition of the sale, any Sale Order shall provide that the sale is being made free and clear of all claims of creditors in the bankruptcy case. The Debtor submits that such a provision is justified. The Debtor will serve notice of the Sale Hearing and Sale Procedures on all creditors and other parties in interest in the estate. The Debtor does not anticipate any opposition from creditors. If that turns out to be case, then all such parties will have been deemed to have consented to the sale, and Section 363(f)(2) of the Bankruptcy Code will be satisfied. See FutureSource LLC v. Reuters Ltd., 312 F.3d 281, 285 (7<sup>th</sup> Cir. 2002); and In re Shary, 152 B.R. 724, 725 (Bankr. N.D. Ohio 1993).

**D. The Assumption and Assignment of Leases and Contracts is a Proper Exercise of Business Judgment**

28. Bankruptcy courts employ a “business judgment” standard when evaluating a Debtor’s decision to assume or reject an executory contract or unexpired lease. See In re G.I. Industries, Inc., 204 F.3d 1276, 1282 (9<sup>th</sup> Cir. 2000), citing NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523, 104 S.Ct. 1188, 79 L.Ed.2d 482 (1984) (recognizing that the business judgment rule is used in reviewing motions to assume or reject executory contracts). In the Debtor’s business judgment, the assumption and assignment of the executory contracts is in the best interests of the estate and its creditors. There are no defaults by

the Debtor under the terms of the Sign Lease and the Salon Lease. As such, there is no basis for denying the request for the assumption and assignment of the Sign Lease and the Salon Lease.

**E. The Form of Notice of Hearing and Sale Should be Approved**

29. While no particular form of notice is required, the Debtor must provide those creditors and parties in interest entitled to notice with sufficient information regarding the sale so that such parties can make an informed decision about consenting to, or opposing, the proposed sale. A critical component of the notice will be disclosure of the Sale Procedures so that those parties in interest wishing to participate in the bidding can do so on a timely basis.

**CONCLUSION**

30. Based on the reasons set forth herein, the Debtor respectfully requests that the Court, enter an order approving: (a) the sale of the Property to the highest and/or best bidders as may appear at the Auction; and (b) the assumption and assignment of executory contracts and unexpired leases, including the Sign Lease and the Salon Lease; and (c) granting the Debtor such other and further relief as the Court may find just and proper.

**3324 N. CLARK STREET, LLC, Debtor**

By: /s/ Ariel Weissberg  
One of its attorneys

Ariel Weissberg, Esq. (Attorney No. 03125591)  
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# **EXHIBIT 1**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:

3324 N. CLARK STREET, LLC,

Debtor

Chapter 11

Case No. 16-30934

Hon. Donald R. Cassling  
Room 619

**BIDDING PROCEDURES**

Set forth below are the bidding procedures (the “Bidding Procedures”) to be employed in connection with that certain “Purchase and Sale Agreement” (“Purchase Agreement”), pursuant to which the any Qualified Bidder (as defined below) may acquire the Seller and the Debtor’s interests in the property and improvements located at 3324 N. Clark Street, Chicago, Illinois (“Property”). The Debtor shall obtain the entry of an order of the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (“Court”), as “stalking horse” bidder under the Purchase Agreement, which, among other things (a) approves the sale of the Property under the terms of the Purchase Agreement, or to such other better and/or higher offeror as may appear at the Auction (defined below), (b) approves the within Bidding Procedures, (c) approves the form and manner of the sale notice and bidding procedures notice, (d) schedules a Sale Hearing (as defined below), and (e) approves procedures for the assumption and, if necessary, assignment of executory contracts and unexpired leases. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Purchase Agreement.

1. Assets to be Sold. The Debtor shall offer for sale certain of the property and assets (the “Asset Sale”) of the Debtor’s interests in the Property as set forth more fully in the Purchase Agreement (collectively the “Acquired Property”).

2. Due Diligence. In order to conduct due diligence, any potential bidder (“Potential Bidder”): (a) must deliver an executed confidentiality agreement in form and substance



acceptable to the Debtor; and (b) must be able, as determined by the Debtor, to consummate a transaction based upon the Asset Sale, as applicable, if selected as the successful bidder. A Potential Bidder will have the opportunity to conduct reasonable due diligence through and including the Bid Deadline (defined below). The Debtor and its representatives shall not be obligated to furnish any due diligence information after the Bid Deadline.

3. Qualifying Bids. Any Potential Bidder that wishes to participate in the bidding process must become a “Qualifying Bidder.” Wintrust Bank is deemed a Qualifying Bidder for all purposes. To be deemed a “Qualifying Bidder,” a bid must be received from a Qualifying Bidder by a date no later than the Bid Deadline that:

(a) states that such Qualifying Bidder offers to purchase all or substantially all of the Property upon the terms and conditions substantially as set forth in the Purchase Agreement;

(b) is accompanied by a clean and duly executed purchase agreement (the “Modified Purchase Agreement”) and a marked Modified Asset Purchase Agreement reflecting any variations from the Purchase Agreement;

(c) states that such Qualifying Bidder is financially capable of consummating the transactions contemplated by the Modified Purchase Agreement, and provides written evidence satisfactory to the Debtor demonstrating that such bidder has the financial ability to consummate the purchase of all of the Property;

(d) contains such financial and other information to allow the Debtor, to make a reasonable determination as to the Qualifying Bidder’s financial and other capabilities to consummate the transactions contemplated by the Modified Purchase Agreement, including, without limitation, such financial and other information setting forth adequate assurance of future performance under contracts and leases to be assumed pursuant to section 365 of the Bankruptcy Code in a form requested by the Debtor to allow the Debtor to serve, within one (1) business day after such receipt, such information on counter-parties to any contracts or leases

being assumed or assumed and assigned in connection with the proposed sale that have requested, in writing, such information;

(e) states that such Qualifying Bidder's offer is irrevocable until the closing of the Asset Sale if such Qualifying Bidder is the Winning Bidder (defined below);

(f) identifies with particularity each and every executory contract and unexpired lease, the assumption and, as applicable, assignment of which is a condition to closing;

(g) does not request or entitle such Qualifying Bidder to any break-up fee, expense reimbursement, or similar type of payment;

(h) fully discloses the identity of each entity that will be bidding in the Asset Sale or otherwise participating in connection with such bid, and the complete terms of any such participation;

(i) does not contain any financing contingencies of any kind; (x) provides for expiration of any due diligence contingency on or before the Auction Date (as defined below); and (y) contains evidence that the Qualifying Bidder has received debt and/or equity funding commitments or has financial resources readily available sufficient in the aggregate to consummate the Asset Sale, which evidence is reasonably satisfactory to the Debtor;

(j) includes evidence of authorization and approval from the Qualifying Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Modified Purchase Agreement; and

(k) provides a purchase deposit equal to ten percent (10%) of the purchase price contained in the Modified Purchase Agreement.

A competing bid that satisfies all the above requirements shall constitute a "Qualifying Bid".

4. Bid Deadline. A Qualifying Bidder that desires to make a bid shall deliver a written or electronic copy of its bid to counsel to the Debtor, Weissberg and Associates, Ltd., Attn: Ariel Weissberg, Esq., 401 S. LaSalle Street, Suite 403, Chicago, IL 60605, so as to be actually received no later than two (2) business days before the Auction (defined below) (“Bid Deadline”).

5. Evaluation of Qualifying Bids. The Debtor shall make a determination regarding whether a bid is a Qualifying Bid and shall notify bidders whether their bids have been determined to be qualified by a date no later than two (2) days prior to the Auction Date. Prior to the Auction (as defined below), the Debtor shall determine, in its reasonable judgment, which of the Qualifying Bids is likely to be the highest or best.

6. No Qualifying Bids. If no timely, conforming Qualifying Bids are submitted by the Bid Deadline, the Debtor shall not hold the Auction and shall proceed to a closing of the sale transaction contemplated by the Stalking Horse Agreement.

7. Auction. In the event that the Debtor timely receives one or more Qualifying Bids other than the Purchase Agreement, the Debtor shall conduct an auction at the Court (the “Auction”) on such date as the Court may set in the Bidding Procedures Order (the “Auction Date”). The Auction shall be governed by the following procedures:

- (a) only the Qualifying Bidders shall be entitled to make any bids at the Auction;
- (b) Qualifying Bidders shall appear in person at the Auction, or through a duly authorized representative;
- (c) bidding shall commence at the amount of the highest Qualifying Bid submitted by the Qualifying Bidders prior to the Auction;
- (d) Qualifying Bidders may then submit successive bids in increments of at least twenty-five thousand dollars (\$25,000) higher than the preceding bid; provided, however, that

the Debtor may alter the minimum bid increments in its sole and absolute discretion following consultation with the Bank;

(e) The Bank may make one or more credit bids pursuant to section 363(k) of the Bankruptcy Code;

(f) all Qualifying Bidders shall have the right to submit additional bids and make additional modifications to the Purchase Agreement or Modified Purchase Agreement at the Auction, provided that any such modifications to the Purchase Agreement or Modified Purchase Agreement on an aggregate basis and viewed in whole, shall not be less favorable to the Debtor than the terms of the Purchase Agreement;

(g) the Auction shall continue until there is only one offer that the Debtor determines subject to Court approval, is the highest or best from among the Qualifying Bids submitted at the Auction (the “Winning Bid”). In making this decision, the Debtor shall consider, without limitation, the amount of the purchase price, the form of consideration being offered, the likelihood of the bidder’s ability to close a transaction and the timing thereof, the number, type and nature of any changes to the Purchase Agreement requested by each bidder, and the net benefit to the Debtor’s estate. The bidder submitting such Winning Bid shall become the “Winning Bidder,” and shall have such rights and responsibilities of the purchaser, as set forth in the applicable Purchase Agreement or Modified Purchase Agreement; and

(h) within one (1) day after adjournment of the Auction, the Winning Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Winning Bid was made.

8. Sale Hearing. The Winning Bid will be subject to approval by the Court. The hearing to approve the Winning Bid (the “Sale Hearing”) shall take place at a date, time and place as directed by the Court.

9. Return of Deposits. All deposits shall be returned to each Qualifying Bidder not selected by the Debtor as the Winning Bidder no later than five (5) business days following the conclusion of the Sale Hearing.