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STATUS Hearing Date: June 15, 2017

Time: 2:00 p.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 11

477 WEST 142ND STREET HOUSING
DEV. FUND CORP.,

Case No.: 15-12178 (SHL)

Debtor.
-----X

**NOTICE OF STATUS HEARING IN CONNECTION WITH CHAPTER 11 TRUSTEE'S
MOTION FOR ENTRY OF AN ORDER AUTHORIZING AND APPROVING TERMS
AND CONDITIONS OF AUCTION SALE OF THE DEBTOR'S ESTATE'S REAL
PROPERTY LOCATED AT 477 WEST 142ND STREET, NEW YORK, NEW YORK,
DESIGNATED AS BLOCK 2058, LOT 29, FREE AND CLEAR OF ALL LIENS,
CLAIMS AND ENCUMBRANCES, WITH SUCH LIENS, CLAIMS AND
ENCUMBRANCES TO ATTACH TO PROCEEDS OF SALE**

PLEASE TAKE NOTICE, that on **June 15, 2017 at 2:00 p.m.**, or as soon thereafter as counsel may be heard, a status hearing only (the "Status Hearing") will be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, Southern District of New York, One Bowling Green, New York, New York 10004-1408, Courtroom 701, on the annexed motion (the "Motion") of Gregory Messer, the Chapter 11 Trustee (the "Trustee") of the Debtor's estate of 477 West 142nd Street Housing Dev. Fund Corp. (the "Debtor"), by his counsel, LaMonica Herbst & Maniscalco, LLP, seeking entry of an Order, pursuant to 11 U.S.C. §§ 105 and 363 (the "Bankruptcy Code") and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing and approving (a) a public auction sale (the "Auction Sale") of the Debtor's estate's right, title and interest in the real property located at, and known as, 477 West 142nd Street, New York, New York, designated as Block 2058 and Lot 29 (the

“Property”), to the highest or best bidder, and free and clear of all liens, claims and encumbrances (the “Liens”), if any, with such Liens to attach to the proceeds of sale in the same priority and extent as they existed on the petition date, (b) the terms and conditions of the Auction Sale, and (c) granting such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that in accordance with the Court’s prior directive, no substantive relief in connection with the Motion will be granted by the Court at the Status Hearing. A hearing to consider approval of the Trustee’s Motion will be scheduled by the Court to be held on a future date and time.

Dated: June 9, 2017
Wantagh, New York

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Attorneys for the Trustee

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Relates to a Status Hearing on June 15, 2017 at 2:00 p.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

477 WEST 142ND STREET HOUSING
DEV. FUND CORP.,

Case No.: 15-12178 (SHL)

Debtor.

-----X

**MOTION OF THE CHAPTER 11 TRUSTEE SEEKING ENTRY OF AN ORDER
AUTHORIZING AND APPROVING TERMS AND CONDITIONS OF AUCTION SALE
OF THE DEBTOR'S ESTATE'S REAL PROPERTY LOCATED AT 477 WEST 142ND
STREET, NEW YORK, NEW YORK, DESIGNATED AS BLOCK 2058, LOT 29, FREE
AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, WITH SUCH LIENS,
CLAIMS AND ENCUMBRANCES TO ATTACH TO PROCEEDS OF SALE**

**To: The Honorable Sean H. Lane
United States Bankruptcy Judge
United States Bankruptcy Court
Southern District of New York:**

Gregory Messer, the Chapter 11 Trustee (the "Trustee") of the Debtor's estate of 477 West 142nd Street Housing Dev. Fund Corp. (the "Debtor"), by his attorneys, LaMonica Herbst & Maniscalco, LLP, in support of his motion (the "Motion"), seeks the entry of an Order, pursuant to 11 U.S.C. §§ 105 and 363 (the "Bankruptcy Code") and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing and approving (a) a public auction sale (the "Auction Sale" or the "Auction") of the Debtor's estate's right, title and interest in the Debtor's real property located at, and known as, 477 West 142nd Street, New York, New York, designated as Block 2058 and Lot 29 (the "Property"), to the highest or best bidder, and free and clear of all liens, claims and encumbrances (the "Liens"), if any, with such

Liens to attach to the proceeds of sale in the same priority and extent as they existed on the Filing Date (as defined herein), (b) the terms and conditions of the Auction Sale (the “Terms and Conditions” or the “Terms and Conditions of Sale”)¹, and (c) granting such other and further relief as this Court deems just and proper.

Jurisdiction and Statutory Predicates

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
3. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
4. The statutory predicates for the relief requested herein, include, *inter alia*, Sections 105 and 363 of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004.

Background

A. Procedural History

5. On August 5, 2015 (the “Filing Date”), the Debtor filed a voluntary petition (the “Petition”) for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “Court”).
6. Immediately subsequent to the filing, the Debtor continued to operate and manage its property and affairs as a debtor in possession pursuant to §§1107 and 1108 of the Bankruptcy Code.
7. As of the Filing Date, the Debtor owned and operated an apartment building (the “Building”) located at the Property. The Property has approximately 4 commercial spaces on the first floor and 8 residential apartments above the commercial spaces.
8. No committee of unsecured creditors was appointed in this case.

¹ All capitalized terms not defined herein shall be ascribed the same meanings as set forth in the Terms and Conditions.

9. By Order of the Court dated March 17, 2016 [Docket No. 34], the Court directed that a Chapter 11 Trustee be appointed in this case.

10. By Order of the Court dated March 21, 2016 [Docket No. 37], the Court approved the appointment of Gregory Messer, Esq., as Chapter 11 Trustee. The Trustee is currently serving in such capacity.

11. As of the Trustee's appointment, the Trustee has been operating the Property. The Trustee has collected (limited) rents from the tenants/shareholders (the "Shareholders")² of the Property, made necessary repairs and conducted routine maintenance at the Property. Such responsibilities are ongoing.

12. The Trustee contemplates moving forward with the Auction Sale of the Property coextensively with the formulation, filing, and ultimate approval of the Trustee's Chapter 11 plan (the "Trustee's Plan"). The Trustee anticipates that the Trustee's Plan will pay all allowed creditors' claims in full, including all administrative claims in the case and the capital gain tax obligations of the estate incurred by virtue of the sale.

13. To this end, the Trustee anticipates filing in the immediate future, an application seeking Court approval of the employment of Maltz Auctions Inc. as real estate broker (the "Broker" or "Maltz") to the Trustee and Debtor's estate.

B. The Real Property

The Building

14. As indicated above, the Building consists of approximately 4 commercial spaces on the first floor and 8 residential apartments above the commercial spaces.

² For purposes of this Motion (and the Trustee's Plan), the Shareholders consist of DeLois Blakely ("Blakely"), Margaret Callender, Joann McClain, Charles DeBerry and Shirley Pitts.

The Debtor's status as an HDFC

15. The Debtor is/was a Housing Development Fund Corporation (“HDFC”)³ created under Article XI of the Private Housing Finance Law of the State of New York, and ownership of the Property was conveyed from NYC as grantor to the Debtor as grantee by deed dated December 7, 1982.

The Mortgage and other Liens and Judgments

16. Upon information and belief, on or about September 20, 2007, the Debtor executed and delivered a mortgage and note in favor of Madison Park Investors LLC and E.R. Holdings LLC (the “Original Lender”) in the principal amount of \$650,000.00. (the “Mortgage Loan”).

17. Thereafter, the Debtor defaulted on the Mortgage Loan, and, in 2009, the Original Lender commenced a foreclosure action against the Property.

18. On or about March 23, 2015, the Original Lender assigned the Mortgage Loan to 477 W. 142nd Funding LLC (the “Lender”).

19. Subsequently, a foreclosure auction sale of the Property was scheduled for August 5, 2015. On the same date, the Debtor filed its Petition for relief under Chapter 11 in order to stop the foreclosure sale and address its business affairs.

³ An HDFC is a special type of limited equity housing cooperative in New York City (“NYC” or the “City”) which is incorporated under Article XI of the New York State Private Housing Finance Law and the Business Corporation Law (BCL). Under this law, NYC is able to sell buildings directly to tenant or community groups to provide low-income housing. Many HDFCs were created through a process of co-op conversion of foreclosed, city-owned properties. An HDFC is a form of co-op housing intended for low-income New Yorkers. The bulk of these income-restricted co-ops came into being after thousands of derelict apartments were seized by the City in the late 1970s. The City began fixing up the buildings, then allowed tenants to buy them for nominal amounts and turn them into low-income co-ops. The buildings were concentrated on the Lower East Side and in Upper Manhattan, Brooklyn and the South Bronx.

20. As of the Filing Date, upon information and belief, the Lender was owed approximately \$1,725,044.92, plus interest, fees, taxes, insurance and other charges, including attorney's fees, in connection with the Mortgage Loan.

21. Additionally, unpaid and accrued real estate taxes against the Property are approximately \$700,000, and open water charges for the Property are approximately \$212,000. Additional judgments and ECB's are filed against the Property in the aggregate sum of several hundred thousand dollars.

22. The Trustee seeks, through the Auction Sale, to obtain the highest possible value for the Property in order to address and reorganize the debts of the Debtor's estate, while also recognizing the interests of the Shareholders.

C. Sale of the Property

23. As indicated above, the Trustee has been operating the Building in furtherance of his statutory duties, but the operation thereof has been challenging given the lack of rents being received from the Shareholders and/or other tenants. Notwithstanding this fact, the Trustee has diligently maintained and made emergency and necessary repairs at the Property. The status quo, however, cannot be sustained over time. Moreover, the Debtor is in a Chapter 11 proceeding. Therefore, the Debtor's estate, its Property, the operation of the Building, and the Debtor's debt obligations must be appropriately and adequately addressed in this case.

24. At this juncture, the Trustee's proposed sale of the Property, with the attendant benefits which will inure to the Shareholders, is a prudent and efficient mechanism to accomplish these duties and goals consistent with the requirements under the Bankruptcy Code.

25. For a substantial period of time, the Trustee has been contacted by, and communicated with, multiple interested parties inquiring about the potential purchase of the

Property, and recently has been soliciting and receiving multiple formal and informal purchase offers for the Property.

26. Thus, there has been strong interest regarding the acquisition of the Property. The Property is located in a highly desirable section of Harlem, New York, and thus has tremendous economic potential. Therefore, maximum value may be realized for the benefit of the Debtor's estate, creditors and its Shareholders. Notwithstanding significant effort, the Trustee has been unable to enter a term sheet or other "stalking horse agreement" with an interested buyer on terms acceptable to the Trustee in the exercise of his reasonable business judgment. Therefore, at this juncture, the Trustee desires to proceed with an Auction of the Property in order to obtain the significant economic benefit for the estate, its creditors, and the Shareholders upon the annexed Terms and Conditions of Sale.

27. The Trustee intends on further marketing the Property via Maltz through the date of the Auction Sale (to be determined and scheduled in the near future) in order to maximize the Purchase Price. The Auction Sale shall offer the Property for sale "as is", "where is" and free and clear of all Liens, with any such Liens to attach to the proceeds of sale in the order and priority as they existed on the Filing Date, but subject to certain rights for the Shareholders as set forth in the annexed Terms and Conditions of Sale and described below.

28. The Auction Sale will likely yield sufficient proceeds to clear all valid liens against the Property, as well as pay all other allowed claims in the case in full, including without limitation, administrative tax claims (capital gains tax) of the estate incurred as a result of the sale, and the administrative claims for the services rendered by the Trustee and his professionals in this case.

29. Accordingly, the Trustee respectfully requests that the Court authorize and approve the Auction Sale of the Property.

D. The Term and Conditions of Sale

30. In order to facilitate an orderly sale of the Property, the Trustee submits that the Court approve the annexed Terms and Conditions of Sale (bidding procedures) (**Exhibit “A”**), pursuant to which bids for the Property will be solicited at the Auction.

31. Consistent with the Terms and Conditions, and in furtherance of the Auction Sale, the Trustee will schedule the date, time and place of the Auction, upon written notice to all interested parties, in accordance with Rule 2002 and 6004, to take place in the near future⁴.

32. In accordance with the Auction procedures set forth in the Terms and Conditions of Sale, in order for other interested parties to be permitted to bid on the Property, all prospective bidders must deliver to the Trustee or Maltz, a certified or bank check, in the amount of \$490,000.00 (the “Qualifying Deposit”), payable to the Trustee, prior to the commencement of the Auction Sale, which amount shall serve as a partial good faith deposit against payment of the Purchase Price. The Opening Bid at the Auction shall be in the sum of not less than \$4.9 million (plus the Buyer’s Premium). The Trustee will return any Qualifying Deposit to any unsuccessful bidder(s) immediately after the conclusion of the Auction Sale, except for the second highest bidder in accordance with and as set forth in the Terms and Conditions.

33. The Successful Purchaser (as that term is defined in the Terms and Conditions) shall (a) deliver a certified or bank check, in an amount of at least 10% of the bid price minus the Qualifying Deposit (together with the Qualifying Deposit, the “Deposit”), plus a four percent (4%) Buyer’s Premium (for the real estate brokerage commission), within 48 hours of the

⁴ The Trustee contemplates possibly scheduling the Auction to be held on July 26, 2017 at 11:00 a.m., at a place to be determined. The Trustee intends to serve a notice of Auction substantially in the form as annexed as **Exhibit “B”**.

Auction Sale; and (b) pay the balance of the Purchase Price for the Property to the Trustee at the closing of title to the Property (the "Closing").

34. Furthermore, an integral component of the Terms and Conditions is that, upon Closing, and in accordance with the requirements and conditions as may be set forth in the Trustee's Plan⁵, the Successful Purchaser will acquire the Property subject to life tenancies ("Life Tenancies") of the five (5) Shareholders (one presently occupied unit each) (the "Life Tenants"). Blakely's Life Tenancy for her unit shall be transferable to her daughter (based upon existing disability hardship circumstances). No other transfers of units or Life Tenancies are permitted.

35. Rent for the Life Occupancy Tenants shall be paid per unit to the Successful Purchaser (Owner) as follows: (a) without charge for the first two (2) years following Closing; (b) then the monthly sum of \$400.00 for years two through four after Closing; (c) for the fifth year after Closing, the monthly rent may be increased by no more than five percent (5%), and (d) with subsequent annual increases of rent thereafter at the rate of three percent (3%).

36. As further set forth in the Terms and Conditions, all due diligence by any interested party or bidder shall be borne by such party or bidder.

37. Additionally, in accordance with the Terms and Conditions, all deed transfer taxes that are not otherwise exempt by the Plan under section 1146 of the Bankruptcy Code or other applicable state law shall be borne by the Successful Purchaser.

38. As set forth in the Terms and Conditions, there are no contingencies of any kind on the part of the Successful Purchaser. The only contingencies on the part of the Debtor's estate

⁵ Any rights and/or benefits conferred upon each of the Shareholders shall be in accordance with the requirements and conditions of the Trustee's Plan, and will only be granted upon acceptance of the Plan by each such Shareholder, and in exchange for a mutual release and waiver of claims between the Trustee, on behalf of the Debtor's estate, and each Shareholder.

is to deliver insurable title to the Property⁶ and obtain, if necessary, NYC and/or NYC Housing Development Funding Corp. approval for the transfer of the Property. In the event the Trustee cannot deliver insurable title (or any required NYC approval), then the sole recourse of the Successful Purchaser is to receive a refund of the Deposit (and the Buyer's Premium).

39. Moreover, the Terms and Conditions provide the terms and requirements for closing on the sale of the Property. The Successful Purchaser must close title to the Property within thirty (30) calendar days after the entry of an Order of the Court approving the sale of the Property to the Successful Bidder, although such date may be extended by the Trustee in his sole and absolute discretion or as necessary to effectuate the Trustee's Plan. As to the Successful Purchaser, time is of the essence to close the transaction. No transaction shall be deemed final until it has been approved by the Court. The Court and all interested parties are respectfully referred to the Terms and Conditions of Sale for the precise terms thereof.

40. Immediately, or shortly, following the Auction Sale, subject to the Court's availability, the Trustee will seek Court approval of the Auction Sale results. Upon Court approval, and in conjunction with the Trustee's Plan, the Trustee will be in a position to move forward with the sale and to close on the Property as soon as practicable.

41. The Trustee believes that the proposed Terms and Conditions provide an appropriate framework for selling the Property in an orderly and timely fashion and maximizing value for the Debtor's estate and creditors, as well as providing significant and valuable benefits to the Shareholders. Accordingly, the Trustee respectfully submits that the Terms and Conditions should be approved.

⁶ If title or mortgage title insurance is desired, the Successful Purchaser is required to order such title search and insurance through EAM Land Services, Inc. ("EAM"), as a result of the Trustee's extensive title clearance efforts conducted through and with EAM.

Bid Protections

42. The Trustee, in the exercise of his reasonable business judgment, further submits and requests, that he may, but is not required to, prior to the commencement of the Auction, offer a bidder certain stalking horse rights and/or bid protections, as warranted, without the necessity of a further Order of the Court. Such rights and/or protections would include a prospective first overbid over the Opening Bid in the amount of up to \$5.1 million (a potential \$200,000 increase), plus the Buyer's Premium, and a breakup fee (the "Breakup Fee") of up to \$150,000.00 to be paid exclusively from Closing proceeds.

BASIS FOR THE RELIEF REQUESTED

Bankruptcy Code Section 363(b)

43. Bankruptcy Code § 363(b) provides, in pertinent part, that a trustee, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1); see In re Ames Dept. Stores, Inc., 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992). In accordance with Bankruptcy Rule 6004(f)(1), the sale of property outside of the ordinary course of business may be by private sale or by public auction. See Fed. R. Bankr. P. 6004(f)(1). Further, section 105(a) of the Bankruptcy Code provides in relevant part: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a).

44. The proposed use, sale, or lease of property of the estate may be approved under Bankruptcy Code § 363(b) if it is supported by sound business justification. See Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC), 478 F.3d 452, 466 (2d Cir. 2007) (quoting Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983)); Official Comm. of Unsecured Creditors of LTV Aerospace

& Defense Co. v. LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141, 145 (2d Cir. 1993); Parker v. Motors Liquidation Co. (In re Motors Liquidation Co.), 430 B.R. 65, 83 (S.D.N.Y. 2010) ("The overriding consideration for approval of a Section 363 sale is whether a 'good business reason' has been articulated." (citations omitted)). Moreover, pursuant to Bankruptcy Code § 105, the Court has expansive equitable powers to fashion any order or decree which is in the interest of preserving or protecting the value of the Debtors' assets. See, e.g., Chinichian v. Campolongo (In re Chinichian), 784 F.2d 1440, 1443 (9th Cir. 1986).

45. In Lionel, one of the seminal and most widely followed cases dealing with asset sales, the Second Circuit determined that a sale of assets could be approved if the debtor (or a trustee) could demonstrate an "articulated business justification" for the sale. Lionel Corp., 722 F.2d at 1070. The Court further held that the factors to be considered in determining whether a sound business reason exists include the following:

[P]roportionate value of the asset to the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasing or decreasing in value.

Id. at 1071 (emphasis added).

46. If a sound business justification exists, then a presumption attaches that the decision was informed, in good faith and in the honest belief that the action was in the best interests of the estate. Official Comm. of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (citations omitted).

47. In addition to requiring sound business reasons to approve a sale pursuant to Bankruptcy Code § 363(b), many courts have required a showing that the price to be obtained for

assets be fair and reasonable; that the sale to the proposed purchaser was negotiated in good faith; and that it does not unfairly benefit insiders, the purchaser, or a certain creditor or class of creditors. See, e.g., In re Channel One Commc'ns, Inc., 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990); In re Indus. Bally Refrigeration & Air Conditioning Supplies, Inc., 77 B.R. 15, 21 (Bankr. E.D. Pa. 1987).

48. Moreover, the Court need not wait until confirmation of a plan to approve a disposition of a substantial portion of a debtor's assets if there is a possibility that the debtor will lose a lucrative business opportunity or risk serious harm to the debtor or its assets. See Indiana State Police Pension Trust v. Chrysler LLC (In re Chrysler LLC), 576 F.3d 108, 118-19 (2d Cir. 2009); Official Comm. of Unsecured Creditors of LTV Aerospace & Defense Co. v. LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141, 144 (2d Cir. 1992); Lionel Corp., 722 F.2d at 1071; In re St. Petersburg Hotel Assoc., Ltd., 37 B.R. 341 (Bank. M.D. Fla. 1984).

Bankruptcy Code Section 363(f)

49. The Trustee proposes to sell the Property free and clear of all Liens. Such Liens will attach to the net proceeds received by the Debtor's estate as a result of the sale with the same priority, validity, force and effect as they existed on the Filing Date.

50. Under Section 363(f) of the Bankruptcy Code, a trustee may sell property of the estate free and clear of any interest in such property of an entity other than the estate only if, at least one of the following conditions is satisfied:

- (a) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (b) such entity consents;
- (c) 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;

- (d) such interest is in bona fide dispute; or
- (e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. §363(f).

51. Since section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to approve the sale of the Property “free and clear” of liens, claims, encumbrances and interests. See 11 U.S.C. § 363(f); In re Borders Group, Inc., 453 B.R. 477, 483-84 (Bankr. S.D.N.Y. 2011); Mich. Employment Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.), 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (recognizing that Section 363(f) of the Bankruptcy Code is written in disjunctive, and holding that court may approve sale “free and clear” provided that at least one subsection of section 363(f) is met), cert. dismissed, 503 U.S. 978 (1992); Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988).

52. Regarding section 363(b) of the Bankruptcy Code, there are compelling reasons and sound business justifications for the Court to authorize the sale of the Property as proposed herein. As discussed more fully herein, the Trustee has been operating the Property since his appointment in March 2016. The Trustee has made all necessary and emergency repairs, and maintained the Property. However, with the Shareholders paying limited rents, and the funds in the Trustee’s account dwindling over time—compounded by the challenging nature of the administration and sensitivities of this case—the Trustee elected to move forward with an Auction Sale as the best methodology by which all allowed creditors—secured, administrative and unsecured creditors alike—will be paid in full. Further, as provided in the Terms and Conditions, each of the Shareholders will receive a very favorable Life Tenancy with a period of no rent and minimum monthly rent thereafter, with nominal increases over time. Thus, the

proposed sale benefits all creditors and Shareholders, and provides an appropriate and expeditious resolution to this case.

53. The Trustee, in the exercise of his reasonable business judgment, has concluded that the sale of the Property, pursuant to the proposed Auction procedures, as set forth in the Terms and Conditions, will produce the highest or best offer that could reasonably be obtained for the Property, and will satisfactorily pay all of the claims against the estate. Therefore, the Auction sale of the Property is in the best interests of the Debtor's estate, creditors, and the Shareholders.

54. Approval of the Auction of the Property at this point in the case is necessary to attempt to maximize the value of the asset for the estate and effectively address the Debtor's debt obligations. In this regard, the Debtor's estate risks the lost opportunity if the Auction Sale is not conducted, as well as the Chapter 11 proceeding being placed in jeopardy, to the detriment of the Debtor's estate, creditors, and Shareholders.

55. Based upon the foregoing, section 363(b) of the Bankruptcy Code is satisfied.

56. Regarding section 363(f) of the Bankruptcy Code, the Purchase Price, in furtherance of the Terms and Conditions of Sale, and as will be memorialized in the Memorandum of Sale, will pay in full all Liens (as well as allowed claims in the case). Liens against the Property, which include the first mortgage, judgments and certain ECB's against the Property, are in the approximate aggregate amount in excess of three million dollars (\$3.0 million). Therefore, in furtherance of the Terms and Conditions and the Auction Sale, the Property will be sold at a price that exceeds all Liens against the Property. Thus, section 363(f)(3) of the Bankruptcy Code is satisfied.

57. Therefore, the Trustee submits that ample authority exists and support has been demonstrated for the Court to approve the Motion, the Terms and Conditions of Sale, and the Auction Sale.

Bankruptcy Code Section 363(m)

58. Pursuant to Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

59. While the Bankruptcy Code does not define “good faith”, the United States Court of Appeals for the Second Circuit has held that:

[The] good faith of a purchaser is shown by the integrity of his conduct during the course of the sale proceedings; . . . A purchaser’s good faith is lost by “fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.”

Licensing by Paolo, Inc. v. Sinatra (In re Gucci), 126 F.3d 380, 390 (2d Cir. 1997) (citations omitted).

60. Here, the Auction will enable the Debtor’s estate to realize maximum value for its principal asset and is in the best interests of the Debtor's estate, its creditors, and the Shareholders. Based upon the Trustee’s efforts to date, along with further marketing and sale efforts of the Trustee through Maltz, the Trustee believes that the Auction and the bidding process will yield the highest and/or best bids for the asset, pay all allowed creditors in full, and provide a substantial benefit to the Shareholders as well.

61. In furtherance of section 363(m) of the Bankruptcy Code, the terms as set forth in the Terms and Conditions, and ultimately, the emergence of a Successful Purchaser, are designed

to ensure that maximum value is to be received by the Debtor's estate and simultaneously allow prospective purchasers a full and fair opportunity to bid for the asset. As such, the Auction procedures as set forth in the Terms and Conditions are proposed by the Trustee in good faith, and the execution of a memorandum of sale with the Successful Purchaser (and Second Highest Bidder) (and any other agreements or instruments related thereto) is/are also in good faith and the result of an arm's-length transaction between the Successful Purchaser and the Trustee. Accordingly, the Trustee submits that the ultimate purchaser herein is entitled to the protections of a good faith purchaser under section 363(m).

Bid Protections

62. As set forth above, the Trustee, in the reasonable exercise of his business judgment, seeks authorization to offer (but is not required to offer) an Opening Bidder at the Auction certain stalking horse rights and/or bid protections.

63. The Breakup Fee of up to \$150,000.00 would only be paid out of proceeds from a Closing on the sale of the Property for a purchase price that is at least higher than the Opening Bid (plus the Buyer's Premium), as well as accounting for and covering the Breakup Fee.

64. With respect to stalking horse rights and/or bid protections, bankruptcy courts are guided by the principles of the "business judgment" rule in evaluating a trustee's decision to offer such bidding protections. See In re Integrated Resources, Inc., 147 B.R. 650, 658 (S.D.N.Y. 1992) ("A bankruptcy court should uphold a break-up fee which was not tainted by self-dealing and was the product of arm's-length negotiations.") (citation omitted). Bidding protections for purchasers of a debtor's estate's assets constitute appropriate compensation for the risk and expense involved in preparing and proposing a bid, which thereby enhances the value of the debtor's estate by attracting initial bids and establishing a minimum standard for

competing bids. Bidding protections may take many different forms, including paying the out-of-pocket expenses incurred by a bidder in arranging the deal, including due diligence expenses, or compensating a bidder for its lost opportunity costs. See In re Hupp Indus., Inc., 140 B.R. 191, 194 (Bankr. N.D. Ohio 1992). A break-up fee should be "reasonably related to the bidder's efforts and the transaction's magnitude." Integrated Resources, 147 B.R. at 662-63.

65. Here, the maximum proposed Breakup Fee represents less than 3% of the Purchase Price, and is wholly reasonable based upon the time, energy and expenses undertaken or to be undertaken by a prospective bidder in tendering a bid. As stated above, if the Trustee grants the Breakup Fee up to the maximum of \$150,000.00, the next overbid for the Property would then be \$5,100,000.00, plus the Buyer's Premium. Therefore, the Breakup Fee is reasonable and will not negatively impact the net proceeds received by the Debtor's estate in connection with a sale of the Property. Accordingly, the Trustee respectfully submits that payment of the Breakup Fee is reasonable and should be approved by this Court.

Waiver under Rule 6004(h)

66. Pursuant to Bankruptcy Rule 6004(h), an order authorizing the sale of property is stayed for fourteen (14) days after the entry of the order unless the court orders otherwise. The Trustee requests that the Court order that such stay not apply with respect to the sale of the Property. The Trustee (and certain interested parties to date) has/have expressed the desire to close on the sale of the asset as quickly as possible. Thus, such a stay would further delay the date that a new owner could take possession and control of the Property, and, therefore, might chill interest in acquiring the Property. Further, given the challenging administration of this case and operation of the building (and dwindling funds on hand to operate the Building), delay in

consummating a sale provides no benefit to the estate, and thus the Trustee wishes to close on the sale of the Property as soon as practicable.

NOTICE

67. The Trustee will provide notice of this Motion, including a separate notice of the date, time and place of the Auction, in accordance with the requirements set forth in Bankruptcy Rules 2002 and 6004. The Trustee submits that no other or further notice is required.

SUMMARY

68. The Trustee has demonstrated substantial business justification for the proposed sale of the Property. The Trustee believes that an Auction Sale will enable the estate to realize substantial value from the Property for the benefit of all of the estate's creditors and Shareholders, and serve as an integral component of the Trustee's Chapter 11 Plan and this case reorganization.

69. The Trustee, in the exercise of his reasonable business judgment, requests and recommends that the Court approve the Auction Sale of the Property and the Terms and Conditions of Sale in connection therewith.

70. In accordance with the authority presented and support demonstrated herein, an Auction Sale of the Property is demonstrably the best way to preserve and maximize the value of the Property for the benefit of the estate's creditors and Shareholders. Accordingly, a sound business reason exists for the sale of the Property pursuant to the proposed Terms and Conditions and the Auction Sale.

CONCLUSION

71. Based upon the foregoing, the Trustee respectfully requests entry of an Order, pursuant to 11 U.S.C. §§ 105 and 363 and Bankruptcy Rules 2002 and 6004, authorizing and

approving the Terms and Conditions of Sale and Auction Sale for the Property, and granting such other and further relief as this Court deems just and proper.

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

WHEREFORE, the Trustee respectfully requests entry of an Order, granting the relief requested herein, and for such other and further relief as this Court deems just and proper.

Dated: June 9, 2017
Wantagh, New York

LaMonica Herbst & Maniscalco, LLP
Attorneys for the Trustee

By: /s/ Adam P. Wofse
Adam P. Wofse, Esq.
A Partner of the Firm
3305 Jerusalem Avenue, Suite 201
Wantagh, New York 11793
(516) 826-6500

TERMS AND CONDITIONS OF SALE

PURSUANT TO AN ORDER OF THE HONORABLE SEAN H. LANE, DATED _____, THE PROPERTY OF THE DEBTOR'S ESTATE, LOCATED AT 477 WEST 142ND STREET, NEW YORK, NEW YORK 10031 IS TO BE SOLD AT PUBLIC AUCTION.

1. On August 5, 2015, 477 West 142nd Street Housing Dev. Fund Corp., the debtor and debtor-in-possession (the "Debtor"), filed a voluntary petition for reorganization under chapter 11 of Title 11, United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Court"), under case number 15-12178-SHL. On March 21, 2016, the Court approved the appointment of Gregory Messer, Esq., as Chapter 11 operating trustee (the "Trustee"), and the Trustee continues to serve in such capacity.

2. These Terms and Conditions of Sale are promulgated in connection with the Court authorized Public Auction Sale (the "Auction") of the Debtor's real property located at 477 West 142nd Street, New York, New York 10031, Block 2058, Lot 29 (the "Property"). The Auction shall be conducted by Maltz Auctions, Inc. ("Maltz"), the Trustee's proposed real estate broker (the "Broker") (employment of the Trustee's Broker subject to separate application and Order of the Court) for the sale contemplated herein. The Terms and Conditions of Sale are subject to Bankruptcy Court approval.

3. The Trustee is represented by LaMonica Herbst & Maniscalco, LLP ("LHM"), with offices at 3305 Jerusalem Avenue, Suite 201, Wantagh, New York 11793.

4. The Auction will be held on such date, and at such time and place, as set forth by the Trustee in a separate notice therefor, to be served upon interested parties and creditors in accordance with Bankruptcy Rules 2002 and 6004.

5. The Successful Purchaser (as hereinafter defined) of the Property, will, at the time and place of the conclusion of the Auction, sign a memorandum of sale (the "Memorandum of Sale") in accordance with these Terms and Conditions of Sale.

6. In order to be permitted to bid on the Property, prior to the commencement of the Auction¹, each prospective bidder ("Bidder") must deliver to Maltz or the Trustee a certified or bank check made payable to "Gregory Messer, as Trustee" in the amount of four hundred ninety thousand dollars (\$490,000.00) (the "Qualifying Deposit"), which amount shall serve as a partial good faith deposit against payment of the purchase price by such competing Bidder as the Trustee and/or LHM determines to have made the highest or best bid for the Property (the "Successful Purchaser"). The opening bid (the "Opening Bid") at the Auction shall be in the sum of not less than four million nine hundred thousand dollars (\$4,900,000.00) (plus the Buyer's Premium as defined and set forth below). Within 48 hours after conclusion of the Auction, the Successful Purchaser shall deliver to the Trustee, by certified or bank check (made payable to "Gregory Messer, as Trustee") or by wire in immediately available federal funds, an amount equal to 10% of the high bid realized at Auction minus the Qualifying Deposit (together with the Qualifying Deposit, the "Deposit") plus a four percent (4%) Buyer's Premium (as hereinafter defined) for the Broker's compensation. The Buyer's Premium shall

¹ The Trustee is authorized, but not required, to offer, in his sole and absolute discretion, certain stalking horse rights and/or bid protections to any such applicable Opening Bidder along the following terms: up to \$5.1 million for the first overbid over the Opening Bid; and up to a \$150,000.00 breakup fee to be paid exclusively from the Closing proceeds of the Property.

be deemed to have been earned immediately upon the fall of the hammer and is due within 48 hours after conclusion of the Auction. Failure of the Successful Purchaser to tender the 10% Deposit of the high bid at Auction and the Buyer's Premium within 48 hours after conclusion of the Auction shall result in an immediate default under the terms of these Terms and Conditions of Sale and the Memorandum of Sale and shall result in the forfeiture of all earnest monies paid. The Successful Purchaser and the competing Bidder who the Trustee determines to have made the second highest or best bid for the Property (the "Second Highest Bidder") must execute, and thereby agree to be bound by these Terms and Conditions of Sale and the Memorandum of Sale. **At the conclusion of the Auction, Maltz will return the Qualifying Deposits to all Bidders, except for the Successful Purchaser and the Second Highest Bidder. The Second Highest Bidder's Qualifying Deposit shall be returned within two (2) business days following approval of the Auction by the Bankruptcy Court ("Court Approval Date").**

7. Pursuant to an order of the Bankruptcy Court, the Successful Purchaser, and the Second Highest Bidder in the event of a Successful Purchaser's Default (as hereinafter defined), are solely responsible to pay Maltz four percent (4%) of the high bid at Auction (the "Buyer's Premium"). The sum of the high bid at Auction and the Buyer's Premium is defined herein as the "Purchase Price".

8. The Successful Purchaser must pay the balance of the Purchase Price for the Property, subject to customary adjustments for real estate taxes, water and sewer charges, and utilities (to the extent applicable), to the Trustee by certified or bank check or by wire in immediately available federal funds. The Successful Purchaser must close title to the Property at a date that is no more than thirty (30) days after the Court Approval Date (the "Closing Date"), **TIME BEING OF THE ESSENCE as to the Successful Purchaser**, although such date may be extended by the Trustee in his sole and absolute discretion or as necessary to effectuate the Trustee's plan of reorganization (the "Plan").

9. If the Successful Purchaser fails to post the total required ten (10%) percent Deposit and four percent (4%) Buyer's Premium within 48 hours following the Public Sale ("Successful Purchaser's Default"), the Trustee, on behalf of the Debtor's estate, in his sole and absolute discretion, may, within three (3) business days of Successful Purchaser's Default, deem the Second Highest Bidder to hold all benefits and obligations under the Terms and Conditions of Sale and Memorandum of Sale, as the new Successful Purchaser (the "New Successful Purchaser"). The New Successful Purchaser shall not receive credit for any Deposit and/or Buyer's Premium forfeited by the initial Successful Purchaser. The New Successful Purchaser must close title to the Property no later than thirty (30) days following receipt of written notice to the New Successful Purchaser of Successful Purchaser's Default (the "New Successful Purchaser's Closing"), **TIME BEING OF THE ESSENCE as to the New Successful Purchaser**, although such date may be extended by the Trustee in his sole and absolute discretion or as necessary to effectuate the Trustee's Plan.

10. The closing (the "Closing") shall take place at the Law Offices of Gregory Messer, PLLC, 26 Court Street, Suite 2400, Brooklyn, New York 11242, or such other place as directed by the Trustee.

11. The Successful Purchaser, or the New Successful Purchaser, as the case may be, shall pay any and all costs and expenses in connection with the Closing related to obtaining a survey; fee title or mortgage title insurance; title company endorsement, search and escrow charges; environmental, engineering or other Property inspections; appraisals, reports and other costs of Property due diligence; and County, State, New York City ("NYC"), or other real property transfer, deed or documentary tax, or other taxes imposed upon the sale due in connection with the transfer of the Property from the Debtor's estate at Closing to the extent not otherwise exempt in accordance

with section 1146 of the Bankruptcy Code or applicable New York state law. **Notwithstanding any language to the contrary herein, the Successful Purchaser or the New Successful Purchaser, as the case may be, if such title and/or mortgage title insurance is sought thereby, is required to order title insurance and/or mortgage title insurance from EAM Land Services, Inc. ("EAM"), 6901 Jericho Turnpike, Suite 210, Syosset, New York 11791 (516) 677-9757.** The Successful Purchaser acknowledges that it will be responsible for the completion of any ACRIS forms, if required. The Trustee shall not be required to execute any form of title affidavit (but may in his sole and absolute discretion) and all title exceptions customarily omitted from a title policy on account of such title affidavit shall be deemed permitted exceptions. The Successful Purchaser, or the New Successful Purchaser, as the case may be, acknowledges that it will be responsible for the preparation of all Closing documents required including, but not limited to, transfer tax forms. In connection with the Closing and Closing Date, the Successful Purchaser or the New Successful Purchaser, as the case may be, is hereby given notice that **TIME IS OF THE ESSENCE against the Successful Purchaser or the New Successful Purchaser, as the case may be, and the failure of the Successful Purchaser or the New Successful Purchaser, as the case may be, to close for any reason whatsoever (except as otherwise provided herein) including its failure to pay the balance of the Purchase Price on the Closing Date, will result in an immediate forfeiture of the Deposit and Buyer's Premium and the termination of the Successful Purchaser's or the New Successful Purchaser's, as the case may be, right to acquire the Property under these Terms and Conditions of Sale and the Memorandum of Sale.** The Successful Purchaser or the New Successful Purchaser, as the case may be, shall be obligated to close title to the Property and, except as expressly set forth herein, there is no contingency of any kind or nature that will permit the Successful Purchaser, or the New Successful Purchaser, as the case may be, to cancel or avoid its obligation under these Terms of and Conditions of Sale and the Memorandum of Sale other than the Trustee's inability to deliver insurable title to the Property. Further, the Successful Purchaser or the New Successful Purchaser, as the case may be, shall have demonstrated, to the satisfaction of the Trustee, LHM and/or Maltz, evidence of its ability to conclude the transaction upon these Terms and Conditions of Sale and the Memorandum of Sale, without delay. The Trustee reserves the right to reject any Purchaser or Bidder who the Trustee believes, in his sole discretion, is not financially capable of consummating the purchase of the Property. Expenses incurred by the Successful Purchaser, or any other Bidder, concerning any due diligence shall be the sole responsibility of such Bidder and, under no circumstances shall Maltz, the Trustee, the Debtor, the Debtor's estate and/or professionals be responsible for, or pay, such expenses. In the event of a default of the Successful Purchaser to close in accordance with the terms and provisions herein, the Trustee may proceed with the sale of the Property to the New Successful Purchaser, without further notice or Court order, and the New Successful Purchaser shall not receive credit for any Deposit (or the Buyer's Premium) forfeited by the initial Successful Purchaser.

12. Maltz, the Trustee, the Debtor and/or LHM and their professionals have not made and do not make any representations or warranties as to the physical condition, expenses, operations, value of the land or buildings thereon, or any other matter or thing affecting or related to the Property or this Auction, which might be pertinent to the purchase of the Property, including, without limitation, (i) the current or future real estate tax liability, assessment or valuation of the Property; (ii) the potential qualification of the Property for any and all benefits conferred by or available under federal, state or municipal laws, whether for subsidies, special real estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated; (iii) the compliance or non-compliance of the Property, in its current or any future state, with applicable present or future zoning ordinances or other land use law or regulation, or the ability to obtain a change in the zoning or use, or a variance in respect to the Property; (iv) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Property from any source, including, but not limited to, any state, city or federal government or institutional lender; (v) the current or future use of the Property; (vi) the current or future rents, other operating incomes or

expenses; (vii) the presence or absence of any laws, ordinances, rules or regulations issued by any governmental authority, agency or board and any violations thereof; and (viii) the compliance or non-compliance with environmental laws and the presence or absence of underground fuel storage tanks, any asbestos, any lead paint or other hazardous materials anywhere on the Property, or notes or notices of violations of law or municipal ordinances, orders or requirements noted or issued by any governmental department, agency or bureau having authority as to but not limited to lands, housing, buildings, fire, health, environment and labor conditions affecting the property. Each Bidder hereby expressly agrees and acknowledges that no such representations or warranties have been made. Maltz, the Trustee, the Debtor, the Debtor's estate and/or professionals, shall not be liable or bound in any manner by expressed or implied warranties, guarantees, promises, statements, representations or information pertaining to the Property, made or furnished by Maltz, the Trustee, the Debtor, the Debtor's estate and/or professionals, or any real estate broker, agent, employee, servant or other person or professional representing or purporting to represent Maltz, the Trustee and/or the Debtor's estate, unless such warranties, guarantees, promises, statements, representations or information are expressly and specifically set forth in writing within these Terms and Conditions of Sale and the Memorandum of Sale.

13. (a) The Property is being sold **"AS IS" "WHERE IS", "WITH ALL FAULTS"**, without any representations, covenants, guarantees or warranties of any kind or nature, and free and clear of any liens, claims, or encumbrances of whatever kind or nature, with such liens, if any, to attach to the proceeds of sale in such order and priority as they existed immediately prior to the Closing, and sale of the Property is subject to, among other things (a) any state of facts that an accurate survey may show; (b) any covenants, restrictions and easements of record; (c) any state of facts a physical inspection may show; (d) any building or zoning ordinances or other applicable municipal regulations and violations thereof; and (e) environmental conditions; provided, however, **the Property shall be delivered free and clear of any and all monetary liens.** By delivering their respective Qualifying Deposits, all Bidders acknowledge that they have had the opportunity to review and inspect the Property, the state of title thereof and laws, rules and regulations applicable thereto, and will rely solely thereon and on their own independent investigations and inspections of the Property in making their bids. Neither Maltz, the Trustee, on behalf of the Debtor's estate, or LHM, nor any of their collective representatives makes any representations or warranties with respect to the permissible uses of the Property including, but not limited to, the zoning of the Property. All Bidders acknowledge that they have conducted their own due diligence in connection with the Property and are not relying on any information provided by Maltz, the Trustee, the Debtor, and/or their professionals. The Property will be sold subject to any and all violations requiring corrective action.

(b)(i) **Subject to Paragraph 13(b)(iv) below, the Successful Purchaser or the New Successful Purchaser, as the case may be, shall take title to and possession of the Property subject to the following life tenancies ("Life Tenancies"):**

- (a) DeLois Blakely, unit 2;
- (b) Margaret Callender, unit 3;
- (c) Joann McClain, unit 4;
- (d) Charles DeBerry, unit 6; and
- (e) Shirley Pitts, unit 7 (collectively, the aforementioned occupants and units hereinafter referred to as the "Life Tenant(s)" and "Unit(s)", respectively);

(ii) The Life Tenancies shall be expressly subject to the following rental and other terms: (a) no rent shall be charged by the Successful Purchaser (the "Owner") to any Life Tenant for any Unit for a period of two (2) years following the Closing Date; then (b) a rental charge in the sum of \$400.00 per month per Life Tenancy Unit for years two (2) through four (4) following the Closing Date; then (c) for the fifth (5th) year following the Closing Date, the monthly rent may be increased

by no more than five percent (5%), and with (d) subsequent annual increases of rent at the rate of three percent 3%. Such rents shall be utilized by the Owner toward common area and general building maintenance charges. However, notwithstanding any language to the contrary, all real estate taxes, water and sewer charges, heat, insurance, salaries for any superintendent of the Property, and repairs to plumbing and electrical systems shall be borne by the Owner;

(iii) With respect to the Life Tenancy of DeLois Blakely, such Life Tenancy shall inure to and be inherited by DeLois Blakely's daughter upon the rental terms and conditions set forth above. **No other Units or Life Tenancies shall be transferable to any other person or entity;** and

(iv) Notwithstanding any language to the contrary, any rights and/or benefits to be conferred upon each of the Shareholders are subject to the Trustee's Plan and any terms, conditions and/or requirements therefor as set forth therein.

14. The Successful Purchaser has five (5) days from the Court Approval Date to order title, copy of which shall promptly be provided to LHM. The Successful Purchaser has fifteen (15) days from the Court Approval Date to advise the Trustee, through his counsel, by electronic mail to awofse@lhmlawfirm.com of any and all title issues or defects that would in any way be an impediment to the Closing on the sale of the Property. Failure of the Successful Purchaser to advise LHM within fifteen (15) days from the Court Approval Date of any such title issues or defects shall be deemed a waiver of any and all rights to raise any such title issues or defects. The Trustee has the right, in his sole and absolute discretion, to postpone or adjourn the Closing in order to address and/or resolve any title issues, or for any other reason.

15. **The Debtor is/was a Housing Development Funding Corporation established by NYC. The Trustee may adjourn the Closing in order to, to the extent required, obtain all necessary regulatory and/or legal approvals by NYC of the Trustee's sale of the Property to a private individual or privately owned company/entity.** In the event such approval is required and is not or cannot be obtained from NYC, then the Trustee's sole obligation is to refund the Deposit and the Buyer's Premium in accordance with section 19 below, and upon such refund, the Successful Purchaser or the New Successful Purchaser, as the case may be, will have no claim or recourse against the Trustee, the Debtor, the Debtor's estate, Maltz and/or their professionals and shall have no further rights under these Terms and Conditions of Sale or the Memorandum of Sale.

16. The Trustee shall convey the Property by delivery of a trustee's deed. The quality of title shall be that which EAM is willing to approve and insure.

17. Nothing contained in these Terms and Conditions of Sale is intended to supersede or alter any provisions of the Bankruptcy Code or otherwise interfere with the jurisdiction of the Bankruptcy Court. All of the terms and conditions set forth in these Terms and Conditions of Sale are subject to modification as may be directed by the Trustee, LHM and/or Maltz, or by the Court. The Trustee, LHM and/or Maltz each reserve the right to modify these Terms and Conditions of Sale at the Auction or thereafter to maintain consistency with the provisions of the Bankruptcy Code and/or prior orders of the Court.

18. These Terms and Conditions of Sale will be read into the record, or specifically incorporated by reference, at the Auction of the Property. By making a bid for the Property, all Bidders will be deemed to have acknowledged having read and understood these Terms and Conditions of Sale and have agreed to be bound by them.

19. If the Trustee is unable to deliver the Property in accordance with these Terms and Conditions of Sale for any reason whatsoever, the Trustee's, Debtor's estate's, the Trustee's and/or the Debtor's estate professionals', and/or Maltz's only obligation will be to refund the Deposit and Buyer's Premium, without interest, to the Successful Purchaser and/or the New Successful Purchaser, as the case may be, and upon such refund, the Successful Purchaser or the New Successful Purchaser, as the case may be, will have no claim or recourse against the Trustee, the Debtor, the Debtor's estate, Maltz and/or their professionals and shall have no further rights under these Terms and Conditions of Sale or Memorandum of Sale.

20. The Trustee reserves the right to withdraw the Property from sale, either prior, or subsequent to the sale, for any reason whatsoever, as he, in his sole and absolute discretion, deems necessary or appropriate.

21. The Auction of the Property is subject to confirmation by the Trustee and pursuant to a further order of the Bankruptcy Court confirming the Auction. No transaction is final until approved by the Bankruptcy Court.

22. Either Maltz or LHM shall notify the Successful Purchaser whether the Auction is confirmed.

23. The Bankruptcy Court shall determine any disputes concerning the Auction of the Property. By participating in the Auction, all Purchasers consent to the exclusive jurisdiction of the Bankruptcy Court to determine such disputes under the Debtor's case.

I have read these Terms and Conditions of Sale and agree to be bound by them.

By:_____ Date:_____

Print Name: _____

MEMORANDUM OF SALE – SUCCESSFUL PURCHASER

High Bid Realized at Auction: _____

4% Buyer's Premium: _____

Purchase Price: _____

The undersigned has this ____ day of _____, 2017, agreed to purchase the property located at 477 West 142nd Street, New York, New York 10031 a/k/a Borough: New York Block: 2058 Lot: 29 (the "Property") of 477 West 142nd Street Housing Dev. Fund Corp., as the Chapter 11 debtor, for the sum of \$_____ DOLLARS and hereby promises and agrees to comply with the annexed Terms and Conditions of Sale of the Property and this Memorandum of Sale.

SUCCESSFUL PURCHASER (Signature)_____
SUCCESSFUL PURCHASER (Signature)_____
PRINT NAME_____
PRINT NAME_____
ADDRESS_____
ADDRESS_____
ADDRESS (City, State, Zip)_____
ADDRESS (City, State, Zip)_____
TELEPHONE NUMBER_____
TELEPHONE NUMBER_____
EMAIL ADDRESS_____
EMAIL ADDRESS

Received from _____ the sum of \$490,000.00, as a non-refundable deposit for the purchase of the Property pursuant to the Terms and Conditions of Sale.

This is to verify that the final Purchase Price in the above sale was for the sum of \$_____.

Maltz Auctions, Inc.**SUCCESSFUL PURCHASER ATTORNEY INFORMATION**

Name _____

Address _____

Phone _____

MEMORANDUM OF SALE – SECOND HIGHEST BIDDER

Bid Realized at Auction: _____

4% Buyer's Premium: _____

Purchase Price: _____

The undersigned has this ____ day of _____, 2017, agreed to purchase the property located at 477 West 142nd Street, New York, New York 10031 a/k/a Borough: New York Block: 2058 Lot: 29 (the "Property") of 477 West 142nd Street Housing Dev. Fund Corp., as the Chapter 11 debtor, for the sum of \$_____ DOLLARS in the event of the Successful Purchaser's Default, and if deemed by the Trustee, in his sole and absolute discretion, to hold all benefits and obligations of a Successful Purchaser under the Terms and Conditions of Sale and this Memorandum of Sale and hereby promises and agrees to comply with the annexed Terms and Conditions of Sale of said Property and this Memorandum of Sale.

SECOND HIGHEST BIDDER (Signature) SECOND HIGHEST BIDDER (Signature)

PRINT NAME PRINT NAME

ADDRESS ADDRESS

ADDRESS (City, State, Zip) ADDRESS (City, State, Zip)

TELEPHONE NUMBER TELEPHONE NUMBER

EMAIL ADDRESS EMAIL ADDRESS

Received from _____ the sum of \$490,000.00, as a non-refundable deposit for the purchase of the Property pursuant to the Terms and Conditions of Sale.

This is to verify that the final Purchase Price for the 2nd Highest Bid was in the above sale was for the sum of \$_____.

Maltz Auctions, Inc.

SECOND HIGHEST BIDDER ATTORNEY INFORMATION

Name _____

Address _____

Phone _____

LaMonica Herbst & Maniscalco, LLP
Attorneys for the Trustee
3305 Jerusalem Avenue
Wantagh, NY 11793
(516) 826-6500
Adam P. Wofse, Esq.

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 11

477 WEST 142ND STREET HOUSING
DEV. FUND CORP.,

Case No.: 15-12178 (SHL)

Debtor.
-----X

NOTICE OF AUCTION SALE OF DEBTOR'S ESTATE'S REAL PROPERTY

PLEASE TAKE NOTICE that on August 5, 2015 (the "Petition Date"), 477 West 142nd Street Housing Dev. Fund Corp. (the "Debtor") filed a voluntary petition with the Bankruptcy Court for the Southern District of New York, seeking reorganization under Chapter 11 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that by Order of the Court dated March 17, 2016, the Court directed the appointment of a Chapter 11 Trustee (the "Trustee") in this case, and by further Order dated March 21, 2016, the Court approved the appointment of Gregory Messer as Trustee.

PLEASE TAKE FURTHER NOTICE that, in connection with a motion filed by the Trustee (the "Motion"), the Bankruptcy Court has entered an Order (the "Auction Procedures Order") authorizing and approving, among other things, (a) the public auction sale (the "Auction Sale" or the "Auction") of the Debtor's estate's right, title and interest in the real property located at, and known as, 477 West 142nd Street, New York, New York, designated as Block 2058 and Lot 29 (the "Property"), to the highest or best bidder, and free and clear of all liens, claims and encumbrances (the "Liens"), if any, with such Liens to attach to the proceeds of

sale in the same priority and extent as they existed on the Petition Date, and (b) the terms and conditions of the Auction Sale. A copy of the Auction Procedures Order is enclosed herewith and the Terms and Conditions of Sale are attached thereto as **Exhibit "A"**.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Auction Procedures Order, the Auction of the Property, by the Trustee, through his professionals, will be held on _____, **2017** at _____:___**0**_.m., at _____.

Dated: Wantagh, New York
_____, 2017

LAMONICA HERBST & MANISCALCO, LLP
Attorneys for the Trustee

By: _____
Adam P. Wofse, Esq.
A Partner of the Firm
3305 Jerusalem Avenue, Suite 201
Wantagh, New York 11793
(516) 826-6500

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 11

477 WEST 142ND STREET HOUSING
DEV. FUND CORP.,

Case No.: 15-12178 (SHL)

Debtor.
-----X

**ORDER AUTHORIZING AND APPROVING AUCTION SALE AND
TERMS AND CONDITIONS THEREOF IN CONNECTION WITH
REAL PROPERTY OF THE DEBTOR'S ESTATE**

Upon the motion¹ (the "Motion") of Gregory Messer, the Chapter 11 Trustee (the "Trustee") of 477 West 142nd Street Housing Dev. Fund Corp. (the "Debtor"), by his attorneys, LaMonica Herbst & Maniscalco, LLP ("LHM"), for entry of an Order, pursuant to Sections 105 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing and approving (a) a public auction sale (the "Auction Sale" or the "Auction") of the Debtor's estate's right, title and interest in the real property located at, and known as, 477 West 142nd Street, New York, New York, designated as Block 2058 and Lot 29 (the "Property"), to the highest or best bidder, and free and clear of all liens, claims and encumbrances (the "Liens"), if any, with such Liens to attach to the proceeds of sale in the same priority and extent as they existed on the Filing Date, (b) the terms and conditions of the Auction Sale (the "Terms and Conditions" or the "Terms and Conditions of Sale"), and (c) granting such other and further relief; and sufficient notice of the Motion having been given;

¹ All capitalized terms not defined herein shall be ascribed the meanings as set forth in the Motion and the Terms and Conditions of Sale, and to the extent there is any inconsistency between and/or among the Terms and Conditions of Sale, this Order and the Motion, the terms and conditions set forth in the Terms and Conditions of Sale shall control.

and this Court having jurisdiction to grant the requested relief pursuant to 28 U.S.C. §§ 157 and 1334; and a hearing having been held on _____, 2017 (the “Hearing”) to consider the relief requested in the Motion; and upon the record made at the Hearing, which is incorporated herein; and it further appearing that the relief requested in the Motion is reasonable and necessary under the circumstances to advance the interests of the Debtor, its estate, its creditors and the Shareholders, in connection with the proposed sale of the Property; and it appearing that an Order authorizing and approving the Auction and the Terms and Conditions of Sale, is in the best interests of the Debtor and all parties in interest; and no objection to the relief requested having been filed and/or any filed objections having been overruled and/or withdrawn; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that:

1. The Motion is granted as set forth herein.
2. The Terms and Conditions of Sale annexed to the Motion and hereto as Exhibit “A” are approved.
3. The Trustee is expressly authorized, but not required, to offer the stalking horse rights and/or bid protections, as set forth in the Motion and the Terms and Conditions, which are hereby approved.
4. In accordance with Bankruptcy Rules 2002 and 6004, the Trustee shall serve copies of (a) the Terms and Conditions of Sale, (b) the notice of the Auction, substantially in the form annexed to the Motion as Exhibit “B”, which form is hereby approved, and (c) this Order, by first class mail upon (i) all creditors, including creditors with an asserted lien against the Property (ii) the Office of the United States Trustee, (iii) all parties (or their counsel) who have

made written expressions of interest in acquiring the Property and (iv) upon each person or entity that has filed a notice of appearance in this case.

5. A hearing shall be held before the Court on _____, 2017 at _____m. (the "Sale Confirmation Hearing") to consider the approval of the sale of the Property to the Successful Purchaser and/or Second Highest Bidder from the Auction.

6. Responses or objections, if any, to the Successful Bid and/or Successful Purchaser, or any remaining relief requested in the Motion, must be raised by not later than the Sale Confirmation Hearing.

7. The Trustee, in consultation with LHM and Maltz, may modify the Terms and Conditions of Sale and/or adopt such other rules for the bidding process to promote the goals of the bidding process, provided such modifications are not inconsistent with any of the other provision of this Order, the Terms and Conditions of Sale, or any other order of this Court.

8. The stay provided for in Bankruptcy Rules 6004(h) is hereby waived, and this Order shall be effective immediately upon its entry.

9. The Trustee is authorized, empowered and directed to execute such documents, enter into and take such actions, and expend such funds as are necessary to implement the terms of this Order.

10. If any Successful Purchaser and/or Second Highest Bidder shall fail to fully comply with the Terms and Conditions of Sale, or upon the failure to consummate a sale of the Property because of a breach or failure on the part of the Successful Purchaser and/or Second Highest Bidder with respect to the Property, the Trustee is authorized to, and shall, retain the Qualifying Deposit and/or the Deposit, and the Buyer's Premium, as the case may be, as liquidated damages, and the Second Highest Bidder, shall be deemed the Successful Purchaser

and shall consummate the sale of the Property without further Order of the Court, or if no Second Higher Bidder exists, then, in such event, the Trustee may seek to sell the Property upon notice and a hearing to any other interested purchaser.

11. Service as provided herein is hereby deemed due, timely, good and sufficient notice of the entry of this Order, the Auction, and all proceedings to be held thereon and matters related thereto.

12. The Court shall retain exclusive jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

Dated: June __, 2017
New York, New York

HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE