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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11  
Case No. 14-22168(RDD)

AFFORDABLE ENTERPRISES OF  
WESTCHESTER., INC.,

Debtor.

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**DEBTOR'S MOTION SEEKING ENTRY OF: (I) ORDER AUTHORIZING INTERIM AND FINAL APPROVAL AND ENTRY INTO MANAGEMENT AGREEMENT BETWEEN THE DEBTOR AND CAPITAL INDUSTRIES CORP.; (II) SALE PROCEDURES ORDER: (A) APPROVING BIDDING PROCEDURES, (B) APPROVING A BREAK-UP FEE, (C) APPROVING THE FORM AND MANNER OF NOTICE, AND (D) SCHEDULING AN AUCTION AND SALE HEARING; (III) SALE APPROVAL ORDER: (A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS INTERESTS AND ENCUMBRANCES, (B) AUTHORIZING THE ASSUMPTION OR REJECTION OF THE DEBTOR'S NONRESIDENTIAL REAL PROPERTY LEASE, BASED UPON THE RESULTS OF AUCTION, (C) GRANTING THE SUCCESSFUL BIDDER GOOD FAITH STATUS, (D) WAIVING THE FOURTEEN DAY STAY OF SALE ORDER, AND (E) GRANTING RELATED RELIEF; AND (IV) GRANTING REQUEST FOR HEARING TO CONSIDER APPROVAL OF MANAGEMENT AGREEMENT AND ENTRY OF BIDDING PROCEDURES ORDER ON SHORTENED NOTICE PURSUANT TO BANKRUPTCY RULE 9006(C)**

**TO: THE HONORABLE ROBERT D. DRAIN,  
UNITED STATES BANKRUPTCY JUDGE:**

Affordable Enterprises of Westchester, Inc., the above captioned debtor and debtor-in-possession ("Debtor" or "Brothers"), by its attorneys DelBello Donnellan Weingarten Wise &

Wiederkehr, LLP, hereby moves this Court, pursuant to sections 105(a), 363(b), (f) and (m), 365, 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”), Rules 2002(a)(2), 6004(a), (b), (c), (e), (f) and (g), 6006(a) and 9c), 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of four (4) Orders:

- **Management Agreement Order** (substantially in the form annexed hereto as **Exhibit B**) authorizing the Debtor, on an interim basis to immediately enter into a Management Agreement (defined below) with Capital Industries Corp.;
- **Sale Procedures Order** (substantially in the form annexed hereto as **Exhibit D**): (i) approving bidding procedures, annexed hereto as **Exhibit E**; (ii) approving the form and manner of notice of the Sale, the Bidding Procedures, the Auction and the Sale Hearing; (iii) approving a Break-Up Fee; (iv) scheduling an auction to sell the Assets, subject to higher and better bids (the “Auction”); and (v) scheduling a hearing to approve the Sale of the Assets in accordance with the Auction (the “Sale Hearing”);
- **Sale Approval Order**: (i) approving the Sale of the Debtor’s Assets in accordance with the results of the Auction to the highest bidder (the “Successful Bidder”), (ii) authorizing the Debtor to assume or reject its nonresidential real property lease for its office premises, based upon the results of auction, and (iii) granting the Successful Bidder good faith status; and (iv) waiving the fourteen-day stay of the Order; and
- **Order Scheduling Hearing on Shortened Notice** granting the Debtor’s request for a hearing to consider (a) approval of the Management Agreement and (b) entry of the Bidding Procedures Order on shortened notice pursuant to Bankruptcy Rule 9066(c).

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and

1334. Consideration of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. This proceeding has been initiated pursuant to Bankruptcy Code §§ 105(a), 363(b), (f) and (m), 365, 503, 507, 1146(a), Bankruptcy Rules 2002(a)(2), 6004(a), (b), (c), (e), (f) and (g), 6006(a) and 9c), 9007 and 9014, and Local Rule 6004-1.

### **BACKGROUND**

4. On February 6, 2014, (the “Filing Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Thereafter the Debtor’s proceeding was referred to this Court for administration under the Bankruptcy Code.

5. The Debtor has continued as a Debtor-in-Possession pursuant to §1107 and 1108 of the Bankruptcy Code.

6. No trustee, examiner or creditors' committee has been heretofore appointed in this proceeding.

7. The Debtor is fully licensed and insured carting and sanitation company and a member in good standing with the Better Business Bureau. The Debtor services all of Westchester, Putnam and Rockland counties, as well as the five boroughs of New York City. Approximately seventy-five percent of the Debtor’s customers are contractors and management companies, with the remaining twenty-five percent belonging to residential customers. Commercial services fall into broad categories including commercial roofing replacement, whole house renovation, and garbage demolition. Residential services include garage cleanouts, bathroom and kitchen remodels, basement and attic cleanout and deck or siding removal.

8. The Debtor previously filed Chapter 11 in 2010, Case No. 10-22322 (RDD). In that case, the Debtor’s bankruptcy counsel renegotiated a substantial number of the Debtor’s equipment

leases involving large trucks and containers essential to the Debtor's operations. The Debtor's operations prospered during 2012 and early 2013 due to work from Hurricane Sandy. However, during 2013, work slowed down significantly.

9. Also during 2013, the Debtor had a dispute with one of its employees who wanted to become an equity owner. The Debtor and the former employee reached a settlement of their dispute without the assistance of counsel. The terms of the agreement were onerous and unaffordable for the Debtor, and also suspect because the amounts paid on behalf of the former employee's claim were actually paid to the former employee's daughter, presumably because the former employee was having his own issues with the IRS.

10. The Debtor took three high-interest loans to try to stabilize operations. The Debtor was current in its payments to the high-interest loans, but was falling behind to other creditors such as the Disposal Sites where it deposits the construction materials. Now in its "low" season, the Debtor did not have the ability to remain current on its debts. The Debtor expects that income will pick up significantly in April when many construction projects begin.

11. The Debtor's desire was to utilize the bankruptcy process in order to further restructure and reorganize the Debtor's affairs.

### **The Debtor's Exigent Need For A Strategic Transaction**

12. To date, the Debtor has been unsuccessful in turning around its operations and now finds itself with a lack of sufficient working capital to sustain operations.

13. In order to preserve the ongoing concern value of the Debtor's assets, the Debtor began negotiating with certain competitors over the past few months to try and obtain a potential purchaser to act as, inter alia, a stalking horse for an auction in order to maximize a return to creditors.

14. During its Chapter 11 case, the Debtor's lack of cash flow has put the Debtor in a precarious situation whereby the Debtor is unable to further and fully sustain its operations without an immediate infusion of new capital while it continues to negotiate with potential suitors. In order to preserve its value as a going concern the Debtor requires working capital to keep the doors open while finalizing negotiations with a potential purchaser.

15. Accordingly, the Debtor negotiated with 2 separate parties, resulting in the Debtor obtaining an offer, subject to higher and better offers, to purchase its business and related assets for the gross purchase price of \$570,000 from Capital Industries Corp. (the "Purchaser"), another duly qualified and licensed hauler/operator in Westchester County and the 5 boroughs.

16. For purposes of disclosure, the Purchaser has no connection with the Debtor or any of its principals or insiders and is represented by separate counsel.

17. As part of the offer, the Purchaser has expressed a willingness, and conditioned its offer upon having the ability, to manage the Debtor's business pending the sale closing in order to ensure the continuation of the Debtor as a going concern pending the sale, absent which the Debtor is unlikely to be able to sustain operations on its own and its assets are likely to be worth substantially less than the purchase price being offered by the Purchaser.

18. As such, in order to preserve the value of the Debtor's assets, the Debtor negotiated with Purchaser a management agreement for the Purchaser to manage and operate the Debtor's Business pending the contemplated sale.

19. It is the Debtor's business judgment that an immediate sale of its Business is the best alternative for the Debtor's creditors and its estate. Alternatively, if the Debtor were to cease operations on account of its lack of cash flow, the Debtor's business would go dark and it would

not be able to sell the Business as a going concern, thereby decreasing the value of its assets, to the detriment of its creditors.

### **The Management Agreement**

20. Given the negative cash flow position that the Debtor is presently faced with, the Debtor commenced negotiations with the Purchaser to allow Purchaser to manage and financially sustain, as needed, the Debtor's operations pending approval and closing of the sale of the Debtor's Assets to the Purchaser, or such other Successful Bidder (defined below). Accordingly, the Management Agreement was negotiated between the Purchaser and the Debtor, a copy of which is annexed hereto as **Exhibit A**.

21. The Management Agreement provides, *inter alia*, that the Purchaser shall manage and use the Debtor's assets to operate the Business, including servicing the Debtor's existing customers, billing of customers and collection of receipts, payment of vendors and employees for materials purchased by Purchaser and work performed for Purchaser on and after commencement of the management services, maintaining insurance and customer accounts, and all other acts reasonably required with respect to the operation of the Business. Further, the Purchaser shall be responsible for all expenses incurred for operation of the Business that become due during its effective period of operation of the Business under the Management Agreement, which will be effective upon Court approval. Purchaser shall retain all profits and sustain and fund all losses, if any, during the period of operation of the Business under the Management Agreement.

22. The Debtor believes that entering into the Management Agreement is in the best interests of the Debtor, its creditors, and its estate as it will preserve the Debtor's ongoing business value.

23. Under the Management Agreement, Manager has agreed to pay all necessary

carrying costs of operating the Debtor accruing on or after the effective date of the Management Agreement. Given the significant costs anticipated by the Debtor to sustain operations, and the Debtor's current lack of adequate capital, the Management Agreement will relieve the Debtor from nearly all administrative expenses associated therewith during the period that the Management Agreement is effective.

### **The Asset Purchase Agreement**

24. On January 16, 2018, after arms-length negotiations, the Debtor and the Purchaser executed an Asset Purchase Agreement (the "APA"), a copy of which is annexed hereto as **Exhibit C**. Subject to this Court's approval of any higher and/or better offers through an auction sale process, the Debtor seeks approval to sell the Business and Assets<sup>1</sup> to the Purchaser on the following terms and conditions:

<b>Seller</b>	The Debtor
<b>Purchaser</b>	Capital Industry Corp.
<b>Purchase Price</b>	\$570,000, subject to Closing Adjustment up to \$125,000
<b>Deposit</b>	\$57,000.00
<b>Acquired Assets</b>	(i) the Assets consisting of (a) all machinery, vehicles and equipment; (b) all containers; (c) customer list, trademark, telephone number and good will/general intangibles
<b>Excluded Assets</b>	(a) cash and cash equivalents, (b) Purchase Price, (c) all causes of action belonging to Debtor's estate, (d) the Debtor's garbage hauling business, (e) Debtor's lease for its office building and (f) all books and records

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<sup>1</sup> Capitalized terms shall have the meaning as set forth in the APA.

**Assumed Liabilities;** None. Purchaser shall *not* be assigned the Debtor's nonresidential real property lease for its office premises.

**Indemnification for  
Certain Liabilities  
Representations and  
Warranties;  
Covenants**

The representations and warranties and covenants are customary for a transaction of this type, including, without limitation, representations warranties regarding the authority to enter into the sale transaction and the agreement to abide by all laws with respect to the sale, litigation, material contracts, permits, environmental matter, ownership of assets, and condition of the Assets, and covenants regarding conduct of the business in the pre-Closing the best efforts of the parties, notices and consents, access to information and the risk of loss.

**Closing Date**

The closing of the transaction provided for in this Agreement (the "Closing") shall be at the offices of the attorney for the Debtor, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, 1 North Lexington Avenue, White Plains, New York, or at such other place as may be agreed upon, no later than March 31, 2018. Notwithstanding the foregoing, the parties may, by mutual agreement, agree to close earlier.

**NO  
EXTRAORDINARY  
PROVISIONS**

**The Debtor's principals are not being offered employment by or ownership in the Purchaser. No consideration is being paid to the Debtor's principals for their limited restrictive covenant not to compete.**

**RELIEF REQUESTED AND BASIS FOR RELIEF**

25. By this motion, the Debtor is seeking entry of four (4) orders: (i) Order approving the Management Agreement, on an interim and final basis, (ii) the Sale Procedures Order (after the first hearing to approve the sale procedures), (iii) Sale Approval Order (after the hearing second hearing to approve the results of the sale process and auction), and (iv) Order Scheduling Hearing on Shortened Notice to Consider Approval of the Management Agreement on an interim basis and the Sale Procedures Order.

**I. The Management Agreement Order**

26. Since the Management Agreement contemplates a "use, sale or lease" of property of the estate necessitating a hearing under Section 363 of the Bankruptcy Code, the Debtor is

proceeding with the instant Motion pursuant to Sections 105 and 363 of the Bankruptcy Code.

27. Section 363(b)(1) of the Bankruptcy Code provides, in pertinent part, as follows:

"The trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate."

28. Section 105(a) of the Bankruptcy Code provides as follows:

"The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this Title...."

29. The Debtor respectfully suggests that the Court's use of the provisions of Section 105(a) of the Bankruptcy Code is appropriate herein. The Management Agreement was negotiated in good faith between the Debtor and the Business Purchaser in contemplation of and ancillary to Business Purchaser's acquisition of the Debtor's Business, in order to, *inter alia*, allow the Debtor's business to continue operations and prevent a deterioration of the Debtor's Business pending Bankruptcy Court approval and closing on the contemplated sale. It is respectfully submitted that the Management Agreement, inasmuch as it is in contemplation of the sale, will ultimately facilitate the Debtor's expeditious exit from Chapter 11, and accordingly, is within the purview of Section 105 of the Bankruptcy Code.

30. Further, the Management Agreement, as set forth above, contemplates the assumption by the Purchaser of virtually all of the Debtor's ongoing carrying costs and expenses. In light of the Debtor's present lack of adequate revenue and working capital, such costs and expenses will amount to unpaid administrative expenses, which will make the Debtor's exit from Chapter 11 that much more difficult. It is therefore suggested that the Purchaser's assumption of said liabilities, via the Management Agreement, will inure to the benefit of the Debtor, its creditors and its estate, furthering the purpose of the instant Chapter 11 case and the facilitation of an expeditious and efficient exit from Chapter 11.

## **II. The Sale Procedures Order**

### **A. The Proposed Bidding Procedures**

31. The Sale of the Assets pursuant to the APA is subject to higher and/or better offers. In order to ensure that the highest and best offer is received for the Assets, the Debtor has established the proposed Bidding Procedures to govern the submission of competing bids at an auction. Accordingly, the Debtor seeks this Court's approval of the Bidding Procedures set forth in **Exhibit E** and incorporated herein in their entirety.

32. The Bidding Procedures provide that bidders submit initial overbids in an amount of \$620,000 in cash (the "Initial Minimum Overbid") which represents \$50,000 in excess of the aggregate cash portion of the Purchase Price under the APA, which \$30,000 of that amount is equal to the Break-Up Fee plus \$20,000.00 in an initial minimum overbid increment. All bids after the Initial Minimum Overbid shall be in increments of \$10,000.

33. All bids submitted for the purchase of the Debtor's assets shall remain open, and all deposits held in the attorney escrow account of the Debtor's counsel until the sale of the Debtor's Assets to the Successful Bidder is consummated. In the event that the Successful Bidder is unable to consummate on the sale of the Debtor's Assets, the next highest and/or best bidder (the "Backup Bidder") will then be required to consummate on the sale of the Debtor's assets.

### **B. Bidder Qualification**

34. In order for a purchaser of the Assets to qualify as a Bidder, the Debtor proposes that the purchaser's Competing Bid must be received by a date to be set by the Court at the hearing to consider this Motion (the "Bid Deadline") and must comply with all of the following requirements:

- (a) it is in writing and is irrevocable through a closing of the sale of the Assets;
- (b) it includes a duly authorized and executed asset purchase agreement substantially in the form of the APA together with all exhibits thereto, as well as copies of such materials marked to show any amendments and modifications to the APA (the "Marked Agreement") and a marked copy of the proposed order to approve the Sale by the Bankruptcy Court;
- (c) it provides for (i) a cash purchase price for the Assets, expressed in U.S. Dollars, of not less than \$620,000;
- (d) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Debtor to make a reasonable determination as to the Bidder's financial and other capabilities to consummate the transaction contemplated by the Marked Agreement;
- (e) It is not conditioned on any contingencies, such as, without limitation: (i) the outcome of unperformed due diligence by the Bidder, and/or (ii) obtaining financing;
- (f) it includes an acknowledgement and representation that the Bidder: (i) has had an opportunity to conduct any and all required diligence regarding the Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Marked Agreement; and (iv) is not entitled to any expense reimbursement or break-up fee in connection with its bid;
- (g) it includes evidence, in form and substance reasonably satisfactory to the Seller, of authorization and approval from the Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery, and closing of the Marked Agreement; and
- (h) it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Seller), certified check or such other form acceptable to the Seller, payable to the order of the Seller (or such other party as the Seller may determine) in an amount equal to ten (10%) percent of the Competing Bid.

35. For the avoidance of doubt, and notwithstanding the foregoing, any overbid submitted by the Buyer at any Auction on substantially the same terms as its initial offer (apart

from any increase in price) shall be a Qualified Competing Bid.

36. The Debtor believes that this aforementioned proposed Bidding Procedures are fair and reasonable and will permit all parties truly interested in acquiring the Debtor's business an opportunity to submit a bid that can be weighed or compared against the Purchaser's stalking horse offer.

**C. The Proposed Bidding Procedures Are Adequate and Should Be Approved**

37. In determining whether bidding procedures governing the sale of a debtor's assets are adequate, Court have consistently deferred to the debtor's business judgment for their specific industry. See, In re Integrated Resources, Inc., 147 B.R. 650, 656-57 (Bankr. S.D.N.Y. 1992)(Court held that where overbid procedures are negotiated by the chapter 11 debtor, the business judgment rule applies and said procedures are "presumptively valid.").

38. Furthermore, the purpose of bidding procedures is to solicit the highest and best bid, which would in turn best benefit the creditors. In re Financial News Network Inc., 980 F.2d 165 (2nd. Cir., 1992)( Bankruptcy court's principal responsibility relating to bidding procedures that govern sale is to secure best possible bid for benefit of creditors.)

39. Thus, courts deem appropriate those bidding procedures intended to maximize the value of the debtor's estate. See, e.g., Financial News, 980 F.2d at 170-71 (Bankruptcy court allowed bidder to supplement one of two bids for Chapter 11 debtor's assets after bidding was closed since the revision was consistent with both rules by which particular auction was being conducted and reasonable expectations of bidders); Integrated Resources, 147 B.R. at 656-57.

40. The Debtor believes that the Bidding Procedures proposed will additionally procure serious parties interested in acquiring the Debtor's Assets and will result in realizing the full value of the Debtor's Assets. The Debtor's Bidding Procedures are designed to facilitate a

competitive bidding process in an expeditious manner, especially in light of the fact that the Debtor has significant time constraints to sell and close under the APA. The Bidding Procedures will allow the Debtor to conduct the Auction in an open fashion that will encourage participation from those bidders that demonstrate they are financially capable to consummate the transaction.

41. In addition, the Bidding Procedures provide for an “overbid” provision. For a qualified Bid to be considered, it must be in a cash amount of \$620,000, which amount equals the aggregate cash portion of the Purchase Price under the APA, plus the Break-Up Fee of \$30,000, plus \$20,000 in an additional overbid increment.

42. The Initial Minimum Overbid is necessary not only to compensate the Debtor for the risk that it assumes in foregoing a known, willing and able purchaser for a new potential acquirer, and additionally to ensure that there is an increase in the net proceeds to the estate, after payment of the Break-Up Fee and expense reimbursement. The Debtor believes that the Initial Minimum Overbid will enable competitive bidding and maximize the value of the Debtor’s Assets, without a chilling effect.

43. The Debtor believes, in its business judgment that the Bidding Procedures are adequate and will result in maximizing the value of its assets and are therefore appropriate under the relevant standards governing auction proceedings.

**D. The Break-Up Fee is Appropriate**

44. It has become an established practice in chapter 11 cases to approve break-up fees and other forms of bidding procedures in connection with the sale of significant assets pursuant to section 363 of the Bankruptcy Code. See, e.g., Integrated Resources, 147 B.R. at 662; In re 995 Fifth Ave. Assoc., L.P., 96 B.R. 24 (Bankr. S.D.N.Y. 1989). Break-up fees enhance the bidding process by inducing a “white knight” to submit a bid by providing compensation for the

risks it is undertaking and to cover the costs of due diligence. 995 Fifth Ave. Assoc., 96 B.R. at 28.

45. Generally, Courts approve break-up fees unless they are unreasonable or appear more likely to chill the bidding process than to enhance it. Integrated Resources, 147 B.R. at 662. When examining whether break-up fees are reasonable and appropriate, the Courts examine (1) the relationship between the parties negotiating the break-up fee for any self-dealing or taint; (2) whether the fee hampers, as oppose to enhances, bidding; and (3) whether the amount of the break-up fee is unreasonable as compared to the purchase price. Id.

46. The Break-Up Fee in this instance is appropriate since (1) the Debtor and the Purchaser negotiated at arms-length, (2) the Break-Up Fee provided an incentive for the Purchaser to enter into the Contract of Sale and invest significant monies and efforts in conducting its due diligence, all the while not knowing whether it will be the Successful Bidder, and (3) the amount of the Break-Up Fee in the event the Purchaser is outbid is \$30,000, or 5.26% of the Purchase Price.

47. In addition to the factors stated above, the Break-Up Fee will provide a minimum floor bid on which other bidders may rely upon. Therefore, under the circumstances, the Break-Up Fee is appropriate.

**E. The Proposed Form and Manner of Notice of Sale is Adequate**

48. Bankruptcy Rule 2002(a) and (c) requires the Debtor to notify creditors of the proposed sale of the Assets, including the date, time and place of the Auction, terms of the Sale, and the deadline for filing any objections.

49. The Debtor proposes to comply with these requirements by serving via first class mail within three (3) days of entry of the Sale Procedures Order copies of: (i) Sale Procedures

Order, (ii) Bidding Procedures, and (iii) this Motion.

50. The Debtor proposes to serve the following parties: (i) the Office of the U.S. Trustee; (ii) all creditors and their respective counsel; (iii) all taxing authorities; (iv) counsel to the Purchaser, (v) all counterparties to each of the Debtor's executory contracts and/or leases; and (vii) all potential buyers known by the Debtor as having previously expressed interest in acquiring any of the Debtor's assets.

51. The Debtor submits that the foregoing notice fully complies with the requirements set forth in Bankruptcy Rule 2002. Based upon the foregoing, the Debtor respectfully requests that this Court approve the form and manner of the notice proposed above.

## **II. The Sale Approval Order**

### **A. This Court Should Approve the Sale of the Debtor's Assets to the Successful Bidder**

52. On January 16, 2018, the Debtor executed the APA with the Purchaser which provides for a sale of substantially all of the Debtor's assets. The Purchase Price is \$570,000.00 in cash, subject to the Closing Adjustment in favor of the Purchaser up to \$125,000, payable by a good faith deposit of \$57,000.00 upon execution of the Contract of Sale, with the balance, after application of the Closing Adjustment, to be paid in cash at the Closing.

53. Following the Auction, the Debtor will seek this Court's approval of the sale of the Debtor's Assets free and clear of all liens, claims and encumbrances to the bidder that submits the highest and best offer at the Auction (the "Successful Bidder").

54. All of the sale proceeds will be received by the Debtor, with all liens, claims and encumbrances to attach to the proceeds in accordance with Section 363(f) of the Bankruptcy Code.

55. Pursuant to Section 363 (b) and (f) of the Bankruptcy Code, the Debtor seeks entry of an order authorizing the sale and transfer the Assets. Section 363(b)(1) of the Bankruptcy Code provides, in pertinent part, "The trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." §363 (f) of the Bankruptcy Code states as follows:

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest 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 satisfaction of such interest.

56. The conditions set forth in 11 U.S.C. §363(f) are in the disjunctive, which means that only one of the tests must be met. The Debtor believes that the Purchase Price for the sale of the Assets in this manner is in the best interests of the estates and their creditors, for a variety of reasons, including the following: (i) the Debtor believes that an immediate sale of the Assets is in the best interests of creditors and the estate at large; (ii) the Purchase Price is adequate and represents fair market value of the Assets to be sold; and (iii) the sale proceeds will be used to fund a liquidating plan of reorganization and will likely result in an orderly distribution to creditors.

57. The only allowed secured claims on any of the assets is a repair loan collateralized by the 2 2001 Peterbilt Rolloffs that were repaired with the loaned funds in 2016. The lender, WK Financial Group, is owed approximately \$40,000 and their lien will be satisfied at closing.

58. Other than WK Financial, the Debtor has no other allowed secured creditors whose claims are not subject to dispute.<sup>2</sup>

59. It is therefore submitted that Section 363(f) of the Bankruptcy Code is satisfied and an immediate sale of the Assets is in the best interests of creditors and the estate and will prevent unnecessary, irreparable harm to the creditors and the estate.

60. In connection with this motion, the Debtor proposes to invite interested parties to make higher or better offers by way of conducting an auction of the Debtor's Assets in contemplation of sales free and clear of all liens, claims and encumbrances, with all such liens, claims and encumbrances to attach to the sale proceeds.

61. The Debtor seeks authority to conduct the Auction free and clear of all liens with the liens to attach to the proceeds of sale (i.e., gross proceeds, less expenses) pursuant to §363(f) of the Bankruptcy Code. Since the Auction contemplated hereby is not in the ordinary course, its authorization requires notice and a hearing pursuant to Section 363(b) of the Bankruptcy Code. Auction sales are specifically authorized under the Bankruptcy Code and F.R.B.P. Rule 6004(f) provides that, "All sales not in ordinary course of business may be by private sale or public auction."

62. It is within the discretion of the Court to determine whether to approve or disapprove of a method for the disposition of property. In re Alves, 52 B.R. 353 (Bankr. D.R.I.

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<sup>2</sup> The Debtor has one pre-petition creditor who holds a disputed secured claim in the approximate amount of \$170,000. The Debtor may sell free and clear of this disputed interest under Section 363(f)(4).

1985); See, generally, In re Stogsdill, 102 B.R. 587 (Bankr. W.D. Tex. 1989). As stated above, the Assets include (i) all machinery, reequipment and containers owned by the Debtor, (ii) all customer lists, (iii) all intellectual property owned by Debtor and (iv) all other container business related assets owned by the Debtor, whether tangible or intangible, phone numbers and lists other than the Excluded Assets.

63. The Debtor respectfully submits that the APA, subject to higher and better offers received at an Auction, will provide the greatest recovery for the Debtor's estate than would be provided by any other available alternative. In addition, the terms and conditions of the APA will be tested in the market through an auction process, which will support the fairness and reasonableness of the consideration being received. Therefore, the Debtor requests that the Court authorize and approve the Sale of the Assets.

**B. Claims of the Estate**

64. The estimated claims of the Debtor's estate consist of:

Administrative Claims (approximate) <sup>3</sup> :	\$200,000.00
Secured Claims:	
WK Financial Group	\$40,000.00
Unsecured Claims	\$800,000.00

**C. Assumption or Rejection of Debtor's Nonresidential Real Property Lease Pursuant to Section 365 of the Bankruptcy Code**

65. The Debtor proposes to either assume and assign or reject its unexpired nonresidential real property lease for its office premises located at 1 Highland Industrial Park, Peekskill, New York, a copy of which is annexed hereto as Exhibit "F", based upon the result of the Auction.

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<sup>3</sup> Of this amount, approximately \$125,000 represents unpaid post-petition trade payables and the \$75,000 balance unpaid professional fees.

66. In the event that the Purchaser is the successful purchaser, it does not require use of the Debtor's office premises and the Debtor will seek authority to reject the Lease at the Sale approval hearing.

67. In the event, however, that another successful purchaser at auction requires the Lease, the Debtor will request that the Court permit the assumption and assignment of the Lease to such successful purchaser at the Sale approval hearing pursuant to Sections 363 and 365 of the Bankruptcy Code.

68. Upon information and belief, the Debtor has no pre-petition arrears and at most 1 month of post-petition arrears under the Lease

**D. Granting the Successful Bidder Good Faith Status is Appropriate**

69. Section 363(m) of the Bankruptcy Code provides as follows:

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.

70. Here, the Sale of the Assets is in good faith. There is no evidence of fraud or collusion in the Debtor's marketing process. To the contrary, as discussed throughout this Motion, and as will be further demonstrated at the Sale Hearing, the APA or such other purchase agreement that the Court is ultimately asked to approve will be the culmination of a solicitation and negotiation process in which all parties are expected to be represented by counsel.

71. Based upon the foregoing, the Debtor respectfully submits that Purchaser has taken part in the transaction contemplated hereby in a manner consistent with granting it "good faith purchaser" status, and the protections concomitant with such status.

**D. The Fourteen Day Stay of the Sale Approval Order Should be Waived**

72. Federal Rule of Bankruptcy Procedure 6004(g) provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.”

73. The Debtor hereby requests that the Court, in its discretion, waive the fourteen-day stay imposed by Rule 6004(g).

74. The Debtor suggests that good cause exists for such a waiver. Under the Contract of Sale, the Debtor must close with the Purchase within sixty (60) days. If Sale Approval Order is stayed for fourteen days under Rule 6004(g), then the Debtor’s marketing period would be shortened by fourteen days so that the Debtor does not inadvertently default under the Contract of Sale. By waiving the fourteen-day stay, the Debtor will be afforded the opportunity to expand its marketing period for an additional fourteen days.

75. For the foregoing reasons, the Debtor therefore requests that the Court waive the fourteen-day stay consistent with the provisions of Federal Rule of Bankruptcy Procedure 6004(g).

**REQUEST PURSUANT TO LOCAL BANKRUPTCY RULE  
9077 FOR HEARING TO CONSIDER APPROVAL OF THE  
MANAGEMENT AGREEMENT AND ENTRY OF THE  
BIDDING PROCEDURES ORDER ON SHORTENED NOTICE  
PURSUANT TO BANKRUPTCY PROCEDURE 9006(C)  
AND NOTICE OF THIS MOTION**

76. As set forth above, the Debtor is urgently in need of consummating a strategic transaction in order to sustain the viability of its business operations.

77. The Debtor lacks any working capital or safety net to ensure stability and future viability.

78. The continued stigma associated with the uncertainty and pending litigation in the Chapter 11 case has contributed to the Debtor's tenuous status and ability to preserve or bolster operations.

79. In order for the Debtor to maintain its operation in order to achieve this Sale, the Debtor needs to permit the Purchaser to take over management of the Business immediately pending the Sale in order to sustain the Business as a going concern.

80. Therefore, the Debtor hereby requests that the Court enter order shortening time pursuant to Rule 9006(c) of the Federal Rules of Bankruptcy Procedure so that the hearing to consider approval of (a) the Management Agreement, and (b) the Bidding Procedures, to be heard on an expedited basis prior to January 31, 2018.

81. The Federal Rules of Bankruptcy Procedure provide for a shortening of time under certain circumstances.

82. Federal Rule of Bankruptcy Procedure 9006(c) provides as follows:

(c) *Reduction.*

(1) *In General.* Except as provided in paragraph (2) of this subdivision, when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.

(2) *Reduction Not Permitted.* The court may not reduce the time for taking action under Rules 2002 (a)(4) and (a)(8), 2003(a), 3002(c), 3014, 3015, 4001(b)(2), (c)(2), 4003(a), 4004(a), 4007(c), 8002, and 9033(b).

83. Thus, the Federal Rules of Bankruptcy Procedure specifically authorize the Court to hear an application such as the Motion herein on shortened notice, for cause shown.

84. The Debtor respectfully submits that sufficient cause exists for scheduling a hearing on shortened notice to consider the Motion and asks the Court to consider this Motion as request for hearing on shortened notice pursuant to Local Bankruptcy Rules 1007-2 and 9077-1.

85. The Debtor submits that the timeline of 20-30 days for the Bid Deadline is sufficient to further and finally market the Debtor's assets and provides adequate time for any potential purchasers to conduct any further inquiries into the Debtor's assets.

86. This Motion will be served via email, facsimile, or overnight delivery upon (i) all parties asserting secured claims against the Debtor, (ii) the Office of the U.S. Trustee, and (iii) and all other parties entitled to notice pursuant to Bankruptcy Rule 4001(d).

**NO PRIOR REQUEST**

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

**WHEREFORE**, the Debtor respectfully requests that the Court grant all of the relief requested herein, together with such other and further relief as is just and proper under the circumstances.

Dated: White Plains, New York  
January 16, 2018

DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP  
*Attorneys for the Debtor*  
One North Lexington Avenue  
White Plains, New York 10601  
(914) 681-0200

By: /s/ Jonathan S. Pasternak  
Jonathan S. Pasternak

**MANAGEMENT AGREEMENT**

**MANAGEMENT AGREEMENT** (this “Agreement”) made as of January 16, 2018 (the “Effective Date”) by and between AFFORDABLE ENTERPRISES OF WESTCHESTER, INC. (the “Company”), a New York corporation with its principal place of business at 2025 Maple Avenue, Cortlandt Manor, New York 10567 and CAPITAL INDUSTRIES CORP. (“Manager”), a New York corporation, with an address of 555 Saw Mill River Road, Yonkers, New York 10701.

**WHEREAS**, the Company is engaged in the business of owning and operating a waste hauling business (the “Business”) located at 2025 Maple Avenue., Cortlandt Manor, New York (the “Property”); and

**WHEREAS**, the Company has filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York under Case No. 14-22168; and

**WHEREAS**, the Company has determined in its business judgment that it is in the best interests of its creditors and estate to immediately sell subject to higher and better offers and Bankruptcy Court approval substantially all of the Business and other related assets (the “Sale”) in light of its current financial situation; and

**WHEREAS**, the Company has entered into an Asset Purchase Agreement (the “APA”) with the Manager for the purchaser of substantially all of the Business and other related assets;

**WHEREAS**, the Debtor has insufficient cash flow to engage new jobs and work orders, thereby diminishing the value of the Debtor’s assets as a going concern;

**WHEREAS**, in order to preserve the value of the Debtor’s assets, Manager desires to immediately begin operating the Business (not including the Company’s garbage hauling business) pending the contemplated sale;

**WHEREAS**, the parties hereto desire to enter into this Agreement to provide for the engagement of the Manager by the Company to provide management services to the Company as of the date of interim Bankruptcy Court approval of this Agreement (the “Effective Date”).

**NOW, THEREFORE**, in consideration of the premises and covenants set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

**1. Retention of the Manager; Services.**

a. The Company hereby retains the Manager to perform the management services described herein. The Manager agrees to provide such management services (the “Services”) to the Company in accordance with this Agreement.

b. The Manager shall be responsible for the strategic, financial, consultative and administrative obligations related to the operation of the Business. The Manager shall make commercially reasonable efforts to continue the Company’s compliance with all local and state regulations relating to the Business. The Services shall include, but not be limited to using the Company assets to operate the business, including servicing the Debtor’s existing customers, billing of customers and collection of receipts, payment of vendors and employees for materials purchased by Manager and work performed for Manager on and after commencement of the Management Services, maintaining equipment and licenses, maintaining and/or terminating the Company’s employees in Manager’s business judgment and discretion, and all other acts reasonably required with respect to the operation of the Business.

c. The Manager shall use its own bank account for all income received and expenses incurred during the management period described herein and shall provide a full accounting for all income generated and expenses incurred in connection with the management of the Business.

d. Manager shall not be responsible for any liabilities of the Company prior to the Effective Date other than the collecting and disposal of material from the containers as contemplated under the APA.

**2. Limitations on Manager's Authority.**

Notwithstanding anything herein to the contrary, without the prior consent of the Company, the Manager shall have no authority to do any of the following during the term of this Agreement:

- a. incur debt for or on behalf of the Company;
- b. make any change to the Company's billing systems;
- c. change the name or otherwise alter the design of the logo utilized by the Company;
- d. transfer title to or control over any of the Company's assets; and
- e. do any other act not in the ordinary course of the Company's business or not for the betterment of the Company.

**3. Term.**

a. The term of this Agreement (the "Term") shall commence as of the Effective Date and shall terminate on the earlier of (a) a closing on a sale of the Business to Manager or (b) termination of the APA between the parties.

b. Notwithstanding anything to the contrary herein, this Agreement may be terminated pursuant to the provisions of Section 7 hereof.

**4. Compensation.**

For each calendar month of the Term (or if any month of the Term commences other than the first of the month pro-rated for each such portion thereof) (the "Pay Period"), the Manager shall be permitted to use the assets of the Company and retain for its sole benefit all profits of the

Company after paying all ordinary and necessary expenses of the Business, including but not limited to goods purchased, payroll, rent, taxes and insurance. Manager shall be responsible for all expenses incurred for operation of the Business that become due on or after January \_\_, 2018 and during its period of operation of the Business under this Agreement. Manger shall retain all profits and sustain all losses during the period of operation of the Business under this Agreement. Manager is entitled to invoice and collect excess dumping fees (i.e. fees charged to client for excess weight of container) which may be owed by existing Company clients that are listed in Schedule 1.1(iii) of the APA and which can only be determined by Manager upon collecting the existing containers which are set forth in Schedule 1.1(ii) of the APA.

Upon approval of this Agreement by the Bankruptcy Court, Manager is hereunder authorized to use its own funds, as may be necessary, in addition to assets and property of the Company, to fund any deficiencies in operating capital for the Business. The funds advanced by Manager shall be waived upon the closing of the Sale to Manager.

**5. Rent**

Manager shall not be responsible for any rent attributable to Company's premises, as Manager is not contemplated to use any of the Company's leased premises.

**6. Insurance**

In connection with the operation of the Business, the Manager is specifically responsible for payment of all applicable and necessary insurance during the Term of this Agreement, including General Liability and Workers' Compensation insurance (to the extent that Manager continues to employ any of Company's employees). Manager shall provide to Company proof of insurance within two (2) business days of a written request. Manager shall add Company as an additional insured to its existed insurance policy. In addition, Company shall maintain its general liability policy during the term of this Agreement at its own expense.

**7. Termination.**

a. Notwithstanding any other provisions of this Agreement, the Company may, in its sole discretion, immediately terminate this Agreement at any time should any of the following occur: (a) Manager's material breach of, or material failure to perform, any term, representation, condition or responsibility by Manager under this Agreement which is not cured within 10 days after receipt of notice of such breach; (b) failure to maintain Workers Compensation Insurance, General Liability Insurance; or (c) conduct by Manager that is determined by a court of competent jurisdiction to be grossly negligent or fraudulent.

b. Manager shall have the right to terminate this agreement, upon seven (7) days' written notice, for any of the following reasons: (i) failure of the Company or its principal Keith Koski to cooperate and provide access to all documents and information necessary to operate the Business; (ii) a determination by Manager that any of the representations and warranties set forth in this Agreement and/or the APA were not true or accurate as of the date they were entered into; or (iii) a determination that Koski or any employee of the Company is intentionally attempting to undermine the authority or ability of Manager to manage the Business.

c. In the event the parties do not otherwise terminate this Agreement in accordance with subsections a or b. above, this Agreement shall terminate upon closing of a sale of the Business to either Manager or such other successful purchaser at auction pursuant to the sale procedures to be implemented by the Bankruptcy Court in the Company's bankruptcy case.

**8. Representations and Warranties of Manager.**

a. Manager is duly authorized to enter into and perform this Agreement.

b. Manager has the personnel and skills to perform the services required of it pursuant to this Agreement.

c. Manager will perform all of its service on behalf of, for the benefit of, and in the name of, the Company.

d. Manager is unaware of any law, regulation, contract or agency which would prevent it from performing the Services.

e. Manager is aware that the Company is now debtor in possession pursuant to a chapter 11 bankruptcy filing.

f. Manager warrants and represents it will procure and shall maintain, at its own expenses, insurance in adequate amounts and coverage of such types and amounts as are usual and customary for similar businesses or as may be required by law, or by the United States Trustee, or by the Trustee, including comprehensive general liability insurance, workers' compensation, and employers' liability insurance, boiler and machinery insurance, business interruption insurance, and any other insurance deemed necessary for the operation of the Business. Manger agrees that said insurance coverage shall name the Company, and such other persons as the Manager may reasonably request, as additional insureds and shall be with a carrier authorized to do business within the State of New York and whom Manager shall approve in its reasonable discretion subject to the approval of the Bankruptcy Court.

**9. Representations and Warranties of the Company.**

a. All of the representations and warranties of the Company made in the APA remain true and correct as of the effective date of this Agreement.

b. Keith Koski will fully cooperate with Manager in implementing this Agreement.

c. The Company shall provide access to its books and records to the extent needed for Manager to operate the Business hereunder.

d. The Company will provide access to its bank statements and billing systems upon execution of this Agreement.

e. Prior to the Effective Date, The Company shall provide a schedule of any payments necessary for Manager to be responsible for under this Agreement.

f. The Company is authorized to enter into and perform this Agreement and also obtain the appropriate approvals and orders from the U. S. Bankruptcy Court to implement and put into effect this Agreement.

g. The Company is not prohibited by any law, regulation, contract or agency, including the Bankruptcy Court from entering into and performing under this Agreement.

h. In connection with the Property, the Company warrants and represents it will procure and shall maintain, at its own expense, insurance in adequate amounts and coverage of such types and amounts as are usual and customary or as may be required by law, or by the United States Trustee, or by the Trustee, insuring the property. The Company shall provide Manager with a waiver of subrogation from its insurer(s).

**10. Amendments.**

Any amendment to this Agreement shall be made in writing and signed by the parties against whom enforcement shall be sought.

**11. Independent Contractor.**

The parties intend that the Manager render services hereunder, as an independent contractor, and nothing herein shall be construed to be inconsistent with this relationship or status. The Manager shall be responsible for its and his own taxes.

**12. Assignment.**

This Agreement and all rights and obligations of the Company and the Manager shall inure to the benefit of its respective permitted successors and assigns. The duties and rights of

the parties hereto hereunder are personal to such parties and may not be delegated or assigned by him or it without prior written consent of the other parties.

**13. Notices.**

All notices and other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally, by registered or certified mail, postage prepaid, or by a nationally recognized overnight courier service as follows:

If to the Manager: Capital Industries Corp.  
555 Saw Mill River Road  
Yonkers, New York 10701  
Attn: Andy McGuire

With a copy to: Clifford H. Greene & Associates  
700 White Plains Post Road, Suite 309  
Scarsdale, New York 10583

If to the Company: Affordable Enterprises of Westchester, Inc.  
2025 Maple Avenue  
Cortlandt Manor, New York 10567  
Attn: Keith Koski

With a copy to: Jonathan S. Pasternak, Esq.  
DelBello Donnellan Weingarten  
Wise and Wiederkehr, LLP  
One North Lexington Avenue, 11<sup>th</sup> Floor  
White Plains, New York 10601

or to such other address as any party may have furnished to the other parties in writing in accordance herewith.

**14. Miscellaneous.**

a. Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of New York without regard to conflict of law rules thereof.

b. Severability. If any provision of this Agreement or the application of any such provision to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances other than those to which it is so determined to be invalid and unenforceable, shall not be affected thereby, and each provision hereof shall be validated and shall be enforced to the fullest extent permitted by law.

c. Survivorship. The respective rights and obligations of the parties hereunder shall survive any termination of this Agreement to the extent necessary to the intended preservation of such rights and obligations.

d. Headings. All descriptive headings of sections and paragraphs in this Agreement are intended solely for convenience, and no provision of this Agreement is to be construed by reference to the heading of any section or paragraph.

e. Entire Agreement. This Agreement represents the entire agreement between the parties. All agreements and representations of the parties are set forth herein. This Agreement cannot be modified or amended except in a writing signed by the parties.

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

**15. Bankruptcy Court Jurisdiction.**

The Bankruptcy Court shall have exclusive jurisdiction over the implementation, interpretation and enforcement of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the  
date first above written.

The Company:  
AFFORDABLE ENTERPRISES OF  
WESTCHESTER, INC.

By: /s/ Keith Koski  
Name: Keith Koski  
Title: President

The Manager:  
CAPITAL INDUSTRIES CORP.

By: /s/ Andy McGuire  
Name: Andy McGuire  
Title: President

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

AFFORDABLE ENTERPRISES OF  
WESTCHESTER., INC.,

Chapter 11

Case No. 14-22168(RDD)

Debtor.

-----X

**INTERIM ORDER AUTHORIZING APPROVAL AND ENTRY INTO MANAGEMENT  
AGREEMENT BETWEEN THE DEBTOR AND CAPITAL INDUSTRIES CORP.  
PURSUANT TO 11 U.S.C. SECTIONS 105 AND 363**

UPON consideration (the "Motion")<sup>1</sup> of Affordable Enterprises of Westchester, Inc., the above-captioned debtor and debtor-in-possession (the "Debtor"), by its attorneys, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP for entry of (I) Order Authorizing Approval and Entry into Management Agreement Between the Debtor and Capital Industries Corp. ("Purchaser" or, "Manager"; and (II) Sale Procedures Order: (a) Approving Bidding Procedures, (b) Approving a Break-Up Fee, (c) Approving the Form and Manner of Notice, and (d) Scheduling an Auction and Sale Hearing; and (III) Granting Request for Hearing to Consider Entry of Bidding Procedures Order on Shortened Notice Pursuant to Bankruptcy Rule 9006(c); and a hearing having been held to consider hearing the Motion on shortened notice on January \_\_, 2018, and the Court having granted the Debtor's request to hear the Motion on shortened notice, and a further hearing having been held on January \_\_, 2018 to consider the Motion; and the Court having reviewed and considered the Motion, and the arguments of counsel made, and the evidence adduced, at the hearing held on January \_\_, 2018 (the "Hearing"); upon the record of the Hearing and this Chapter 11 Case; and after due deliberation thereon, and good cause appearing therefor,

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<sup>1</sup> Capitalized terms used herein, not otherwise defined, shall have the meaning ascribed to them in the Motion.

**ORDERED**, that the Debtor be and hereby is authorized to enter into the Management Agreement, on an interim basis pending the Final Hearing (as defined below), subject to the terms of this Order; and it is further

**ORDERED**, that the terms of the Management Agreement are hereby approved, as modified and supplemented herein, and the Debtor is hereby authorized to take any and all such actions as may be required to effectuate the terms of this Order and the Management Agreement; and it is further

**ORDERED**, that the term of the Management Agreement (the “Management Term”) shall commence upon entry of this Order by the Bankruptcy Court, and terminate as set forth in the Management Agreement; and it is further

**ORDERED**, that any confidentiality or non-disclosure agreement entered into between the Debtor and Manager in connection with the acquisition of the Debtor’s assets shall remain in full force and effect and shall be extended to cover the term of the Management Agreement and any of the Debtor’s proprietary information encountered and obtained by Manager during the term of the Management Agreement; and it is further

**ORDERED**, that Manager shall obtain, or as the case may be, ensure that all licenses necessary to operate the Business in compliance with all applicable laws are valid; and it is further that

**ORDERED**, that Manager shall use its good faith efforts to comply with all laws, the Bankruptcy Code, and the U.S. Trustee Guidelines, specifically including, but not limited to, assisting the Debtor and its professionals in the preparation of monthly operating reports; and it is further

**ORDERED**,

**ORDERED**, that the terms of this Order shall not be subject to further amendment without prior written consent of the Manager and the Debtor, and shall be binding upon the Manager and upon the Debtor, its successors and assigns, including any successor trustee or examiner which maybe appointed in this or any superseding case; and it is further

**ORDERED**, notwithstanding Bankruptcy Rule 7062, the terms and conditions of this Order shall be immediately enforceable pursuant to Bankruptcy Rule 8005; and it is further

**ORDERED**, that the Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order; and it is further

**ORDERED**, that a final hearing on the Motion shall be held on February \_\_, 2018 at 10:00 a.m. (the "Final Hearing"). Debtor's counsel shall provide notice of the Final Hearing to all parties mandated by Bankruptcy Rule 4001(c) no later than 15 days prior to the Final Hearing. Objections shall be filed on the Court's website [www.nyeb.uscourts.gov](http://www.nyeb.uscourts.gov) (login and password required) no later than February \_\_, 2018 at 5:00 p.m. and served upon counsel for the Debtor, with a copy delivered to Chambers.

Dated: White Plains, New York  
January \_\_, 2018

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HON. ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

**ASSET PURCHASE AGREEMENT**

**by and among**

**AFFORDABLE ENTERPRISES OF WESTCHESTER, INC.,  
a New York corporation**

**and**

**CAPITAL INDUSTRIES CORP,  
a New York Corporation**

**Dated as of January 16, 2018**

**ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (“Agreement”), made as of January 16, 2018, by and among AFFORDABLE ENTERPRISES OF WESTCHESTER, INC., a New York corporation (the “Seller”) and CAPITAL INDUSTRIES CORP., a New York corporation (the “Purchaser”).

**WITNESSETH:**

WHEREAS, Seller is engaged in the business of providing garbage removal services to residential and commercial business in the construction industry (the “Business”);

WHEREAS, the Seller is currently in Chapter 11 bankruptcy, which case is pending in the Southern District of New York, White Plains Division (“Bankruptcy Court”), bearing Case No. 14-22168(RDD)(“Bankruptcy Case”) and is a debtor-in-possession pursuant to 11 U.S.C. Section 1107 and 1108; and

WHEREAS, Purchaser desires to purchase the Seller’s Business by acquiring substantially all of its assets free and clear of all liens, claims, encumbrances and interests of any kind pursuant to 11 U.S.C. §363(b), (f) and (m), subject to higher and better offers, and Seller desires to sell such Business to Purchaser, all upon the terms and conditions set forth in this Agreement; and

WHEREAS, this Agreement is subject to the approval of the Bankruptcy Court.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth and for the benefits to be derived from the consummation of the transactions contemplated hereby, the parties agree as follows:

1. **Purchase and Sale of Assets.**

1.1 Subject to the terms and conditions, based upon the representations and warranties hereinafter set forth and except as otherwise provided herein, Purchaser agrees to purchase, accept and pay for, and Seller agrees to sell and assign to Purchaser at the Closing (as hereinafter defined), free and clear of all liens, claims, encumbrances and interests of any kind pursuant to 11 U.S.C. §363(b), (f) and (m), all of the assets of the Seller of any kind, tangible and intangible, and wherever located, other than those described in Section 1.2 below, including without limitation, (i) any or all machinery, equipment and vehicles (collectively, “FF&E”) as set forth on Schedule 1.1(i); (ii) all of Seller’s containers set forth on Schedule 1.1(ii); (iii) customer contracts, relationships and lists as set forth in Schedule 1.1(iii); (iv) all of the Seller’s Good Will, Intellectual Property and Confidential Information (as hereinafter defined), including but not limited to the Intellectual Property and Confidential Information set forth on Schedule 1.1(iv); and (v) all right, title and interest in any or all other assets of any kinds used in the Business (collectively, the “Assets”).

(a) For purposes of this Agreement, “*Confidential Information*” shall mean all non-public information, which may include without limitation: phone numbers, websites, domains, trade secrets, ideas, samples, plans, strategies, research, experimental work, development work, designs, prototypes, inventions, specifications, slogans, descriptions, sayings, mottos, position concepts and statements, mission concepts and statements, tag lines, names, media, including without limitation any of the foregoing and their like related to any current, future, or proposed services or any manner of executing, delivering, commercializing, exploiting or advertising the same.

(b) For purposes of this Agreement, “*Intellectual Property*” shall mean intellectual property owned by and/or assigned to Seller, including but not limited to any state or federal trademarks and all common law rights and goodwill associated with the trademarks, all inventions, whether patentable or not, ideas, know-how, data, Confidential Information, copyrights, patents, trade secrets, trademarks, logos, domain names, designs, license rights, GS1/U.P.C. Company prefix number, any registrations or applications relating to any of the foregoing, and any other rights of a similar nature or character whether now existing or hereafter created, developed, arising, or otherwise coming into being, in any jurisdiction.

1.2 The Assets shall not include (i) Seller’s residential garbage business or related routes; (ii) cash and cash equivalents; (iii) accounts receivable; (iv) the Purchase Price; (v) any claims or causes of action which the Seller may have against third parties, related and unrelated to the Bankruptcy Case; or (vi) corporate books and records of the Seller; (collectively, the “Excluded Assets”).

1.3 The Assets are being conveyed AS-IS, WHERE-IS, without any representations, warranties or conditions of any kind, except as expressly provided in Section 4.

2. **Purchase Price.** The purchase price for the Assets shall be Five Hundred and Seventy Thousand Dollars (\$570,000.00; the “Purchase Price”).

2.1 ***Deposit.*** Purchaser shall pay to Seller a contract deposit in the amount of \$57,000.00 (the “Deposit”) upon execution of this Agreement. The Deposit shall be non-refundable except as otherwise set forth herein and shall be held by Seller’s counsel in escrow until Closing (as defined below), at which time it shall be applied to the Purchase Price or returned pursuant to Section 8 below.

2.2 ***Balance.*** The balance of the Purchase Price, after crediting the full amount of the Deposit and the Closing Adjustment (as defined in Section 2.3 below), shall be payable in cash at Closing.

2.3 **Closing Adjustment.** Purchaser shall be entitled to a Closing adjustment (the "Closing Adjustment") to the Purchase Price in an amount equal to the actual cost to recover and dispose of all materials left in the Seller's refuse containers as of effective date of the Management Agreement (defined herein), with such adjustment not to exceed \$125,000 (the "Adjustment Cap"). Purchaser shall be required to provide an accounting of its costs of recovery and disposal of the containers no later than 2 days prior to the Closing Date. Provided there is no dispute over amount, Purchaser shall be entitled to credit against the Purchase Price by such agreed amount of Closing Adjustment not to exceed the Adjustment Cap. In the event that Purchaser's fails to provide such accounting within such time frame, Purchaser's claim for Closing Adjustment shall be deemed waived in its entirety. In the event of a dispute over any accounting timely provided, the Bankruptcy Court shall determine such dispute.

2.4 **Assumption of Liabilities.** Other than to the extent provided for in Section 2.3 above, the Purchaser shall not assume or be deemed to have assumed or in any way have any responsibility for any debt, obligation, claim or liability of Seller whatsoever, including any debt, obligation, claim or liability relating to the Assets or the Business arising from or related to events, acts or omissions prior to the closing date.

3. **Closing.** Subject to the conditions precedent set forth herein, the closing hereunder (the "Closing") shall take place at the offices of Seller's counsel no later than ten (10) days after entry of the Sale Approval Order (defined below) (assuming the waiver by the Bankruptcy Court of the 14-day stay, otherwise the closing shall be fifteen (15) days after the entry of the Sale Approval Order), unless otherwise agreed by the parties in writing (the "Closing Date"). The foregoing notwithstanding, in the event that the Closing has not occurred by March 31, 2018 and the parties have not mutually agreed to an extension of such deadline in writing, either party shall have the right to terminate this Agreement by serving written notice pursuant to Section 8 herein.

4. **Representations and Warranties of Seller.** The Seller represents and warrants to the Purchaser as follows, as of the date hereof and as of the Closing Date:

4.1 **Organization and Existence of the Seller.** Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, and has the power to carry on its business in the manner and at such locations as that business is currently being conducted. The Seller does not have any subsidiaries, nor does it own or have any direct or indirect interest in or control over any corporation, partnership, limited liability company, joint venture or other entity of any kind.

4.2 **Authorization of Transaction.** Subject to the approval of the Bankruptcy Court, the Seller has full power and authority to execute and deliver this Agreement and each of the documents contemplated hereby (together with this Agreement, the "Operative Documents") and to perform its obligations hereunder and thereunder. Seller has taken such action as may be necessary for Seller to execute, deliver and perform each such Operative

Document. No action, approval, consent or authorization of any governmental agency is necessary for Seller to consummate the transactions contemplated herein.

4.3 **Title.** Seller has good and marketable title to the Assets and shall transfer the Assets to Purchaser at Closing free and clear of all liens, claims, interests and encumbrances of any kind. The Assets include, in all material respects, all Assets necessary to operate the Business as currently conducted. As set forth in Schedule 1.1(ii), the Seller has disclosed the current location of each container to the best of its knowledge and ability. The tangible Assets are in operating condition, subject to ordinary wear and tear. No actions have been commenced against Seller or with respect to any container that it has out in the field with regard to illegal presence of toxic or hazardous substances in the containers, and that Seller has no actual knowledge or reason to believe that any such toxic or hazardous substances including but not limited to fuel oil, waste oil or petroleum gasoline are in any of the containers.

4.4 **Binding Obligations.** Subject to the approval of the Bankruptcy Court, this Agreement constitutes, and upon execution by the Seller together with each other Operative Document will constitute, the valid and legally binding obligations of Seller, enforceable in accordance with their respective terms.

4.5 **No Violations.** Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereunder will (i) violate any statute, regulation, injunction, judgment, order, decree or ruling to which the Seller is subject, nor will it require the authorization or approval of, or the filing of any notice with any governmental agency or authority; or (ii) result in a violation or breach of any term or provision of, or require consent or constitute a default under, the Seller's operating agreement or any contract or agreement to which the Seller is a party or by which it is bound; or (iii) result in any lien, encumbrance or other charge upon any of the Assets. The Assets include, in all material respects, all Assets necessary for the conduct of the Business as currently conducted. Seller has all requisite power and all necessary permits, certificates, contracts, approvals and other authorizations required by any and all federal, state, city, county or other municipal bodies to own, lease, use and operate the Assets and Business and in the manner in which such Assets and Business are presently conducted and to transfer such Assets and Business pursuant to this Agreement.

4.6 **No Material Adverse Effect.** To the knowledge of Seller, Seller does not have any liability of any nature whatsoever (whether due or to become due, accrued, absolute, contingent or otherwise) arising from or related to the Business, except: (i) liabilities incurred in the ordinary course of business; and (ii) such other liabilities and obligations as would not in the aggregate have a material adverse effect on the Business or the Assets (a "**Material Adverse Effect**").

4.7 **Brokers.** The Seller has not employed any broker, finder or agent, nor has Seller otherwise dealt with or become in any way obligated for any consultant's, broker's, finder's, agent's or similar fee with respect to the transactions contemplated by this

Agreement other than Maltz Auctions, Inc., whose commission and/or fee shall be the sole responsibility of Seller.

**4.8 Trade Names and Other Intellectual Property.**

(a) Schedule 1.1(iv) sets forth a true and complete list of all registered trademarks, patents and domain names used in the Business. Seller is the exclusive owner of, or is licensed to use, all Intellectual Property. Seller's rights in all such Intellectual Property are freely transferable. There are no claims, complaints, notices or demands of any other person pertaining to any of such Intellectual Property. No proceedings have been instituted, or are pending or to the knowledge of Seller threatened, which challenge the rights of Seller in respect thereof.

(b) Seller has not granted any licenses or other rights to others in Intellectual Property owned or licensed by Seller. To the knowledge of Seller, no other person is infringing on the rights of Seller in any of its Intellectual Property.

(c) To the Seller's knowledge, the present and contemplated business, activities and products of Seller do not infringe any Intellectual Property of any other person. No proceeding charging Seller with infringement of any adversely held Intellectual Property has been filed or, to Seller's knowledge, is threatened to be filed.

**4.9 Customers and Operating Contracts.** Seller has no written agreements with any customers. Seller has provided to Purchaser a complete and accurate list of all customer relationships and lists.

**4.10 Management Agreement.** The parties shall, simultaneous with the execution of this Agreement, execute a management agreement, where under Purchaser shall have the authority to manage the Business pending Closing (the "Management Agreement").

Unless specifically provided otherwise, the representations and warranties set forth in Section 4 shall survive Closing. Seller agrees to indemnify, defend and hold Purchaser harmless from and against any and all loss, liabilities, damage or expense, including reasonable attorney's fees, or due to the breach of any of the representations, warranties or undertakings of Seller contained in this Agreement, and obligations or any violations of any kind asserted against Purchaser arising out of Seller's operation of the Business prior to Closing, including but not limited to mechanic's liens, tax liens, improper service, arising from obligations incurred prior to effective date of the Management Agreement.

5. **Representations and Warranties by Purchaser.** Purchaser represents and warrants to the Seller as follows, as of the date hereof and as of the Closing Date:

5.1 ***Organization and Existence.*** The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the power to own its property and to carry on its business as it is currently being conducted.

5.2 ***Authorization of Transaction.*** The Purchaser has full power and authority to execute and deliver this Agreement and each of the other Operative Documents, and to perform its obligations hereunder and thereunder. The Purchaser has taken such action, including obtaining approval by its Board of Directors, as may be necessary for the Purchaser to execute, deliver and perform each such Operative Document.

5.3 ***Binding Obligations.*** This Agreement constitutes, and upon execution each other Operative Document will constitute, the valid and legally binding obligations of Purchaser, enforceable in accordance with their respective terms.

5.4 ***No Violation.*** Neither the execution nor delivery of this Agreement nor the consummation of the transactions contemplated hereunder will result in a violation or breach of any term or provision of, or constitute a default under, the Purchaser's Certificate of Incorporation or Bylaws or any contract or agreement to which Purchaser is a party or to which Purchaser is subject.

5.5 ***Brokers.*** The Purchaser has not employed any broker, finder or agent, nor has Purchaser otherwise dealt with or become in any way obligated for any consultant's, broker's, finder's, agent's or similar fee with respect to the transactions contemplated by this Agreement.

5.6 ***Condition of Assets.*** Purchaser expressly acknowledges that, except as expressly set forth in this Agreement and/or in any documents and/or instruments executed and/or delivered by or on behalf of Seller in connection with this Agreement (the "Express Representations"), neither Seller, nor any person acting on behalf of Seller, nor any person or entity which prepared or provided any of the materials reviewed by Purchaser in conducting its due diligence, nor any direct or indirect officer, director, partner, member, shareholder, employee, agent, representative, accountant, advisor, attorney, principal, affiliate, consultant, contractor, successor or assign of any of the foregoing parties (Seller, and all of the other parties described in the preceding portions of this sentence (other than Purchaser) shall be referred to herein collectively as the "Exculpated Parties") has made or shall be deemed to have made any oral or written representations or warranties, whether expressed or implied, by operation of law or otherwise. Purchaser is acquiring the Assets based solely on its own independent investigation and inspection of the property and not in reliance on any information provided by Seller, or any of the other Exculpated Parties, except for the representations expressly set forth herein.

6. **Conditions to Closing.**

6.1 Purchaser's obligation to purchase the Assets is expressly conditioned upon:

(a) *Seller's Representations.* Seller's representations and warranties set forth in this Agreement being true and accurate in all material respects on the Closing Date, as if made on such date.

(b) *Performance by Seller.* Seller shall have performed all of the covenants, agreements and obligations and complied with all conditions which are required to be performed or complied with by Seller prior to the Closing.

(c) *Bankruptcy Court Approval.* Entry of a Sale Approval Order by the Bankruptcy Court which is final and non-appealable.

(d) *Material Adverse Change.* From the date of this Agreement, there has been no material adverse change in any of the Assets, individually or in the aggregate, including but not limited to any materially adverse change in Seller's Business or customer relationships.

(e) *Restrictive Covenant.* Execution of a Restrictive Covenant Agreement where under Keith and Kimberly Koski shall agree not to (a) solicit any existing customers of either Seller or Purchaser and (b) have any ownership interest in any business in competition with Purchaser in the Business in the tri-state area for a period of three (3) years after Closing.

(f) *Delivery of Intellectual Property.* Seller shall deliver all Intellectual Property and Confidential Information including all documentation necessary to effectuate the transfer of all associated registrations.

6.2 Seller's obligation to sell the Assets is expressly conditioned upon:

(a) *Purchaser's Representations.* Purchaser's representations and warranties set forth in this Agreement being true and accurate in all material respects on the Closing Date, as if made on such date;

(b) *Performance by Purchaser.* Purchaser shall have performed all of the covenants, agreements and obligations and complied with all conditions which are required to be performed or complied with by Purchaser prior to the Closing;

(c) *Bankruptcy Court Approval.* Entry of Sale Approval Order by the Bankruptcy Court which has become final and non-appealable.

7. **Bankruptcy Court Procedure**

7.1 *Sale Motion.* On or before three (3) business days after the date of execution and delivery of this Agreement, Seller shall file with the Bankruptcy Court a motion (“Sale Motion”) (including all supporting papers, proposed bidding procedures (the “Bid Procedures”), and notices), in a form and substance reasonably satisfactory to the Purchaser, seeking an order (the “Sale Procedures Order”) approving this Agreement and the notice and procedure for a public auction (“Auction”) and sale of the Assets.

7.2 *Sale Approval Order.* The Seller shall use its best efforts to schedule the Auction thirty (30) days, but in no event more than forty (40) days, after entry of the Sale Procedures Order and shall seek entry of an Order approving the results of the Auction (“Sale Approval Order”) no more than five (5) business days after the Auction, or as soon thereafter as the Court’s calendar will reasonably allow.

7.3 *Bid Procedures.* The Bid Procedures shall provide, among other things, that, in order to participate in the Auction, each prospective bidder must previously have delivered to Seller proof of financial wherewithal to consummate the transaction. Upon such demonstration and compliance with all other terms and conditions set forth in this Agreement and the Sale Procedures Order for a prospective bidder, Seller, in its reasonable business judgment, shall determine whether such persons qualify as a bidder (a “Qualified Bidder”). Purchaser shall constitute a Qualified Bidder for all purposes. Seller further agrees that the terms and conditions of the Auction, as proposed in the Sale Motion, shall require, inter alia, (i) that the Qualified Bidder offers to purchase the Property upon the terms and conditions substantially similar to or better than those set forth in this Agreement (including, without limitation, by requiring the Qualified Bidder to deposit in escrow with the Seller’s counsel on or prior to the date of the Auction, an amount equal to ten percent (10%) of its initial bid), (ii) that such offer not be conditioned on obtaining financing or the outcome of unperformed due diligence by the Qualified Bidder, (iii) that such offer is not conditioned upon the Bankruptcy Court’s approval of any bid protections, such as break-up fees, termination fees, expense reimbursement, or similar type of payment, (iv) is accompanied by a copy of this Agreement marked to show any amendments and modifications thereto, (v) that the initial higher and better offer for the Property be at least \$50,000 higher than the Purchase Price set forth in this Agreement which amount consists of (1) a termination fee in the amount of (x) \$15,000, plus (y) reimbursement of actual and verifiable expenses incurred by Purchaser up to \$15,000 (the sum of (x) and (y), the “Termination Fee”) and (2) an initial overbid amount of \$20,000, and that subsequent higher and better offers be in increments of not less than \$10,000 (such initial and subsequent higher and better offers, each a “Qualified Competing Bid”). For the avoidance of doubt, Purchaser shall not be subject to the minimum bidding increment insofar as it does not need to submit a competing bid that is a greater amount than a Qualified Competing Bid. Instead, Purchaser shall be

permitted to match any Qualified Competing Bid with Purchaser's bid still being deemed higher than the Qualified Competing Bid by virtue of the higher net benefit to the estate than in the event of an Alternative Transaction (i.e. due to the estate's incurrence of the cost of the Termination Fee). At Auction, the Seller shall designate both the highest and best bidder as well as a second highest and best bidder ("Back-Up Bidder"). In the event a Qualified Competing Bid is approved by the Bankruptcy Court (an "Alternative Transaction"), upon closing of such Alternative Transaction, Seller shall pay from closing proceeds to Purchaser, (a) return of the full amount of Purchaser's initial Deposit, (b) the Closing Adjustment and (c) the Termination Fee, upon which Purchaser shall have no other claims against the Seller or the Assets.

8. **Termination.**

8.1 *Termination of Agreement.* This Agreement may be terminated as provided below:

(a) Purchaser and Seller may terminate this Agreement by mutual written consent at any time prior to the Closing;

(b) Purchaser may terminate this Agreement by giving written notice to Seller at any time prior to the Closing (i) in the event Seller has breached any representation, warranty or covenant contained in this Agreement or in the Management Agreement in any material respect, or (ii) in the event the Bankruptcy Court does not approve the Sale Motion or the motion requesting entry of the Sale Approval Order;

(c) Seller may terminate this Agreement by giving written notice to Purchaser at any time prior to the Closing in the event Purchaser has breached any representation, warranty or covenant contained in this Agreement in any material respect;

(d) Either party may terminate this Agreement if the Closing shall not have occurred on or before March 31, 2018 (or such later date to which the Closing Date is mutually extended to in writing by the parties); provided, that if the Closing shall not have occurred by such date due to a material breach of this Agreement by a party, then such party may not terminate this Agreement under this Section 8.1(d); and

(e) In the event that a Sale Approval Order is entered which authorizes an Alternative Transaction, unless such Order approves the Purchaser as the Back-Up Bidder, in which case the termination of this Agreement would be effective upon the closing of the Alternative Transaction.

8.2 **Effect of Termination.** Except as otherwise set forth herein, if any party terminates this Agreement pursuant to Section 8.1, all rights and obligations of the parties hereunder shall terminate and neither party shall have any liability to the other (except that nothing herein shall affect or impair any liability for damages that may result from the party then in breach). In the event that this Agreement is terminated for any reason, (a) the full amount of the initial Deposit shall be promptly returned to the Purchaser and (b) upon closing of an Alternative Transaction, Purchaser shall receive the Closing Adjustment from such sale proceeds. In the event that no Alternative Transaction closes after termination hereunder, Purchaser shall, in the alternative, be entitled to an administrative expense claim in Seller's bankruptcy case under Section 503(b) of the Bankruptcy Code in an amount equal to the Closing Adjustment. Seller represents that, as of the date of this Agreement, Seller estimates the outstanding administrative expense claims of Seller's bankrupt estate to not exceed \$250,000.

9. **Additional Terms.**

9.1 **Expenses.** Except for the Termination Fee, the parties shall bear all costs and expenses (including without limitation legal fees and expenses) that they may incur in connection with the negotiation, preparation, execution and delivery of this Agreement, and any other documents contemplated hereby. The Seller shall pay any and all sales, use, excise or other taxes or charges applicable to the transactions contemplated by this Agreement.

9.2 **Notices.** Any notice, demand or request required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given when delivered by hand, one day after transmittal by an internationally recognized overnight courier service, or three days after being sent by registered or certified mail, return receipt requested, postage prepaid, in each case addressed as follows:

If intended for Seller: Affordable Enterprises of Westchester, Inc.  
2025 Maple Avenue  
Cortlandt Manor, New York 10567  
Attn: Keith Koski

with a copy of any  
notice to the Seller: Jonathan S. Pasternak, Esq.  
DelBello Donnellan Weingarten  
Wise and Wiederkehr, LLP  
One North Lexington Avenue, 11<sup>th</sup> Floor  
White Plains, New York 10601

If intended for Purchaser: Capital Industries Corp.  
555 Saw Mill River Road  
Yonkers, New York 10701  
Attn: Andy McGuire

with a copy of any  
notice to Purchaser to: Clifford H. Greene & Associates  
700 White Plains Post Road, Suite 309  
Scarsdale, New York 10583

or to such other address as either party may designate from time to time by written notice in the manner set forth above.

9.3 **Entire Agreement.** This Agreement (including the schedules and exhibits hereto), together with all other Operative Documents executed by the parties, constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior memoranda, correspondence, conversations and negotiations.

9.4 **Counterparts.** This Agreement may be executed in any number of counterparts and, as so executed, shall constitute one agreement binding on all the parties hereto, notwithstanding that the parties may not have executed the same counterpart. Facsimile transmissions, or electronic transmissions in .pdf format, of any executed original document and/or retransmission of any executed facsimile or .pdf transmission shall be deemed to be the same as the delivery of an executed original.

9.5 **Succession and Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties named herein and their respective heirs, successors and permitted assigns. No party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other party.

9.6 **Headings.** The headings of the sections of this Agreement have been assigned for convenience only and shall not be construed as limiting, defining or affecting the substantive terms of this Agreement.

9.7 **Amendments.** This Agreement may be amended or waived only by a writing executed by the parties hereto. No waiver of any breach of this Agreement shall be deemed to be a waiver of any subsequent breach of a similar or like nature.

9.8 **Construction.** The parties intend that each representation, warranty and covenant contained herein shall have independent significance. If any party has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the party has not breached shall not detract from or mitigate the fact that the party is in breach of the first representation, warranty or covenant.

9.9 **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

9.10 **Further Assurances.** Each of the parties hereto, both before and after the Closing, shall take such further actions and execute such additional documents as may be necessary or reasonably requested from time to time by the other party to consummate the transactions contemplated hereby.

9.11 **Jurisdiction and Venue.** In the event of a dispute hereunder, the parties agree to submit to the exclusive jurisdiction of the United States Bankruptcy Court, Southern District of New York (White Plains Division) for the resolution thereof, until such time as the Bankruptcy Case is closed. Following such closure, the parties agree to submit to the jurisdiction of the Federal and State Courts of the State of New York.

9.12 **Governing Law.** This Agreement shall be governed by and construed according to the laws of the State of New York.

IN WITNESS, WHEREOF, the parties hereto have set their hands and seals on the day, month and year first above written.

AFFORDABLE ENTERPRISES OF  
WESTCHESTER, INC.  
Seller

CAPITAL INDUSTRIES CORP.  
Purchaser

By: /s/ Keith Koski  
Keith Koski, President

By: /s/ Andy McGuire  
Andy McGuire, President

SCHEDULE 1.1(i)  
Machinery, Equipment, Vehicles

1 - 8yd container

3 - 9yd container

38 - 10yds container

23 - 15yd container

28 - 20yd container

6 - Custom tall/short 20yders

86 - 30yd container

5 - 40yd container

2 Compactors (Self-contained power packs)

1 Compactor (needs repair)

2002 Western Star - Auto Trans - Auto Tarper

2001 Peterbilt 8LL - Auto Tarper

2001 Peterbilt 8LL - Auto Tarper

1999 GMC (Super Duty Hook lift)

2001 Chevy 10yd Packer

1999 International 20yd Packer

386 yards on the street of various 2, 4, 6 and 8 yarders

2010 Peterbilt Roll off - 18 Speed, Auto Tarp - 24 month note

2017 Hino Roll off - Auto - Auto Tarp - 5 Year note

SCHEDULE 1.1(ii)  
Containers

# AFFORDABLE CARTING DUMPSTERS

BOX #'S	CUSTOMER	PHONE NUMBER	ADDRESS
8-01	LAZ PARKING	CORNELIUS 374-4875	MEMORIAL DRIVE CORTLANDT MANOR - CORTLANDT TRAIN STATION
C11-01	SPECTRUM CONTRACTING	CHRIS 494-6243	1 VALLEY LANE CHAPPAQUA
11-02	PK YARD		
11-03	PK YARD		
C12-01	JEANETTE SANDOR	917-319-3503	75 LELAND AVE PLEASANTVILLE
C12-02	SUMMIT MECHANICAL	MIKE 845-213-0433	400 WALNUT ST YONKERS
C12-03	JOE FERGUSON	914-527-9210	39 REVERE RD ARDSLEY
C12-04	MTK CONSTRUCTION	MARK 917-882-3684	202-05 26TH AVE BAYSIDE
C12-05	SHEELA INC	MEGNA 908-834-8477	(NIKIL 908-524-9265) 7 WARDS ISLAND MANHATTAN
C12-06	EDGEHILL CONSTRUCTION	DANNY 646-584-1031	(SAMANTHA 718-514-4898) 407 RIVERDALE AVE YONKERS
C12-07	SCOTT DRIVANOS	845-494-0937	31 ALICE LANE FISHKILL
C12-08	CUSATO	760-7527	310 PEACH LAKE RD BREWSTER
C12-09	PK YARD		
C12-10	LIFETIME CONSTRUCTION	JAKE 612-229-4246	(OFFICE 952-401-2865) 480 BEDFORD RD CHAPPAQUA
C12-11	AVANTI BUILDING	CARMINE 914-403-7169	462 SOUTH 8TH AVE MOUNT VERNON
C12-12	PK YARD		
C12-13	PK YARD		
C12-14	C&C MANAGEMENT	SUPER 917-696-8493	871 ELTON AVE BRONX
C12-15	PK YARD		
C12-16	MITCHELL YAVEN	914-788-0249 914-318-4017	WREN COURT CORTLANDT MANOR
C12-17	MICHAEL BORDIERI	860-559-1055	27 BEDELL RD KATONAH
C12-18	PK YARD		
C12-19	PK YARD		
C12-20	PK YARD		
C12-21	MICHAEL BUJAS	469-8471	1353 BALDWIN RD YORKTOWN
C12-22	JOHN WHALEN	914-318-4811	153 WEBBER AVE SLEEPY HOLLOW
C12-23	PK YARD		
C12-24	JANE VANLARE	536-7786	460 BEECHMONT DRIVE NEW ROCHELLE
C12-25	PK YARD		
C12-26	FB1 SIDING	PEDRO	61 MANHATTAN AVE WHITE PLAINS
C12-27	PK YARD		

# AFFORDABLE CARTING DUMPSTERS

BOX #'S	CUSTOMER	PHONE NUMBER	ADDRESS
C12-28	MARK TAYLOR	483-6021	1040 OREGON RD CORTLANDT MANOR
C12-29	PK YARD		
C12-30	JANET CHEAVER	MARGARETT 845-406-8674	23 STILLMAN LANE PLEASANTVILLE
C12-31	NOBILETTI BUILDERS	MIKE 917-754-6329	3 FAIRWAY CLOSE FOREST HILLS
C12-32	DIRECT MGMT	GEORGE 718-924-3999	(OFFICE 718-274-4300)234 DRAKE AVE NEW ROCHELLE
C12-33	PK YARD		
C12-34	PK YARD		
C12-35	LOCAL DUMP	MIKE 203-406-9962	12 HEARTHSTONE CIRCLE
C12-36	FULL IN YARD		
C12-37	YARD FULL		
C12-38	DISPOSE ALL	BARBARA 203-979-1996	315 BREVOORT LANE RYE
15-01	CAPITAL YARD		
15-02	RAPID CONSTRUCTION	HARRY 718-775-0552	(KHAN 718-772-7374) 945 UNDERHILL AVE BRONX
15-03	DAVE RAMSAROOP	917-518-4815	27 BEATTIE LANE NEW ROCHELLE
15-04	JUSTIN HAHN	845-612-6479	4204 NAPIER AVE BRONX
15-05	GERARD CRAWLEY	908-432-5819	125 NORTH EVARTS AVE ELMSFORD
15-06	SHAKIRA WILSON	914-557-6380	656 KISSAM RD PEEKSKILL
15-07	JULIE BOGTHANI	212-729-0185	31-22 30TH ST ASTORIA
15-08	LENCO TILE	LEONARD 914-329-9049	57 RIVERVIEW RD IRVINGTON
15-09	FULL IN YARD		
15-10	FRANZOSO	PETER 914-447-1965	320 EAST DEVONIA AVE MOUNT VERNON
15-11	WESTCHESTER VASCULAR	914-591-8400	88 ASHFORD AVE DOBBS FERRY
15-12	JLG CONTRACTING	JASON 917-804-5353	189 DUXBURY RD PURCHASE
15-13	THOMAS DRISCOLL	914-980-9060	179 PENNSYLVANIA AVE MOUNT VERNON
15-14	FRANK VALENZA	347-471-9371	10 ALPINE RD NEW ROCHELLE
15-15	PAUL GOULD	845-522-1975	70 SOUTH QUAKER HILL RD PAWLING
15-16	JAMES CAPPS	917-701-6148 917-570-3641	956 LESTER RD YORKTOWN HEIGHTS
15-17	JOSEPH ARDER	718-730-3669	278 EAST 203RD ST BRONX
15-18	AMERITRUST		10 ANN PLACE LAKE PEEKSKILL

# AFFORDABLE CARTING DUMPSTERS

BOX #'S	CUSTOMER	PHONE NUMBER	ADDRESS
15-19	PAUL STERN	424-4624	10 JOHN ST MOHEGAN LAKE
15-20	EO CONTRACTING	914-557-6247	170 MOUNT JOY PLACE NEW ROCHELLE
15-21	MARK MARRA	631-766-4253	156B NORTH BROADWAY WHITE PLAINS
15-22	BP	267-308-0128	1161 WINDING WOOD RD KATONAH
15-23	GREG CARUSO	646-739-8823	2023 MAPLE AVE CORTLANDT MANOR
L20-16	JOSE GAONA	914-382-8368	1119 ELM ST PEEKSKILL
S20-1	TOP LINE	516-425-3569	162 GEYMER DRIVE MAHOPAC
20-2	ROBERT KLINE	914-482-3776	31 SASSI DRIVE CROTON ON HUDSON
T20-03	MINELLI CONSTRUCTION	JOHN 516-924-4895	2920 GOULDEN AVE BRONX
T20-19	CUSATO	914-760-7527	28 KATONAHS WOOD RD KATONAH
T20-24	ZACCO JR	JOHN 917-842-7207	521 5TH AVE NEW ROCHELLE
21-01	ELITE ENVIROMENTAL	RAY 914-760-7834	3011 STONEY ST YORKTOWN HEIGHTS
21-02	EDILSAR BARRIOS	914-629-6383	2 GEDNEY TERRACE WHITE PLAINS
21-03	COOPER	316-6793	34 BAYBERRY RD ARMONK
21-04	FULL IN YARD		
21-05	SEAN ARONSEN	347-703-1148	20 TORRE PLACE YONKERS
21-06	CHRISTOPHER ALBA	917-703-4846	7 CRESTVIEW AVE CORTLANDT MANOR
21-07	ELITE ENVIROMENTAL	RAY 914-760-7834	3011 STONEY ST YORKTOWN HEIGHTS
21-08	SUN RAY ELECTRIC LLC	MARCO 203-509-7775	(RON 203-565-2204) 50 BROADWAY HAWTHORNE
21-09	725 BEECHURST	516-779-0759	7-25 160TH ST FLUSHING
21-10	LATOYA LEVY-PARRIS	914-837-5299	250 GARDEN AVE MOUNT VERNON
21-11	PK YARD		
21-12	MINNEFORD MARINA	FRANK 914-320-6672	150 CITY ISLAND AVE BRONX
21-13	MARIO AMBROSELLI	646-642-1148	150-33 14TH RD WHITESTONE
21-14	PK YARD		
21-15	ZENERGY	ASIM 447-0487	25 RECTORY LANE SCARSDALE
21-16	LUCIO DILEO	914-760-9740	290 SALEM RD POUND RIDGE
21-17	OMAR FORD	646-533-3150	152 ROLLING WAY PEEKSKILL
21-18	PK YARD		
21-19	DEEM	NORMAN 646-715-2365	451 WEST 151ST ST MANHATTAN

# AFFORDABLE CARTING DUMPSTERS

BOX #'S	CUSTOMER	PHONE NUMBER	ADDRESS
21-20	PK YARD		
21-21	PK YARD		
21-22	BAY RESTORATION	TONY 973-568-9599	440 WEST END AVE MANHATTAN
21-23	LOCAL DUMPSTER	BIRMANIA 914-619-3212	2 LAUREL PLACE YONKERS
21-24	JASON QUINONES	646-520-7807	64-51 217TH ST BAYSIDE
21-25	INTERIOR MASTERS GRP	ADAM 646-773-0508	(OFFICE 646-604-3818) 20 ROLLING HILL LANE HARRISON
21-26	KEEREEN CONTRACTING	PAUDIE 917-418-9571	115 RT 303 TAPPAN
21-27	INNOVATIVE PROPERTY	ZIGGY 203-768-7262	90 CLAREMONT AVE RYE
21-28	AVI PERETZ	347-455-0066	641 EAST 221ST ST BRONX
30-1	PK YARD		
30-2	WILSON VASQUEZ	845-269-1687	647 CREEKSIDE LANE FISHKILL
30-3	SENSIBLE CHOICE	826-7221, LARRY 325-2870	(ROB 434-4214) 4 POKAHOE DRIVE SLEEPY HOLLOW
30-4	GIANT SIDING	LAURIE 358-1913	5 KEMPSTER RD SCARSDALE
30-5	INNOVATIVE PROPERTY	ELVIRA 718-552-2895	(JIMMY 347-638-3277) 455 EAST 138TH ST BRONX
30-6	ALMIR BUKALO	347-922-4537	2747 SUNRISE ST YORKTOWN HEIGHTS
30-7	TOLAYA CONTRACTING	SONNY 914-255-3553	361 EAST GUN HILL RD BRONX
30-8	MIDVALLEY CONTRACTING	KATHY 845-565-4089	80 ALEXANDER ST YONKERS - NON FRIABLE ABSESTOS
30-9	PK YARD		
30-10	CRNA PROPERTIES	ALEX 490-1420	1661 GRAND AVE BRONX
30-11	PK YARD		
30-12	AMERITRUST	JOSEPH 914-906-0952	2772 SARLES DRIVE YORKTOWN HEIGHTS
30-13	TWINS CONTRACTING	WILLIE 917-656-2015	(KIRK 917-656-2010) 1930 RANDALL AVE BRONX
30-14	DENNIS TAYLOR	403-4597	4556 WHITE PLAINS RD BRONX
30-15	HUDSON RIDGE	VICTOR 714-3142	2016 QUAKER RIDGE RD CROTON ON HUDSON
30-16	PK YARD		
30-17	VICTORIA ANGELINI	201-394-2132	(MATHW 201-394-2132) 582 VIEW LAND DRIVE YORKTOWN HEIGHTS
30-18	P & L MANAGEMENT	MICHAEL 845-297-4430	428 WEST 56TH ST MANHATTAN
30-19	PK YARD		
30-20	VOLUNTEERS OF AMERICA	718-716-2252	(CURTIS 347-241-6433) 50 WEST MOUNT EDEN AVE BRONX
30-21	PK YARD 12/18		
30-22	ORANGE CONSTRUCTION	CRAIG 917-804-9899	76 HEATHERDELL RD ARDSLEY

# AFFORDABLE CARTING DUMPSTERS

BOX #'S	CUSTOMER	PHONE NUMBER	ADDRESS
30-23	NPE SOLUTIONS	GINA 305-767-1671	(ERIC 305-763-2093) 2763 HEDWIG DRIVE YORKTOWN HEIGHTS
30-24	CUSATO	914-760-7527	502 MOUNT HOLLY RD KATONAH
30-25	ZENERGY	447-0487	5 WHITE BIRCH LANE SCARSDALE
30-26	SHEELA INC	908-834-8477, 908-834-8671	(908-331-2686) 725 WEST 135TH ST MANHATTAN
30-27	MIKE RHODES	845-691-8417	557 ROUTE 44 HIGHLAND
30-28	GIOVANNI CUPELLI	879-0040	501 STRATTON RD NEW ROCHELLE
30-29	PK YARD		
30-30	TOP LINE	516-425-3569	47 HIGH ST KATONAH
30-31	RESTLESS RESTORATION	SHELDON 914-325-4383	20 SOUTH HIGH ST TUCKAHOE
30-32	PARGOL JAVAHARI	914-548-5098, 245-7459	49 BOUTON RD SOUTH SALEM
30-33	MICHAEL SUBACH	315-657-3226	286 OVERHILL RD STORMVILLE
30-34	MINELLI CONSTRUCTION	JOHN 516-924-4895	2920 GOULDEN AVE BRONX
30-35	RAMSAM	BASIL 574-3235	35 BROOKBY RD SCARSDALE
30-36	NY RENOVATE	PAULIE 914-374-4799	25 BONNETT AVE LARCHMONT
30-37	PK YARD		
30-38	MULLEN & SON	973-309-5789	561 BOSTON POST RD PORT CHESTER
30-39	532 FLATBUSH AVE	WINTERFIELD 347-445-5594	532 FLATBUSH AVE BROOKLYN
30-40	PK YARD		
30-41	ZENERGY	ASIM 914-447-0487	48 FENIMORE RD SCARSDALE
30-42	WB CLASSICAL	ERIC 403-2638	480 BROADWAY DOBBS FERRY
30-43	MIDVALLEY CONTRACTOR	KATHY 845-565-4089	94 ALEXANDER ST YONKERS - NON FRIABLE ABSESTOS
30-44	MITCH LARUSO	MATHEW 914-262-5865	(MITCH 914-483-7306) 17 SUNSET RIDGE CARMEL
30-45	R&D CARPET & TILE	STEPHANIE 631-420-3601	(DARWIN 914-403-4474) 5901 PALISADE AVE
30-46	CUSATO	914-760-7527	87 NORTH SALEM RD KATONAH
30-47	ERIC LOMBARDO	914-552-1214	33 BRYN MAWR TERRACE YONKERS
30-48	PK YARD		
30-49	ROCCO GUILLI	356-4196	51 CRAWFORD TERRACE GREENWICH CT
30-50	PK YARD		
30-51	MIDVALLEY CONTRACTOR	KATHY 845-565-4089	80 ALEXANDER ST YONKERS - NON FRIABLE ABSESTOS
30-52	PAUL MUNROE	914-760-9229	4 TAMARACK DRIVE CORTLANDT MANOR
30-53	PK YARD		
30-54	SUSAN O'CONNELL	203-215-7044	12 NICHOLS DRIVE HASTINGS ON HUDSON

# AFFORDABLE CARTING DUMPSTERS

BOX #'S	CUSTOMER	PHONE NUMBER	ADDRESS
30-55	ZENERGY	ASIM 447-0487	402 MAMARONECK RD SCARSDALE
30-56	AVY DELAFIELD	ASHER 516-250-8727	680-14 WEST 246TH ST BRONX
30-57	YELLOW MOOSE	646-673-2252	15 QUAKER RD CARMEL
30-58	AUSTIN RENOVATION	TYRONE 486-2346	23 SOUTH TERRACE MOUNT VERNON
30-59	PK YARD		
30-60	KEEREN CONTRACTING	PAUDIE 917-418-9571	115 ROUTE 303 TAPPAN
30-61	MIDVALLEY CONTRACTING	CATHY 845-565-4089	(OZEL 917-578-2836) 106 CORPORATE PARK DR WEST HARRISON
30-62	NAFEES CONSTRUCTION	AHMAD 718-755-6166	735 ANDERSON HILL RD PURCHASE
30-63	LUIS ARCHER	914-837-1104	109 AUGUSTINE RD WHITE PLAINS
30-64	RAMSAM	BASIL 574-3235	7 OAKSTWAIN RD SCARSDALE
30-65	MULLEN & SONS	973-309-5789	561 BOSTON RD PORTCHESTER
30-66	JK EQUITIES	718-807-8606	177-31 EDGERTON RD JAMAICA
30-67	FINKELSTEIN	LUIS 914-419-5306	75 WEST 190TH ST BRONX
30-68	PK YARD		
30-69	MEHL IMPROVEMENTS	MARCELINO 914-527-5116	148 VALLEY STREAM RD EAST LARCHMONT
30-70	NICK ZHENG	718-878-0766	33-20 FARRINGTON ST FLUSHING
30-71	PK YARD		
30-72	OPINION ACCESS CORP	EUGENE 516-668-7378	47-10 32ND PLACE LONG ISLAND CITY
30-73	ELITE GROUP OF NYC INC	917-565-1573	222 FRANKLIN AVE MOUNT VERNON
30-74	PK YARD		
30-75	HOME & HEARTH	734-9773	1750 EAST MAIN ST MOHEGAN LAKE
30-76	HOME & HEARTH	734-9773	11 VALLEY LANE GARRISON
30-77	FMA CONSTRUCTION	FERNANDO 646-533-1939	412 NORTH LAKE BLVD MAHOPAC
30-78	JEC	JIMMY 906-9953	28 JEROME AVE NEW ROCHELLE
30-79	RED XANADU	ROB 347-289-1280	(CORTEZ 646-287-1216) 909 EAST TREMONT AVE BRONX
30-80	BRIGITTE CICERO	302-2142	2881 MEADOWCREST DRIVE YORKTOWN HEIGHTS
30-81	PK YARD		
30-82	F&A FLOOR COVERING	DEBBIE 631-274-9625	(ORLANDO/FRANK 914-681-1800) 305 NORTH ST WHITE PLAINS
30-83	LNI INDUSTRIES	GREG 201-709-5815	72 IRVING AVE CROTON
30-84	CHRIS JAMES	347-539-7348	33 ELLWOOD AVE MOUNT VERNON
30-85	CUSATO	JOE 760-7527	89 BOWAY RD SOUTH SALEM
30-86	MARK THOMAS	914-602-7433	35 MANITOU TRAIL WHITE PLAINS

## AFFORDABLE CARTING DUMPSTERS

BOX #'S	CUSTOMER	PHONE NUMBER	ADDRESS
40-1	FIRST TEE	DAVID 914-469-3137	3545 JEROME AVE BRONX
40-2	LOCAL DUMPSTER	THOMAS 646-785-7888	3073 BARKER AVE BRONX
40-3	PK YARD		
40-4	JOVIAN MGMT CORP	ANTHONY 718-597-1575	(AUGUSTINE 914-384-3803) 38-44 PARK AVE YONKERS
40-5	SEABREEZE	ANDREW 718-721-9030	(BART 718-600-1954) 130-23 150TH AVE JAMAICA
C35-1	WMRS	BRIANNA 485-1500	
C35-2	WMRS	BRIANNA 485-1500	
C35-3	PK YARD		
CAPITAL	TEMPLE RESTORATION	718-622-4821	490 PACIFIC ST BROOKLYN

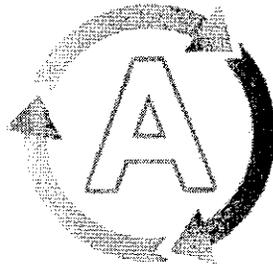
SCHEDULE 1.1(iii)  
Customer List

Redacted

SCHEDULE 1.1(iv)  
Trademark, Phone Numbers

# United States of America

United States Patent and Trademark Office



**Reg. No. 4,749,723**

**Registered June 2, 2015**

**Int. Cl.: 39**

**SERVICE MARK**

**PRINCIPAL REGISTER**

AFFORDABLE ENTERPRISES OF WESTCHESTER (NEW YORK CORPORATION)  
2025 MAPLE AVE  
CORTLANDT MANOR, NY 10567

FOR: GARBAGE COLLECTION; JUNK, TRASH AND DEBRIS REMOVAL; TRASH SERVICES,  
NAMELY, RENTAL OF DUMPSTERS, IN CLASS 39 (U.S. CLS. 100 AND 105).

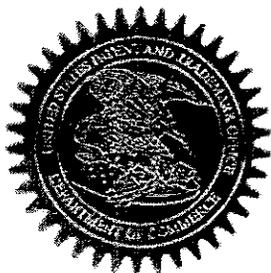
FIRST USE 1-1-2015; IN COMMERCE 1-1-2015.

THE MARK CONSISTS OF AN OUTLINE OF THE LETTER "A" IN BLUE LOCATED  
WITHIN A CIRCULAR IMAGE OF THREE GREEN ARROWS. THE COLOR WHITE REPRESENTS  
TRANSPARENT AREAS AND IS NOT PART OF THE MARK.

THE COLOR(S) GREEN AND BLUE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

SN 86-376,817, FILED 8-26-2014.

CAROL SPILS, EXAMINING ATTORNEY



*Michelle K. Lee*

Director of the United States  
Patent and Trademark Office

<u>Number</u>	<u>Label</u>	<u>Source</u>
(914) 495-8082	(914)-736 3801	Main Number
(888) 998-1615	Affordable Site	Affordable/Site
(914) 495-8071	Pennysaver	Pennysavor North
(914) 618-5565	Carmine	Carmine's Site
(866) 302-3748	Dumpster Boss	Dumpster Boss
(866) 225-4576	Dumpster Ladies	Dumpster Ladies
(347) 514-9800	Brooklyn/Queens	Brooklyn/Queens
(914) 290-4800	Hometown Dumpsters	Google Queens
(631) 292-1015	Hometown Junk	Hometown
(516) 874-2499	Hometown Demo	Hometown
(516) 272-4300	Advertise	Yodel
(877) 944-3331	Advertise	Yodel
(914) 703-4040	Hauler Direct	Hauler Direct
(914) 495-8083	NDS Connect	NDS Connect
(914) 495-8095	NDS Connect Junk	NDS Connect Junk
(877) 988-3331	Low Priced Dumpsters	Low Priced Dumpsters
(855) 933-0322	We Dunk It	Knicks
(914) 339-0302	Dynamic Interactive	Dynamic Interactive
(718) 841-9571	Dynamic Interactive	Dynamic Interactive
(877) 229-5053	Dynamic Interactive	Dynamic Interactive
(914) 290-6064	Westchester D. Rentals	Westchester D. Rentals
(914) 363-6441	Facebook	Facebook
(888) 998-2575	Facebook	Facebook
(877) 959-4884	Disposaf-All	Disposal-All
(914) 380-3111	Jobs/Dirt	Postings

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

AFFORDABLE ENTERPRISES  
OF WESTCHESTER, INC.,

Chapter 11

Case No. 14-22168(RDD)

Debtor.

-----X

**ORDER (I) APPROVING BIDDING PROCEDURES, (II) APPROVING  
BREAK-UP FEE AND (II) SCHEDULING AN AUCTION  
AND SALE HEARING**

Upon the motion (the “Motion”) of Affordable Enterprises of Westchester, Inc., the above captioned reorganized debtor in the above-captioned Chapter 11 case (the “Debtor”), by its attorneys, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, seeking entry of an Order, on shortened notice, inter alia, (i) establishing bidding procedures, annexed hereto as Exhibit A to govern the sale (the “Sale”) of substantially all of the Debtor’s container business related assets (the “Assets”), as further defined in the Purchase and Sale Agreement (the “PSA”, annexed to the Motion as Exhibit C), dated January 16, 2018 between the Debtor and Capital Industries Corp. (the “Purchaser”); (ii) scheduling an auction to sell the Assets, subject to higher and better bids (the “Auction”); and (iii) scheduling a hearing to approve the Sale of the Assets in accordance with the Auction (the “Sale Hearing”), and a hearing having been held to consider hearing the Motion on shortened notice on January \_\_, 2018, and the Court having granted the Debtor’s request to hear the Motion on shortened notice; and a further hearing having been held on January \_\_, 2018 to consider the Motion, and it appearing that all objections, if any, having either been resolved, withdrawn or overruled, and good and sufficient cause having been shown, it is hereby

**ORDERED**, that the relief requested in the Motion is granted, as set forth herein by the provisions of this Order. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled as announced to the Court at the hearing on this Motion or by stipulation filed with the Court, are overruled; and it is further

**ORDERED**, that the Debtor is authorized to conduct an auction for the sale of the Assets in accordance with the Bidding Procedures annexed hereto as Exhibit A, which Bidding Procedures are hereby approved; and it is further

**ORDERED**, that the Break-Up fee is hereby approved; and it is further

**ORDERED**, that the deadline for submitting bids to become Qualified Bids is February \_\_, 2018 at 5:00 p.m. EST, at the offices of Debtor's counsel, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, White Plains, New York 10601, Attn: Jonathan S. Pasternak, Esq. and Debtor's counsel shall promptly provide copies of such Qualified Bids to Purchaser's counsel; and it is further

**ORDERED**, that if any Qualified Bids are received in accordance with the Bidding Procedures, the Debtor will conduct an Auction commencing on February \_\_, 2018 at 11:00 a.m., the offices of Debtor's counsel, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, 11<sup>th</sup> Floor, White Plains, New York 10601; and it is further

**ORDERED**, that a hearing shall be held before the Honorable Robert D. Drain, United States Bankruptcy Judge, at the United States Bankruptcy Courthouse, 300 Quarropas Street, White Plains, New York 10601, Courtroom 118, on **February \_\_, 2018 at 10:00 a.m.** or as soon thereafter as counsel may be heard (the "Sale Hearing"), to confirm the results of the Auction, authorize the sale of the Assets, based upon the results of the Auction, and grant such other related relief as may be deemed necessary or proper by the Court; and it is further

**ORDERED**, that counsel to the Debtor shall file with the Bankruptcy Court a report of Qualified Bids no later than February \_\_, 2018 at 5:00 p.m., which report shall indicate, inter alia, whether the Debtor intends to go forward with the Auction; and it is further

**ORDERED**, that objections to the relief to be considered at the Sale Hearing shall be filed by February \_\_, 2018 at 5:00 p.m. with the Bankruptcy Court at the Court's website <https://ecf.nysb.uscourts.gov/cgi-bin/login.pl> (password and log in required), with a copy delivered directly to Chambers and served upon counsel to the Debtor, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, White Plains, New York 10601, Attn: Jonathan S. Pasternak, Esq.; and it is further

**ORDERED**, that, notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

**ORDERED**, that to the extent that this Order is inconsistent with any prior order or pleading with respect to the proposed sale transaction, the terms of this Order shall govern; and it is further;

**ORDERED**, that the Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order; and it is further

**ORDERED**, that (a) the Debtor shall serve this Order along with the Bidding Procedures upon: (i) the Office of the U.S. Trustee; (ii) all taxing authorities; (iii) counsel to the Purchaser; (iv) all known creditors of the Debtor; (v) all entities known or reasonably believed to have asserted a lien, claim, interest, or encumbrance in any of the Assets, (vi) all potential buyers known by the Debtor as having previously expressed interest in acquiring any of the Assets, and

(vii) all parties that have requested notice pursuant to Bankruptcy Rule 2002 within three (3)  
business days of entry of this Order.

Dated: White Plains, New York  
January \_\_, 2018

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HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

## **Bidding Procedures**

Set forth below are the bidding procedures (the “Bidding Procedures”) to be employed with respect to the transactions contemplated by the Purchase and Sale Agreement between Affordable Enterprises of Westchester, Inc. (the “Seller”) and Capital Industries Corp. (the “Buyer”), dated as January 16, 2018 (the “Purchase Agreement”), concerning the sale of the Assets (defined below).

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Purchase Agreement. In the event of any inconsistency between the provisions of these Bidding Procedures and the provisions of the Purchase Agreement, the Purchase Agreement shall control. Any person or entity interested in the specific terms of the Sale (defined below) should refer to the Purchase Agreement, a copy of which is available from counsel to the Seller, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, 11<sup>th</sup> Floor, White Plains, New York 10601, Attention: Jonathan S. Pasternak, Esq., Telephone: (914) 681-0200, Facsimile: (914) 684-0288, email: [jpasternak@ddw-law.com](mailto:jpasternak@ddw-law.com).

The Seller has determined that: (A) the transactions contemplated by the Purchase Agreement (such transactions being referred to collectively as the “Sale”) shall be subject to competitive bidding as set forth in these Bidding Procedures; (B) the transfer of the Seller’s rights, title and interests in and to the Assets (as defined below) shall be subject to approval by the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) pursuant to Sections 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the “Bankruptcy Code”); and (C) the Sale shall be subject to such other closing conditions and other terms and conditions as are set forth in the Purchase Agreement.

### **Bidding Process**

These Bidding Procedures describe, among other things, the Assets available for sale, the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Assets, the manner in which bids become Qualified Competing Bids (as defined below), the receipt and negotiation of bids received, the conduct of any Auction (as defined below), the ultimate selection of the Successful Bidder (as defined below), and the Bankruptcy Court’s approval thereof (collectively, the “Bidding Process”).

### **Assets To Be Sold**

The Assets, as defined in the Purchase Agreement, include: (a) all equipment, machinery and vehicles of the Debtor; (b) all containers owned by the Debtor; (c) all customer lists; and (d) all intellectual property, trademarks, good will and telephone numbers owned by the Debtor.

### **Notice And Solicitation Of Bids**

Within one (1) Business Day following the entry of the Bidding Procedures Order or as soon as reasonably practicable thereafter, the Seller may provide notice, in form and substance satisfactory to the Buyer, of the Sale, the Bidding Procedures, the time and place of the Auction (as defined below), the time and place of the Sale Hearing (as defined below), and the objection deadline for the Sale Hearing to potential bidders who may wish to participate in the Bidding Process by submitting higher and better offers (“Competing Bids”) to purchase the Assets.

Any person or entity other than the Buyer that desires to submit a Competing Bid (a “Bidder”) must do so in writing, provided that such Competing Bid satisfies all of the requirements for Qualified Competing Bids (as set forth below) and is received by the Seller and its counsel at the following address **February \_\_, 2018 not later than 5:00 p.m. (EST)** (the “Bid Deadline”) (unless the Seller and the Buyer agree to an extension): Seller’s counsel: DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, Attention: Jonathan S. Pasternak, Esq., One North Lexington Avenue, 11<sup>th</sup> Floor, White Plains, NY 10601. Upon receipt, the Seller shall promptly provide copies of all Competing Bids to the Buyer.

#### Qualified Competing Bids

To be considered a qualified Competing Bid (a “Qualified Competing Bid”), each Competing Bid must be received by the Bid Deadline and must comply with all of the following requirements:

- (a) it is in writing and is irrevocable through a closing of the sale of the Assets;
- (b) it includes a duly authorized and executed asset purchase agreement substantially in the form of the Purchase Agreement together with all exhibits thereto, as well as copies of such materials marked to show any amendments and modifications to the Purchase Agreement (the “Marked Agreement”);
- (c) it provides for (i) a cash purchase price for the Assets, expressed in U.S. Dollars, of not less than \$620,000;
- (d) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Seller to make a reasonable determination as to the Bidder’s financial and other capabilities to consummate the transaction contemplated by the Marked Agreement;
- (e) it is not conditioned on any contingencies, such as, without limitation: (i) the outcome of unperformed due diligence by the Bidder, and/or (ii) obtaining financing;
- (f) it includes an acknowledgement and representation that the Bidder: (i) has had an opportunity to conduct any and all required diligence regarding the Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Marked Agreement; (iv) is duly qualified and licensed to operate the Business (as defined in the Purchase Agreement) and (v) is not entitled to any expense reimbursement or break-up fee in connection with its bid; and
- (g) it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Seller), certified check or such other form acceptable to the Seller, payable to the order of the Seller (or such other party as the Seller may determine) in an amount equal to ten (10%) percent of the Competing Bid.

For the avoidance of doubt, and notwithstanding the foregoing, any overbid submitted by the Buyer at any Auction on substantially the same terms as its initial offer (apart from any increase in price) shall be a Qualified Competing Bid.

### Auction

If the Seller receives one or more Qualified Competing Bids in addition to the Purchase Agreement, the Seller, through Auction Advisors, will conduct an auction (the "Auction") of the Assets to select the highest or best bid for the Assets (the "Successful Bid"). The Auction, which shall be transcribed or recorded to the extent required under New York local practice, shall be held at **11:00 a.m. (prevailing Eastern time) on February \_\_, 2018**, at the offices of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, 11<sup>th</sup> Floor, White Plains, NY, or such other location as shall be timely communicated to all entities entitled to attend the Auction.

The Seller may conduct the Auction in any manner and upon any terms and conditions satisfactory to the Court, permitted by the Purchase Agreement, and consistent with these Bidding Procedures, that will achieve the maximum value for the Assets. Such terms and conditions may include, by way of example, one or more rounds of sealed or open bids from the Buyer and any Bidder who submitted a Qualified Competing Bid. The initial bid at the Auction shall be the highest or otherwise best bid, as determined by the Seller in its reasonable discretion, as among the Buyer's bid and any Qualified Competing Bids, and such initial bid shall be announced to the Buyer and any other Bidder submitting a Qualifying Competing Bid at the commencement of the Auction. Any subsequent bidding for the Assets at the Auction shall be in increments of at least Ten Thousand Dollars (\$10,000.00) or any higher reasonable amount established by the Seller at the Auction.

At the conclusion of the Auction, the Seller shall submit the Successful Bid to the Court at the Sale Hearing (as defined below), for entry of a Sale Approval Order. Any Bid that fails to comply with the Bidding Procedures or any other procedures established at the Auction may be refused.

If no Qualified Competing Bids are received, the Seller and the Buyer intend to seek immediate Court approval of the Purchase Agreement without conducting an Auction.

### Selection Of Successful Bid

Prior to the conclusion of the Auction, the Seller will (a) review and evaluate the Buyer's bid and each Qualified Competing Bid, (b) identify the highest or otherwise best offer for the Assets received at the Auction (such bid, the "Successful Bid" and the bidder making such bid, the "Successful Bidder") and (c) communicate to the Buyer and the Qualified Competing Bidders the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Seller shall be final, subject to approval by the Bankruptcy Court.

The Seller will sell the Asssets to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Bankruptcy Court at the Sale Hearing. For the avoidance of doubt, the Seller shall not consider or support any bid (whether or not such bid is a Qualified Competing Bid) for any of the Assets received after the close of the Auction.

If, following the entry of the Sale Approval Order, the Successful Bidder fails to consummate the Sale because of a breach or failure to perform on the part of the Successful Bidder, the highest or otherwise best bid ("Back-Up Bid") will be deemed the new Successful Bidder and legally obligated and bound to consummate the transaction, and the Seller will be authorized, but not required, to consummate the Sale with the bidder who submitted the Back-Up Bid without further order of the Court. In such case, the good faith deposit of the Successful Bidder shall be forfeited to the Seller and the Seller shall have the right to seek any and all other remedies and damages from the defaulting Successful Bidder to the extent permissible under the applicable purchase agreement and applicable law.

Bid deposits for any unsuccessful bidder will be returned within three (3) business days of conclusion of the Auction, except in the case of the Back-Up Bidder, if any, whose deposit shall be released 3 days after closing in the event it is not deemed the new Successful Bidder.

#### Sale Hearing

A hearing to approve the sale of the Assets to the Buyer or other Successful Bidder will be held on February \_\_, 2018 at 10:00 a.m. before the United States Bankruptcy Court for the Southern District of New York, located at 300 Quarropas Street, Courtroom 118, White Plains, NY 10601 (the "Sale Hearing").

If no Qualified Competing Bids are timely submitted and no objections to the proposed sale are timely received, the Court may enter the Sale Approval Order without holding a Sale Hearing. If timely objections to the proposed transaction are received, then the Seller will seek Court approval at a Sale Hearing. Closing of a sale of the Assets is expressly conditioned upon entry of the Sale Approval Order as described in the Purchase Agreement and Sale Motion.

#### Free Of Any And All Liens, Claims, Interests, and Encumbrances

All of the rights, title, and interests of the Seller in and to the Assets, or any portion thereof, to be acquired will be sold, conveyed, transferred, and assigned free and clear of all Liens, Claims, Interests, and Encumbrances pursuant to Section 363(f) of the Bankruptcy Code, such Liens, Claims, Interests, and Encumbrances to attach to the net proceeds of the sale of the Assets. Upon request of a successful bidder, the Debtor's non-residential real property lease for the rental of its office premises shall be assumed by the Debtor and assigned to the Purchaser at closing.

**THIS LEASE:** dated as of the 1st day of November, 2015.

Between

**HIGHLAND INDUSTRIAL PARK, INC.**, with an address of 1 Highland Industrial Park Drive, Peekskill, New York, 10566, hereinafter referred to as the Landlord,

and

**AFFORDABLE ENTERPRISES, INC.**, with an address of 2025 Maple Avenue, Cortlandt Manor, New York, 10567 hereinafter referred to as the Tenant,

**WITNESSETH:** That the Landlord hereby demises and leases unto the Tenant, and the Tenant hereby hires and takes from the Landlord for the term and upon the rentals hereinafter specified, the premises described as follows, situated in the City of Peekskill, County of Westchester, and State of New York.

**Premises:** 3,250 Sq. Ft. in as is condition, at: 1 Highland Industrial Park Drive, Peekskill, New York 10566 and approximately 20,000 sq. ft. plus in as is condition and approximately 5,000 sq. ft. additional feet in the fenced in yard (as per attached diagram)

**Term:** The term of this lease shall be FIVE YEARS. Provided there shall be no defaults by Tenant during the Term of the Lease, Tenant shall have the option to renew at a 4% Annual Increase. The option to renew must be exercised on or before 90 days prior to expiration of the Term of the lease as set forth herein.

**Beginning:** November 1<sup>st</sup>, 2015 to October 31<sup>st</sup>, 2020

**Rent:** The Rent for this leasehold shall be \$3,037.00 per Month with 4% Annual Increase each year.

**Payment Due:** The Rent is due and payable each month on the 1st day of the month, with a late penalty of \$50 after the 5th, at the office of 1 Highland Industrial Park Drive, Peekskill, NY 10566, or as may be otherwise directed by the Landlord in writing.

**THE ABOVE LETTING ON THE FOLLOWING CONDITIONS:**

**FIRST: Peaceful Possession** -The Landlord covenants that the Tenant, on paying the said rental and performing the covenants and conditions in this Lease contained, shall and may peaceably and quietly have, hold and enjoy the demised premises for the term aforesaid.

**SECOND: Purpose.** -The Tenant covenants and agrees to use the demised premises as a Parking of trucks & equipment (Demolition and container service), office & repair shop and agrees not to use or permit the premises to be used for any other purpose without the prior written consent of the Landlord endorsed hereon.

**THIRD: Default in Payment of Rent, Abandonment of Premises, Re-entry and Re-letting By Landlord, Tenant Liable for Deficiency, Lien of Landlord to Secure Performance, Attorney's Fees.** -The Tenant shall, without any previous demand thereof, pay to the Landlord, or its agent, the said rent at the times and in the manner above provided. In the event of the non-payment of said rent, or any installment thereof, at the times and in the manner above provided, and if the same shall remain in default for ten days after becoming due, or if the Tenant shall be dispossessed for nonpayment of rent, or if the leased premises -shall be deserted or vacated, the Landlord or its agents shall have the right to and may enter the said premises as the agent of the Tenant, either by force or otherwise, without being liable for any prosecution or damages therefor, and may relet the premises as the agent of the Tenant, and receive the rent therefor, upon such terms as shall be satisfactory to the Landlord, and all rights of the Tenant to repossess the premises under this lease shall be forfeited. Such re-entry by the Landlord shall not operate to release the Tenant from any rent to be paid or covenants to be performed hereunder during the full term of this lease. For the purpose of reletting, the Landlord shall be authorized to make such repairs or alterations in or to the leased premises as may be necessary to place the same in good order and condition. The Tenant shall be liable to the Landlord for the cost of such repairs or alterations, and all expenses of such reletting. If the sum realized or to be realized from the reletting is insufficient to satisfy the monthly or term rent provided in this lease, the Landlord, at its option, may require the Tenant to pay such deficiency month by month, or may hold the Tenant in advance for the entire deficiency to be realized during the term of the reletting. The Tenant shall not be entitled to any surplus accruing as a result of the reletting. The Landlord is hereby granted a lien, in addition to any statutory lien or right to distrain that may exist, on all personal property of the Tenant in or upon the demised premises, to secure payment of the rent and performance of the covenants and conditions of this lease. The Landlord shall have the right, as agent of the Tenant, to take possession of any furniture, fixtures or other personal property of the Tenant found in or about the premises, and sell the same at public or private sale and to apply the proceeds thereof to the payment of any monies becoming due under this lease, the Tenant hereby waiving the benefit of all laws exempting property from execution, levy and sale on distress or judgment. The Tenant agrees to pay, as additional rent, all attorney's fees and other expenses incurred by the Landlord in enforcing any of the obligations under this lease.

**FOURTH: Sub-letting and Assignment.** -The Tenant shall not sub-let the demised premises nor any portion thereof, nor shall this lease be assigned by the Tenant without the prior written consent of the Landlord endorsed hereon.

**FIFTH: Condition of Premises, Repairs, Alterations and Improvements Sanitation, Inflammable Materials, Sidewalks.** -The Tenant has examined the demised premises, and accepts them in their present condition (except as otherwise expressly provided herein) and without any representations on the part of the Landlord or its agents as to the present or future condition of the

said premises. The Tenant shall keep the demised premises in good condition, and shall redecorate, paint and renovate, repair the said premises as may be necessary to keep them in good repair and good appearance. The Tenant shall quit and surrender the premises at the end of the demised term in as good condition as the reasonable use thereof will permit. The Tenant shall not make any alterations, additions, or improvements to said premises without the prior written consent of the Landlord. All erections, alterations, additions and Improvements, whether temporary or permanent in character, which may be made upon the premises either by the Landlord or the Tenant, except furniture or movable trade fixtures installed at the expense of the Tenant, shall be the property of the Landlord and shall remain, upon and be surrendered with the premises as a part thereof at the termination of this Lease, without compensation to the Tenant. The Tenant further agrees to keep said premises and all parts thereof in a clean and sanitary condition and free from trash, inflammable material and other objectionable matter. If this lease covers premises, all or a part of which are on the ground floor, the Tenant further agrees to keep the sidewalks in front of such ground floor portion of the demised premises clean and free of obstructions, snow and ice.

**SIXTH: Mechanics' Liens** -In the event that any mechanics' lien is filed against the premises as a result of alterations, additions or improvements made by the Tenant, the Landlord, at its option, after thirty days' notice to the Tenant, may terminate this lease and may pay the said lien, without inquiring into the validity thereof, and the Tenant shall forthwith reimburse the Landlord the total expense incurred by the Landlord in discharging the said lien, as additional rent hereunder.

**SEVENTH: Glass** -The Tenant agrees to replace at the Tenant's expense any and all glass which may become broken in and on the demised premises. Plate glass and mirrors, if any, shall be insured by the Tenant at their full insurable value in a company satisfactory to the Landlord. Said policy shall be of the full premium type, and shall be deposited with the Landlord or its agent.

**EIGHTH: Liability of Landlord** -The Landlord shall not be responsible for the loss of or damage to property, or Injury to persons, occurring in or about the demised premises, by reason of any existing or future condition, defect, matter or thing In said demised premises or the property of which the premises are a part, or for the acts, omissions or negligence of other persons or tenants in and about the said property. The Tenant agrees to indemnify and save the Landlord harmless from all claims and liability for losses of or damage to property, or injuries to persons occurring in or about the demised premises.

**NINTH: Utilities** -Utilities and services furnished to the demised premises for the benefit of the Tenant shall be provided and paid for by the tenant: heat, gas, electricity, refrigeration, hot water. Services and Water will be billed to the Tenant quarterly at the pro rata share of the leasehold (10%)

**TENTH: Right to Inspect and Exhibit** -The Landlord, or its agents, shall have the right to enter the demised premises at reasonable hours in the day or night to examine the same, or to run telephone or other wires, or to make such repairs, additions or alterations as it shall deem necessary for the safety, preservation or restoration of the improvements, or for the safety or convenience of the occupants or users thereof (there being no obligation, however, on the part of the Landlord to

make any such repairs, additions or alterations), or to exhibit the same to prospective purchasers and put upon the premises a suitable "For Sale" sign. For three months prior to the expiration of the demised term, the Landlord, or its agents, may similarly exhibit the premises to prospective tenants, and may place the usual "To Let" signs thereon.

**ELEVENTH: Damage by Fire, The Elements or Otherwise** -In the event of the destruction of the demised premises or the building containing the said premises by fire, explosion, the elements or otherwise during the term hereby created, or previous thereto, or such partial Explosion, destruction thereof as to render the premises wholly untenable or unfit for occupancy, or should the demised premises be so badly injured that the same cannot be repaired within ninety days from the happening of such injury, then and in such case the term hereby created shall, at the option of the Landlord, cease and become null and void from the date of such damage or destruction, and the Tenant shall immediately surrender said premises and all the Tenant's interest therein to the Landlord, and shall pay rent only to the time of such surrender, in which event the Landlord may reenter and re-possess the premises thus discharged from this lease and may remove all parties therefrom. Should the demised premises be rendered untenable and unfit for occupancy, but yet be repairable within ninety days from the happening of said injury, the Landlord may enter and repair the same with reasonable speed, and the rent shall not accrue after said injury or while repairs are being made, but shall recommence immediately after said repairs shall be completed. But if the premises shall be so slightly injured as not to be rendered untenable and unfit for occupancy, then the Landlord agrees to repair the same with reasonable promptness and in that case the rent accrued and accruing shall not cease or determine. The Tenant shall immediately notify the Landlord in case of fire or other damage to the premises.

**TWELFTH: Observation of Laws, Ordinances, Rules and Regulations** -The Tenant agrees to observe and comply with all laws, ordinances, rules and regulations of the Federal, State, County and municipal authorities applicable to the business to be conducted by the Tenant in the demised premises. The Tenant agrees not to do or permit anything to be done in said premises, or keep anything therein, which will increase the rate of fire insurance premiums on the improvements or any part thereof, or on property kept therein, or which will obstruct or interfere with the rights of other tenants, or conflict with the regulations of the Fire Department or with any insurance policy upon said improvements or any part thereof. In the event of any increase in insurance premiums resulting from the Tenant's occupancy of the premises, or from any act or omission on the part of the Tenant, the Tenant agrees to pay said increase in insurance premiums on the Improvements or contents thereof as additional rent.

**THIRTEENTH: Signs** -No sign, advertisement or notice shall be affixed to or placed upon any part of the demised premises by the Tenant, except in such manner, and of such size, design and color as shall be approved in advance in writing by the Landlord and or the City of Peekskill.

**FOURTEENTH: Subordination to Mortgages and Deeds of Trust Sale of Premises** -This lease is subject and is hereby subordinated to all present and future mortgages, deeds of trust and other encumbrances affecting the demised premises or the property of which said premises are a part. The Tenant agrees to execute, at no expense to the Landlord, any instrument which may be

deemed necessary or desirable by the Landlord to further effect the subordination of this lease to any such mortgage, deed of trust or encumbrance.

**FIFTEENTH: N/A**

**SIXTEENTH: Rules and Regulations of Landlord.**-The rules and regulations regarding the demised premises, affixed to this lease, if any, as well as any other and further reasonable rules and regulations which shall be made by the Landlord, shall be observed by the Tenant and by the Tenant's employees, agents and customers. The Landlord reserves the right to rescind any presently existing rules applicable to the demised premises, and to make such other and further reasonable rules and regulations as, in its judgment, may from time to time be desirable for the safety, care and cleanliness of the premises, and for the preservation of good order therein, which rules, when so made and notice thereof given to the Tenant, shall have the same force and effect as if originally made a part of this lease. Such other and further rules shall not, however, be inconsistent with the proper and rightful enjoyment by the Tenant of the demised premises.

**SEVENTEENTH: Violation of Covenants', Forfeiture of Lease, Re-entry by Landlord, Non-waiver of Breach** -In case of violation by the Tenant of any of the covenants, agreements and conditions of this lease, or of the rules and regulations now or hereafter to be reasonably established by the Landlord, and upon failure to discontinue such violation within ten days after notice thereof given to the Tenant, this lease shall thenceforth, at the option of the Landlord, become null and void, and the Landlord may re-enter without further notice or demand. The rent in such case shall become due, be apportioned and paid on and up to the day of such re-entry, and the Tenant shall be liable for all loss or damage resulting from such violation as aforesaid. No waiver by the Landlord of any violation or breach of condition by the Tenant shall constitute or be construed as a waiver of any other violation or breach of condition, nor shall lapse of time after breach of condition by the Tenant before the Landlord shall exercise its option under this paragraph operate to defeat the right of the Landlord to declare this lease null and void and to re-enter upon the demised premises after the said breach or violation.

**EIGHTEENTH: Notices** - All notices and demands, legal or otherwise, incidental to this lease, or the occupation of the demised premises, shall be in writing. If the Landlord or its agent desires to give or serve upon the Tenant any notice or demand. It shall be sufficient to send a copy thereof by registered mail, addressed to the Tenant at the demised premises, or to leave a copy thereof with a person of suitable age found on the premises, or to post a copy thereof upon the door to said premises. Notices from the Tenant to the Landlord shall be sent by registered mail or delivered to the Landlord at the place hereinbefore designated for the payment of rent, or to such party or place as the Landlord may from time to time designate in writing.

**NINETEENTH: Bankruptcy, Insolvency, Assignment for Benefit of Creditors** -It is further agreed that if at any time during the term of this lease the Tenant shall make any assignment for the benefit of creditors, or be decreed insolvent or bankrupt according to law, or if a receiver shall be appointed for the Tenant, then the Landlord may, at Its option, terminate this lease, exercise of such option to be evidenced by notice to that effect served upon the assignee, receiver, trustee or

other person in charge of the liquidation of the property of the Tenant or the Tenant's estate, but such termination shall not release or discharge any payment of rent payable hereunder and then accrued, or any liability then accrued by reason of any agreement or covenant herein contained on the part of the Tenant, or the Tenant's legal representatives.

**TWENTIETH: Holding Over by Tenant** -In the event that the Tenant shall remain in the demised premises after the expiration of the term of this lease without having executed a new written lease with the Landlord, such holding over shall not constitute a renewal or extension of this lease. The Landlord may, at Its option, elect to treat the Tenant as one who has not removed at the end of his term, and thereupon be entitled to all the remedies against the Tenant provided by law in that situation, or the Landlord may elect, at its option, to construe such holding over as a tenancy from month to month, subject to all the terms and conditions of this lease, except as to duration thereof, and in that event the Tenant shall pay monthly rent in advance at the rate provided herein as effective during the last month of the demised term.

**TWENTY-FIRST: Eminent Domain, Condemnation** -If the property or any part thereof wherein the demised premises are located shall be taken by public or quasi-public authority- under any power of eminent domain or condemnation, this lease, at the option of the Landlord, shall forthwith terminate and the Tenant shall have no claim or interest in or to any award of damages for such taking.

**TWENTY-SECOND: Security** -The Tenant has this day deposited with the Landlord in the sum of \$ \*\*\*\*\*00\*\*\*\*\*, security for the full and faithful performance by the Tenant of all the terms, covenants and conditions of this lease upon the Tenant's part to be performed, which said sum shall be returned to the Tenant after the time fixed as the expiration of the term herein, provided the Tenant has fully and faithfully carried out all of said terms, covenants and conditions on Tenant's part to be performed. In the event of a bona fide sale, subject to this lease, the Landlord shall have the right to transfer the security to the vendee for the benefit of -the tenant and the Landlord shall be considered released by the Tenant from all liability for the return of the said security and the Tenant agrees to look to the new Landlord solely for the return of the said security, and it is agreed that this shall apply to every transfer or assignment made of the security to a new Landlord, The security deposited under this lease shall not be mortgaged, assigned or encumbered by the tenant without the written consent of the Landlord.

**TWENTY-THIRD. Arbitration** -Any dispute arising under this lease shall be settled by arbitration. Land-lord and Tenant shall each choose an arbitrator, and the two arbitrators thus chosen shall select a third arbitrator. The findings and award of the three arbitrators thus chosen shall be final and binding on the parties hereto.

**TWENTY-FOURTH: Delivery of Lease**- No rights are to be conferred upon the Tenant until this lease has been signed by the Landlord, and an executed copy of the lease has been delivered to the Tenant.

**TWENTY-FIFTH: Lease Provisions Not Exclusive** -The foregoing rights and remedies are not intended to be exclusive but as additional to all rights and remedies the Landlord would otherwise have by law.

**TWENTY-SIXTH: Lease Binding on Heirs, Successors, Etc.** All of the terms, covenants and conditions of this lease shall inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the parties hereto. However, in the event of the death of the Tenant, if an individual, the Landlord may, at its option, terminate this lease by notifying the executor or administrator of the Tenant at the demised premises.

**TWENTY-SEVENTH: Force Majeure, Inability to Perform** -This lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in nowise be affected, impaired or excused because Landlord is unable to supply or is delayed in supplying any service expressly or implicitly to be supplied or is unable to make, or is delayed in making any repairs, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Landlord is prevented or delayed from so doing by reason of governmental preemption in connection with the National Emergency declared by the President of the United States or in connection with any rule, order or regulation of any department or subdivision thereof of any governmental agency or by reason of the conditions of supply and demand which have been or are affected by the war.

**TWENTY-EIGHTH:** - This Instrument may not be changed orally.

**TWENTY-NINTH:** - see attached rider

**THIRTIETH:** -Should a conflict arise between Lease & Rider, Rider shall prevail.

**THIRTY-FIRST:** - This Lease supersedes any and all other leases that may exist between the parties.

IN WITNESS WHEREOF the undersigned have executed this lease as of the date set forth above.

LANDLORD:  
HIGHLAND INDUSTRIAL PARK, INC.

By *Philip G. Miller* 01/16/2015  
PHILIP G. MILLER, PRESIDENT

TENANT:  
AFFORDABLE ENTERPRISES, INC.

By *Keith Koski*  
KEITH KOSKI, PRESIDENT

**RIDER TO LEASE BETWEEN:**

LANDLORD: **HIGHLAND INDUSTRIAL PARK INC.**  
TENANT: **AFFORDABLE ENTEPRISES, INC.**  
LEASE DATED: **AS OF NOVEMBER 1, 2015**

R-1. The Tenant agrees that it is to be responsible for its own heating, lighting and power costs any and all repairs such as alarm, plumbing, electrical heat and a/c and any other structural or mechanical systems.

R-2. COMMON CHARGES: To be pro-rated at 10% of water, and provide own dumpster collection.

R-3. PUBLIC LIABILITY AND OTHER INSURANCE: Tenant covenants to provide on or before the commencement of the demised term and to keep in force during the demised term a comprehensive liability policy of insurance in the name of, and for the benefit of Landlord, its designee and Tenant insuring same against any liability for injury to persons and/or property and death of any person (s) occurring in, on, or about the premises, or any appurtenances thereto. Each policy is to be written by one or more responsible insurance companies satisfactory to Landlord and the limits of liability thereunder shall to be less than the amount of One Million and 00/100 (\$1,000,000.) dollars in respect to any one person, in the amount of One Million and 00/100 (\$1,000,000.) dollars in respect to property damages. All such insurance may be carried under a blanket policy covering the premises and any other of Tenant's offices. Tenant agrees to deliver to Landlord at least fifteen (15) days prior to the time such insurance is first required to be carried by Tenant, and thereafter at least fifteen (15) days prior to the expiration of any such policy, either a duplicate original or a certificate and true copy of all policies procured by Tenant in compliance with its obligations hereunder, together with evidence of payment thereafter and including an endorsement which states that such insurance may not be cancelled except upon then (10) days written notice to Landlord and any designee of Landlord. Tenant further agrees to hold harmless the Landlord from any and all claims or judgements accruing to, but not limited to Tenants negligence, illegal operations or otherwise and will assume the cost of legal defense in its entirety regarding the Landlord should the occasion arise.

R-4. Any and all improvements made by Tenant shall be considered affix to the property and is and will remain property of the Landlord at lease termination.

R-5. Parking and yard provided as per site plan approved by the City of Peekskill.

R-6. Tenant responsible for site lighting as connected to the Tenants meter including repair and maintenance therein.

R-7. Tenant may negotiate an option to renew no later than 90 days prior to the end of this term.

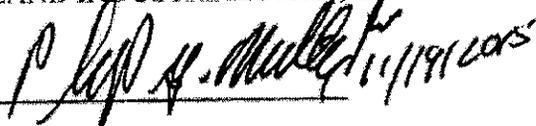
R-8. Tenant agrees not to use any of the yard or parking area for stacking of merchandise, crates, boxes, skids, garbage or debris of any kind. Violation issued in that regard incurred by the City of Peekskill vs Landlord will be assessed to the Tenant for all costs accruing to cleanup and or legal costs.

R-12. The use of the yards shall be to store empty dumpsters and construction equipment, and trucks as the need may arise.

**LANDLORD:**

HIGHLAND INDUSTRIAL PARK, INC.

By

  
PHILIP G. MILLER, PRESIDENT

**TENANT:**

AFFORDABLE ENTERPRISES, INC.

By

  
KEITH KOSKI, PRESIDENT