

<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY</b>
<b>WASSERMAN, JURISTA &amp; STOLZ, P.C.</b> 110 Allen Road, Suite 304 Basking Ridge, New Jersey 07920 Phone: (973) 467-2700 / Fax: (973) 467-8126 Counsel for Trustee, Donald V. Biase <b>SCOTT S. REVER (SR-1425)</b>
<b>In Re:</b>  <b>BAYWAY HAND CAR WASH CORP., et als.</b>  Debtors.

Chapter 11  
Case No. 13-32632(MBK)  
  
Jointly Administered  
  
Honorable Michael B. Kaplan  
  
Hearing Date: February 27, 2017 at 10:00  
a.m.

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**NOTICE OF MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. §363(b) and (f)  
AUTHORIZING THE TRUSTEE TO SELL THE EQUIPMENT AND INVENTORY OF  
JV CAR WASH, FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS; AND  
WAIVING STAY OF ORDER PURSUANT TO F.R.B.P. 6004(h)**

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To: ALL PARTIES ON ANNEXED SERVICE LIST

**PLEASE TAKE NOTICE**, that on the 27<sup>th</sup> date of February, 2017 at 10:00 a.m. or as soon thereafter as counsel may be heard, the undersigned as counsel for Donald V. Biase, the Chapter 7 Trustee in the above captioned bankruptcy case, shall move before the Honorable Michael B. Kaplan, United States Bankruptcy Judge, United States Bankruptcy Court, King Federal Building, 402 East State Street, 3<sup>rd</sup> Floor, Trenton, New Jersey 08608, seeking the entry of an Order pursuant to 11 U.S.C. § 363(b) and (f) Authorizing the Trustee to Sell the equipment and inventory of JV Car Wash, Ltd., Free and Clear of Liens, Claims and Interests, and waiving stay of order pursuant to F.R.B.P. 6004(h) and for such other and further relief as may be just and proper.

**PLEASE TAKE FURTHER NOTICE**, that the undersigned shall rely upon the Certification and Memorandum of Law filed herewith and made a part hereof in support of the relief sought.

**PLEASE TAKE FURTHER NOTICE**, that oral argument is requested.

**PLEASE TAKE FURTHER NOTICE**, that all objections to the relief requested and higher offers for the assets to be sold must be filed in writing with the Clerk of the United States Bankruptcy Court, 402 East State Street, 3<sup>rd</sup> Floor, Trenton, New Jersey 08608, and a copy must be simultaneously served upon Wasserman, Jurista & Stolz, P.C., Attn: Scott S. Rever, Esq., attorneys for Donald V. Biase, the Chapter 7 Trustee, 110 Allen Road, Suite 304, Basking Ridge, New Jersey 07920 so that such objections are received no less than 7 days prior to the return date of this Motion.

**PLEASE TAKE FURTHER NOTICE**, that in the absence of any objections, the relief requested hereunder may be granted without further notice.

Respectfully submitted,

**WASSERMAN, JURISTA & STOLZ, P.C.**  
Counsel for Donald V. Biase  
Chapter 7 Trustee

Date: January 25, 2017

/s/ SCOTT S. REVER  
SCOTT S. REVER

<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY</b>
<b>WASSERMAN, JURISTA &amp; STOLZ, P.C.</b> 110 Allen Road, Suite 304 Basking Ridge, New Jersey 07920 Phone: (973) 467-2700 / Fax: (973) 467-8126 Counsel for Trustee, Donald V. Biase <b>SCOTT S. REVER (SR-1425)</b>
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**CERTIFICATION IN SUPPORT OF MOTION FOR AN ORDER PURSUANT TO  
11 U.S.C. §363(b) and (f) AUTHORIZING THE TRUSTEE TO SELL THE EQUIPMENT  
AND INVENTORY OF JV CAR WASH, FREE AND CLEAR OF LIENS, CLAIMS AND  
INTERESTS; AND WAIVING STAY OF ORDER PURSUANT TO F.R.B.P. 6004(h)**

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TO: HONORABLE MICHAEL B. KAPLAN  
UNITED STATES BANKRUPTCY JUDGE

Donald V. Biase, Chapter 11 Trustee (hereinafter, the “Trustee Biase”), for Bayway Hand Car Wash Corp., Harlem Hand Car Wash Corp., J.V. Car Wash, Ltd., and Webster Hand Car Wash Corp., (collectively, “Debtors”), by and through his counsel Wasserman, Jurista & Stolz, P.C., certifies to this Court as follows:

1. On October 16, 2013, each of the Debtors filed a Voluntary Petition under Chapter 11 of the Bankruptcy Code (11 U.S.C. §1101, et seq.).
2. Pursuant to Order dated November 26, 2013, the Debtors’ cases were ordered to be jointly administered with the case of Jose Vazquez, the principal of the Debtors (“Vazquez”).
3. On May 28, 2013, this Court entered an Order granting a Motion for the appointment of a Trustee for the Debtors and Vazquez.

4. On June 2, 2014, Donald V. Biase was appointed Chapter 11 Trustee for Debtors. Donald Conway was appointed Chapter 11 Trustee for Jose Vazquez.

5. JV Car Wash Ltd. owns and operates a car wash from certain property located at 4778 Broadway, New York, New York (the "Property"). The Trustee has operated the car wash for some time and has determined that it is not viable.

6. The Trustee moves before this Court for the entry of an order authorizing the sale of the equipment and inventory of JV Car Wash to Dorsett Road Car Wash, LLC pursuant to the Contract of Sale (Exhibit "A") for the sum of \$27,000.00 free and clear of all liens, claims, encumbrances and interests pursuant to 11 U.S.C. §363(b) and (f). The Buyer has agreed to remove all the inventory and equipment from the premises no later than five (5) days from the closing.

7. The Trustee proposes to sell the subject assets free and clear of any and all liens, claims, encumbrances and interests pursuant to 11 U.S.C. §363(b) and (f), and F.R.B.P. 6004. I believe there are no liens on the assets to be sold.

8. The Trustee requests that the Court authorize the abandonment of any assets, equipment and inventory that is not taken by the Buyer and that is left on the premises.

9. Notice of the proposed sale has been filed with the Court and the notice will be served by the Clerk on all parties, if any, who have liens, claims, encumbrances or other interests in the property to be sold, the United States Trustees Office, counsel for the Vazquez Trustee, and all parties who have filed a notice of appearance in the case. This motion is being served on all parties listed on the service list attached to the notice of motion.

**THE SALE IS IN THE BEST INTEREST OF THE ESTATE**

10. The Trustee submits the sale of the assets to the Buyer pursuant to the terms of the Sale Agreement is in the best interest of creditors.

11. The Trustee has received several offers for the assets and the offer before the Court is the highest and best offer. The sale is subject to higher and better offers and the other interested parties have been provided with the sale motion.

12. The Sale is an arms-length transaction and is for fair value. It should be noted that the principal of the Buyer, Donald Uxa, is the principal of CW Management, LLC, who was retained to assist the Trustee as manager of the car washes by order of this Court dated September 29, 2014.

13. The Trustee engaged Alan Atkins to conduct an inventory and appraisal of the assets to be sold and his opinion is that they are worth \$37,850.00 at forced sale value. A copy of the Inventory and Appraisal is annexed hereto as Exhibit "B".

14. The Trustee submits that given the circumstances and the lack of alternatives, the Trustee recommends that the sale be approved.

15. The Trustee requests that this Court waive the 14 day stay under F.R.B.P. 6004(h) so the parties can close on the sale as soon as possible.

**CONCLUSION**

16. In light of the foregoing, the Trustee respectfully requests that this Court enter an Order authorizing the sale of the equipment and inventory of JV Car Wash to Dorsett Road Car Wash LLC pursuant to the Sale Agreement free and clear of all liens, claims, encumbrances and interests pursuant to 11 U.S.C. §363(b) and (f).

I certify that the foregoing statements made by me are true. I am also aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: January 25, 2017

/S/ DONALD V. BIASE  
DONALD V. BIASE

## CONTRACT FOR SALE

This Contract for Sale is made on January 25, 2017, between **DONALD V. BIASE** (“**Seller**”), Chapter 7 Trustee for Bayway Hand Car Wash Corp., et als., 110 Allen Road, Suite 304, Basking Ridge, New Jersey 07920, and Dorsett Road Car Wash LLC whose address is P.O. Box 16523 Clayton, MO 63105 hereinafter referred to as the “**Buyer**.”

1. **Purchase Agreement.** The Buyer agrees to buy and the Seller agrees to sell the Property described hereinbelow. Buyer acknowledges that the sale is subject to approval by the United States Bankruptcy Court for the District of New Jersey presiding over the Chapter 7 bankruptcy case of Bayway Hand Car Wash Corp., Case Number 13-32632 MBK. The Seller will move before the Bankruptcy Court to obtain court approval of the Sale. Buyer also acknowledges that it is aware that the sale is subject to higher or better offers.

2. **Property.** The Property being sold hereunder is all equipment and inventory (the “**Property**”) owned by JV Car Wash Ltd. located at 4778 Broadway, New York, NY 10034 (the “**Premises**”).

3. **Purchase Price.** The purchase price is \$27,000.00.

4. **Payment of Purchase Price.** The Buyer shall tender a deposit of \$5,000.00 at the time of execution of this contract. The Deposit will be held in Seller’s counsel’s trust account (Wasserman, Jurista & Stolz Trust Account) pending the closing at which time the deposit shall be turned over to the Seller. The sale shall be consummated immediately as allowed pursuant to the Bankruptcy Court’s order approving the sale. The sale shall be free and clear of any and all liens on the Debtor’s interest in the Property. Upon receipt of this signed

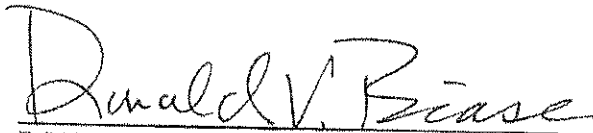
agreement, the Trustee will promptly move before the Bankruptcy Court for Court approval of the sale.

5. **Conditions of Sale.** The Property, is being sold "as is" without any representations or warranties of any kind, nature or description. The Buyer must remove the Property from the Premises no later than five (5) days from the closing.

6. **Complete Agreement.** This Contract is the entire and only Agreement between the Buyer and the Seller and the provisions hereof shall be binding upon all parties who sign hereinbelow.

10. **Exclusive Jurisdiction of Bankruptcy Court.** This Contract and any disputes relating thereto are subject to the exclusive jurisdiction of the Bankruptcy Court presiding over the Bankruptcy case of Bayway Hand Car Wash Corp.

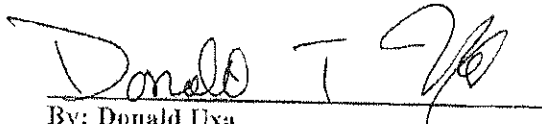
SIGNED AND AGREED TO BY:



DONALD V. BIASE, as Chapter 7  
Trustee for BAYWAY HAND CAR WASH CORP.

Dated: 1-25-2017

DORSETT ROAD CAR WASH, LLC



By: Donald Uxa  
Title: Member/President

Dated: 1-25-2017



<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY</b>
<b>WASSERMAN, JURISTA &amp; STOLZ, P.C.</b> 110 Allen Road, Suite 304 Basking Ridge, New Jersey 07920 Phone: (973) 467-2700 / Fax: (973) 467-8126 Counsel for Trustee, Donald V. Biase SCOTT S. REVER (SR-1425)
<b>In Re:</b>  <b>BAYWAY HAND CAR WASH CORP., et als.</b>  <b>Debtors.</b>

Chapter 11  
Case No. 13-32632(MBK)  
Jointly Administered  
Honorable Michael B. Kaplan  
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**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AN ORDER PURSUANT  
TO 11 U.S.C. §363(b) and (f) AUTHORIZING THE TRUSTEE TO SELL THE  
EQUIPMENT AND INVENTORY OF JV CAR WASH, LTD., FREE AND CLEAR OF  
LIENS, CLAIMS AND INTERESTS; AND WAIVING STAY OF ORDER PURSUANT TO  
F.R.B.P. 6004(h)**

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### **PRELIMINARY STATEMENT**

Donald V. Biase, Chapter 7 Trustee (“Trustee”) hereby submits this Memorandum of Law in support of his Motion for an Order pursuant to 11 U.S.C. §363(b) and (f) authorizing the Trustee to sell the equipment and inventory of JV Car Wash Ltd., free and clear of liens, claims and interests.

### **FACTUAL BACKGROUND**

The facts underlying the Trustee’s motion are set forth in the Certification simultaneously submitted herewith and the exhibits annexed thereto, and are incorporated herein by reference.

### **ARGUMENT**

This Court has the statutory authority to authorize the sale of the Debtor’s assets free and clear of all liens, claims, encumbrances and interests pursuant to §363(b) and (f) of the Bankruptcy Code. A Debtor’s assets may be sold outside the ordinary course of business. Section 363(b)(1) of the Bankruptcy Code provides that “The Trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” Courts in this Circuit interpreting §363(b)(1) of the Bankruptcy Code have held that transactions should be approved under §363(b)(1) when (a) they are supported by the sound business judgment, (b) interested parties are provided with adequate and reasonable notice, (c) the sale price is fair and reasonable, and (d) the purchaser is acting in good faith. See In re Delaware & Hudson Railway Co., 124 B.R. 169 (D. Del. 1991); In re Phoenix Steel Corp., 82 B.R. 334, 335-36 (Bankr. D. Del. 1997); see also In re BPQ Partnership, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995).

The Trustee respectfully submits that all of the four elements set forth above have been met. It is further respectfully submitted that the purchaser is proceeding in “good faith” as

required in In re Abbotts Dairies of Pa., Inc., 788 F.2d 143 (3d Cir. 1986). When a Bankruptcy Court authorizes a sale of assets pursuant to §363(b)(1), it is required to make a finding with respect to the “good faith” of the purchaser. Abbotts Dairies, supra, at page 150.

The proposed sale of the Debtor’s assets are subject to the requirements of §363(f), which provides for a Trustee to sell all or any of its property free and clear of all liens, claims, encumbrances and interests in such property. Section 363(f) provides in relevant part as follows: The Trustee may sell property under subsection (b)...of this section free and clear of any interest of 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. To the best of Trustee’s knowledge, there is no secured debt.

It is well established that a sale free and clear of the interest may occur if any one of the specified conditions under §363(f) have been met.

The Trustee respectfully submits that the sale price is fair and reasonable. The Trustee believes that the purchase price offered by Dorsett Road Car Wash LLC is the highest and best offer for the Debtor’s assets based upon the appraisal and the lack of viable alternatives. As set forth herein, adequate notice of this motion has been given, and the purchase price is subject to the Trustee receiving higher or better offers.

The Contract of Sale by and between the Trustee and the Buyer is a product of good faith, arm’s length negotiations. While not the optimum result in this Chapter 11 case, the purchase price represents a fair market price for the Debtor’s assets. The Trustee requests the express

finding by this Court that the Buyer is a “good faith purchaser” under §363(m) of the Bankruptcy Code.

Pursuant to 11 U.S.C. §554(a), after notice and a hearing, the Trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value to the estate. The Trustee seeks to abandon the bankruptcy estate’s interest in any equipment, inventory or other assets not taken by the Buyer as burdensome to the estate or of inconsequential value to the estate.

Respectfully submitted,

**WASSERMAN, JURISTA & STOLZ, PC**  
Counsel to Donald V. Biase,  
Chapter 7 Trustee

Date: January 25, 2017

/s/ SCOTT S. REVER  
SCOTT S. REVER

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Respectfully submitted,

**WASSERMAN, JURISTA & STOLZ, P.C.**  
Counsel for Donald V. Biase  
Chapter 7 Trustee

Date: January 25, 2017

/s/ SCOTT S. REVER  
SCOTT S. REVER