

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in compliance with D.N.J. LBR 9004-2(c)
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In re:

BAYWAY HAND CAR WASH CO., et al.

Debtors.

Jointly Administered Under
Case No. 13-32632 (MBK)

Judge: Michael B. Kaplan

Chapter 11

Hearing Date:

**APPLICATION AND MEMORANDUM OF LAW IN SUPPORT OF
VAZQUEZ TRUSTEE'S MOTION PURSUANT TO SECTIONS 105(A) AND
363 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002
AND 6004 FOR THE ENTRY OF ORDERS (I) APPROVING FORM OF
STALKING HORSE AGREEMENT, BIDDING PROCEDURES, BREAK-
UP FEE, NOTICE OF SALE, AUCTION AND SALE HEARING WITH
RESPECT TO CERTAIN REAL ESTATE LOCATED AT 4778
BROADWAY, NEW YORK, NEW YORK; (II) APPROVING A SALE OF
THE PROPERTY FREE AND CLEAR OF LIENS, CLAIMS,
ENCUMBRANCES AND INTERESTS; AND (III) GRANTING SUCH
OTHER AND FURTHER RELIEF AS THE COURT DEEMS EQUITABLE
AND JUST**

DONALD F. CONWAY, in his capacity as the Chapter 11 Trustee (the "Vazquez Trustee") for Jose Louis Vazquez ("Vazquez" or the "Individual Debtor"), by and through his undersigned counsel, Becker LLC, by way of application and memorandum of law (the

“Application”) in support of his motion (i) authorizing the Vazquez Trustee to sell the property located at 4778 Broadway, New York, New York, as more particularly described herein (the “Broadway Property”), free and clear of liens, claims, encumbrances and interests, including the interest of the co-owner of the property, (ii) approving, in connection therewith, a form of “stalking horse” agreement, bidding procedures, notice of sale, and a breakup fee to the “stalking horse” bidder, (iii) waiving the stay with respect to the sale of the Broadway Property as provided in Fed. R. Bankr. P. 6004(h), and (iv) granting such other and further relief as the Court deems equitable and just (the “Sale Motion”), states as follows:

PRELIMINARY STATEMENT

1. Through the Sale Motion, the Vazquez Trustee seeks authority to sell the Broadway Property (a) to Madd Equities, LLC or its designee (“Madd” or the “Stalking Horse”) pursuant to a Purchase and Sale Agreement dated September 25, 2017, a copy of which is attached to this Application as Exhibit “A” (the “Stalking Horse Agreement”) or (b) to the party which submits the highest and best offer for the Broadway Property in accordance with the bidding procedures more particularly described in this Application (the “Sale”).

2. As detailed in this Application and the supporting certifications of the Vazquez Trustee and his retained real estate broker, the Vazquez Trustee has actively marketed the Broadway Property for approximately six months. He has received several offers for the Broadway Property and selected the offer of Madd, which is for \$12,300,000.00, and includes an agreement by the Stalking Horse to assume all environmental liabilities with

respect to the Broadway Property and to indemnify the Vazquez Trustee, the co-owner and the Vazquez bankruptcy estate with respect to any environmental liabilities, as the “stalking horse” bid for the Broadway Property (the “Stalking Horse Bid”).

3. Because several other parties remain interested in the Broadway Property, the Stalking Horse Bid and the Stalking Horse Agreement are subject to higher and better offers. Accordingly, in connection with the Sale Motion, the Vazquez Trustee requests that the Bankruptcy Court enter an Order approving bidding procedures with respect to the Broadway Property (the “Bidding Procedures Order”). (The specific bidding procedures are set forth in Paragraph 12 of this Application, *infra* pp. 9-11.) Essentially, they permit all other interested bidders approximately 20 days to undertake due diligence with respect to the Broadway Property and to submit bids for the Broadway Property. They propose a deadline of October 30, 2017, for other parties to submit a competing bid, deposit and proof of financial ability to close. They propose that the Vazquez Trustee conduct an auction of the Broadway Property (the “Auction”) at the offices of the Vazquez Trustee’s special environmental and real estate counsel, Herrick Feinstein LLP, on November 2 or 3, 2017 (the “Auction Date”). They anticipate a hearing on November 9 or 10, 2017, to confirm the results of the Auction and to authorize the sale of the Broadway Property to the party submitting the highest and best offer at the Auction (the “Sale Hearing”). Finally, they contemplate the acceptance of a “back-up bid” should the party submitting the highest and best offer fail to close in accordance with its agreement.

4. Because the Stalking Horse has incurred, and will continue to incur, costs and expenses in connection with its bid, has submitted an initial deposit and will submit an

additional deposit with respect to the Stalking Horse Bid, and has incurred other opportunity costs, the Vazquez Trustee requests that the Bidding Procedures Order approve a breakup fee of \$250,000.00 to be paid to the Stalking Horse if it is not the successful bidder at the Auction. In addition, to protect Vazquez's bankruptcy estate and the co-owner of the Broadway Property, the Vazquez Trustee requests that the Bidding Procedures Order approve an initial overbid of \$300,000.

5. Given (i) the marketing already conducted by the Vazquez Trustee and his retained real estate broker, (ii) the additional notice of the auction and sale incorporated into the Bidding Procedures Order, and (iii) the Vazquez Trustee's intention to conduct an auction of the Broadway Property, the Vazquez Trustee believes that the purchase price to be achieved for the Broadway Property will maximize the value of the Broadway Property for the benefit of Vazquez and the creditors of his bankruptcy estate. Accordingly, as further detailed in this Application, the Vazquez Trustee submits that the sale of the Broadway Property pursuant to the Bidding Procedures Order is an exercise of his sound business judgment as required by 11 U.S.C. § 363(b)(1). Further, the Sale is being made in good faith as required by 11 U.S.C. § 363(b) and the bidding procedures will ensure that the successful bidder and any backup bidder are good faith purchasers as required to comply with 11 U.S.C. § 363(m) and that there has been no collusion which would prevent the Court from approving the Sale pursuant to 11 U.S.C. § 363(n). Based on the Vazquez Trustee's marketing of the Broadway Property and the anticipated Auction of the Broadway Property, the Vazquez Trustee submits that the price to be paid for the Broadway Property is fair and reasonable.

6. The Vazquez Trustee contends that there are no valid liens or judgments against the Broadway Property. To the extent that there are any valid judgments or other claims against Vazquez which could be considered a lien on the Broadway Property, the Vazquez Trustee submits that they do not exceed the Stalking Horse Bid and will not exceed any higher or better offer received in connection with the Auction and that there are other grounds to sell the Broadway Property free and clear of those liens as provided in 11 U.S.C. § 363(f).

7. As detailed in this Application, the Estate of Andres Vazquez, deceased (the “Decedent’s Estate”) jointly owns the Broadway Property with the Vazquez Trustee. The Vazquez Trustee contends that this Court has authority to sell the Broadway Property free and clear of the interest of the Decedent’s Estate pursuant to 11 U.S.C. § 363(h). Regardless, the Vazquez Trustee has consulted with the Decedent’s Estate and reached certain agreements and understandings with the Decedent’s Estate which will be incorporated into the order approving the Sale (the “Sale Order”). (A copy of the proposed Sale Order, including the agreements reached between the Vazquez Trustee and the Decedent’s Estate, is submitted herewith.) As a result, the Vazquez Trustee believes that the Decedent’s Estate will consent to the Sale.

8. The Vazquez Trustee seeks authority pursuant to D.N.J. LBR 6004-5 to pay a commission to the retained broker, which may be shared with the successful bidder’s broker on terms to be agreed to by and between the brokers. This is consistent with the terms of the retention of the Vazquez Trustee’s broker for the Broadway Property.

9. Finally, the Vazquez Trustee seeks a waiver of the automatic stay of the Order approving the Sale as permitted by Federal Rule of Bankruptcy Procedure 6004(h). The Vazquez Trustee submits that there are grounds for this waiver because the Vazquez Trustee and the Stalking Horse Bidder have the right pursuant to the Stalking Horse Agreement to close the Sale immediately and this right will be important to other prospective purchasers in light of a redevelopment opportunity recently presented by the City of New York as further discussed in the Application. (See infra ¶¶ 27-28 at p. 15.)

10. Based on the notices contemplated by the Bid Procedures Order, the Vazquez Trustee submits that there will be adequate notice of the Sale Motion, the Bid Procedures Order, the Auction and the other relief sought in the Sale Motion.

SUMMARY OF THE MATERIAL TERMS OF THE PROPOSED SALE AND BIDDING PROCEDURE WITH RESPECT TO THE BROADWAY PROPERTY

11. Pursuant to D.N.J. LBR 6004-1(a)(3), the following is a summary of the material terms of the proposed sale of the Broadway Property to the Stalking Horse Bidder as set forth in the Stalking Horse Agreement:

<u>TERMS</u>	<u>SUMMARY</u>
References to PSA	
<u>Stalking Horse Bidder</u> PSA, Preamble and Article 13, Section 13.14	Madd Equities, LLC or its designee.
<u>Guarantor</u> , PSA, Article 2, Section 2.5	Jorge Madruga has guaranteed all of the obligations of Madd under the PSA.
<u>Seller</u> PSA, Preamble	Donald F. Conway, solely in his capacity as Chapter 11 Trustee for Jose Louis Vazquez and the Estate of Andres Vazquez, as co-owner.

<u>TERMS</u>	<u>SUMMARY</u>
References to PSA	
<u>Effective Date</u> PSA, Preamble	The Effective Date of the Stalking Horse Agreement is September 25, 2017.
<u>Purchased Assets</u> PSA, Article 1, Section 1.1	4778 Broadway, New York, New York, and designated as Block 2233, Lot 10 on the Tax Maps of the City of New York.
<u>Excluded Assets</u> PSA, Article 1, Section 1.2	Personal property located on or about the Broadway Property, some or all of which may belong to the J.V. Hand Car Wash Corp. and those claiming through it.
<u>Date and Place of Closing</u> , PSA, Article 3, Sections 3.1 and 3.2	Not later than thirty (30) days after approval of the Sale or at such later time as may be agreed upon by Maddd and the Vazquez Trustee or their respective counsel. The closing shall take place at the offices of Maddd’s counsel or such other place as may be agreed upon by Maddd and the Vazquez Trustee or their respective counsel.
<u>Due Diligence</u> Article 5, Section 5.1	Maddd shall have until October 31, 2017 to inspect the Broadway Property and undertake other due diligence with respect to the Broadway Property.
<u>Purchase Price</u> , PSA, Article 2, Section 2.1, 2.3 and 2.4	\$12,300,000.00 (U.S.), plus assumption and indemnity with respect to Environmental Conditions (as defined in the PSA).
<u>Condition of Sale:</u> PSA, Article 1, Section 1.1	AS IS.
<u>Deposit</u> , PSA, Article 2, Section 2.1(a)	\$1,230,000.00 (U.S.), of which \$615,000 currently is being held by Becker LLC in its trust account and the balance of which (\$615,000), shall be paid to Becker LLC after the completion of Buyer’s due diligence period.
<u>Conditions under which deposit forfeited</u> PSA, Article 10, Section 10.1	In the event that Maddd defaults on its obligations under the PSA.

<u>TERMS</u>	<u>SUMMARY</u>
References to PSA	
<p><u>Broker’s anticipated commissions and time of payment thereof</u> Order dated 4/24/2017, Docket Entry 489.</p>	<p>\$469,000.00 (U.S.), to be paid at the time of closing on the Broadway Property or as soon thereafter as practicable.¹</p>
<p><u>Sale free and clear of liens, interests, claims and encumbrances.</u> Article 4, Section 4.4</p>	<p>The sale of the Broadway Property to Maddd or its designee is to be free and clear of any and all liens, interests, claims and encumbrances, including the interest of the co-owner, pursuant to 11 U.S.C. §§ 363(f) and 363(h).</p>
<p><u>Deadline for Approval of Sale</u> PSA, Article 4, Section 4.3; Article 10, Section 10.1(b)</p>	<p>The Stalking Horse Agreement must be approved by the Bankruptcy Court within ninety (90) days of its Effective Date or the Buyer may terminate the Stalking Horse Agreement.</p>
<p><u>Waiver of Stay of sale imposed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure.</u> The Vazquez Trustee’s Sale Motion and proposed Sale Order</p>	<p>Waiver of fourteen (14) day stay is important as both the Vazquez Trustee and Maddd may want to close on the sale of the Broadway Property as soon as possible.</p>
<p><u>Request for tax exemption pursuant section 1146(a) of the Bankruptcy Code</u></p>	<p>At the hearing on the sale of the Broadway Property, the Vazquez Trustee will request that the sale be declared tax exempt pursuant to 11 U.S.C. § 1146(a).</p>
<p><u>Allocation/Release of Sale Proceeds Sale Order.</u></p>	<p>The Vazquez Trustee and the co-owner have agreed to allocate the net proceeds of the sale 50/50 with certain credits. Payment to the co-owner will be made at or promptly after the Closing.</p>

¹ This is the estimated commission based on the Stalking Horse Bid and the terms of the retained real estate broker’s retention agreement (5% of the first \$5 million and 3% of any amount in excess of \$5 million). The actual commission will depend on the amount of the highest and best offer at the Auction. The retained real estate broker has agreed to share the commission with the broker for the ultimate purchaser on terms to be agreed to between the brokers.

12. Pursuant to D.N.J. LBR 6004-2(b) the following is a summary of the material terms of the proposed bidding and auction procedures for the sale of the Broadway Property (the “Bidding Procedures”), including the dates proposed by the Vazquez Trustee:

<u>TERMS</u>	<u>SUMMARY</u>
Stalking Horse Bid:	At present, the Vazquez Trustee has received a qualified bid on the Broadway Property in the amount of <u>\$12,300,000.00</u> in cash (the “ <u>Stalking Horse Bid</u> ”).
Auction:	If the Vazquez Trustee receives any other qualified bids, the Vazquez Trustee will auction the Broadway Property (the “ <u>Auction</u> ”) on November 2, 2017, at 1:00 p.m. (the “ <u>Auction Date</u> ”) at Herrick, Feinstein, LLP, Two Park Avenue, New York, New York 10016. If the Vazquez Trustee does not receive any other qualified bids, the Auction will be cancelled and the Vazquez Trustee will proceed to the Sale Hearing with respect to the Stalking Horse Bid.
Stalking Horse Agreement:	The Vazquez Trustee has identified a prospective purchaser, Maddr Equities, LLC (the “ <u>Stalking Horse</u> ”). The Vazquez Trustee and the Stalking Horse have entered into the Stalking Horse Agreement to sell the Broadway Property to the Stalking Horse. Pursuant to the Sale Motion, and the Stalking Horse Agreement, the Stalking Horse’s offer remains subject to higher or otherwise better offers.
Break-Up Fee:	The Stalking Horse Agreement provides that if the Stalking Horse is not the successful bidder at the Auction, the Stalking Horse shall receive a breakup fee of \$250,000.
Bidder Qualifications:	In order to be a “qualified bidder”, a party must establish that the bidder has liquid assets or a combination of liquid assets and non-contingent financing commitments in an amount sufficient to close on the sale of the Broadway Property. In addition, the bidder must disclose any connection between the bidder and the Debtors, the Trustees, the Trustees’ respective counsel and financial advisors and any creditors. The bidder also must disclose all agreements, if any, between the bidder, any other potential bidder for the Broadway Property and any of the Debtors, the Trustees and the Trustees’ respective counsel in connection with the sale of the Broadway Property.

<u>TERMS</u>	<u>SUMMARY</u>
<p>Bid Qualifications:</p>	<p>In order to bid on the Broadway Property, a bidder must submit to the Vazquez Trustee’s counsel by October 31, 2017 not later than, at 4:00 p.m. (the “<i>Bid Deadline</i>”) the following: (i) a written bid in an amount of at least \$12,600,000.00 in cash, (ii) a proposed form of sale agreement which shall be substantially similar to, and shall be marked to show any changes from, the form of the Stalking Horse Agreement, (iii) an earnest money deposit to the Vazquez Trustee’s counsel equal to ten percent (10%) of the bid (the “<i>Deposit</i>”) in the form of a certified check or wire transfer payable to the trust account of the Vazquez Trustee’s counsel, and (iv) proof that the bidder has the financial ability to close the proposed sale (a “<i>Qualified Bid</i>”).</p>
<p>Due Diligence/ Confidentiality:</p>	<p>Any party desiring due diligence regarding the Broadway Property prior to the Bid Deadline set forth above, may contact the Vazquez Trustee’s retained real estate broker for information about the Broadway Property and to obtain access to the Broadway Property. The Vazquez Trustee’s environmental consultant has completed a Phase I, Environmental Site Assessment/Preliminary Assessment and a Phase II Site Investigation Report of the Broadway Property and is in the midst of preparing a Remedial Investigation and Feasibility Study and related interim reports (the “<i>Investigation</i>”). The results of the Investigation will be made available to prospective purchasers upon execution of a confidentiality agreement.</p>
<p>Escrow of Bid Deposits:</p>	<p>All Deposits shall be held by the Vazquez Trustee’s counsel in a non-interest bearing bank account. Within three (3) business days after entry of the conclusion of the Auction Order, Deposits shall be returned to all bidders except the Successful Bidder and the Back-Up Bidder. The Deposit of the Successful Bidder or the Back-Up Bidder, as applicable, shall be applied to the purchase price in accordance with the Agreement approved by the Bankruptcy Court (the “<i>Approved Contract</i>”).</p>
<p>Deposits Forfeit:</p>	<p>The Deposit will be forfeited as liquidated damages and the Successful Bidder (defined below) held liable for compensatory damages if the Successful Bidder fails to close by reason of its breach of the contract of sale to be signed by the Vazquez Trustee and the Successful Bidder.</p>
<p>No Contingencies:</p>	<p>Bids must not be subject to financing, due diligence, environmental, engineering or any other contingencies not expressly approved by the Vazquez Trustee.</p>

<u>TERMS</u>	<u>SUMMARY</u>
Initial Overbid and Bid Increments:	Bidders who have submitted a Qualified Bid may improve their bids at the Auction. The initial overbid shall be \$300,000.00 and the initial, additional increment shall be \$100,000.00. But the Vazquez Trustee shall have the ability to modify the subsequent bidding increment in his sole discretion at the Auction. The bidding shall be continuous and shall not end until all bidders have been given the opportunity to submit their last and best offers.
Back-Up Bids:	At the conclusion of the Auction, the Vazquez Trustee will announce the highest or otherwise best bid (the " <u>Successful Bidder</u> ") for the Broadway Property and the second highest or otherwise best bid (the " <u>Back-Up Bidder</u> ") for the Broadway Property. If, for any reason, the Successful Bidder fails to consummate the purchase of the Broadway Property, (i) the Back-Up Bidder will be deemed to have submitted the highest or otherwise best bid and (ii) the Vazquez Trustee shall be authorized to effect the sale of the Broadway Property to the Back-Up Bidder as soon as is commercially reasonable without further order of the Bankruptcy Court. The Vazquez Trustee's counsel shall retain the Back-Up Bidder's deposit in a trust account until the sale to the Successful Bidder closes, at which time the deposit (plus accrued interest, if any) shall be returned to the Back-Up Bidder. (If the Back-Up Bidder provides the Vazquez Trustee's counsel with a federal tax identification number, the trust account shall be an interest-bearing trust account; but, otherwise, the Back-Up Bidder's Deposit shall remain in a non-interest bearing trust account.)
Reservation of Rights and Modification:	The Vazquez Trustee reserves the right (i) to impose additional or different terms and conditions at or before the Auction, (ii) to extend the deadlines set forth in the Bidding Procedures and to adjourn the Auction or the Sale Hearing without further notice other than a public announcement at the Auction or an announcement in open court or notation of the Court's Calendar on the date of the Sale Hearing, and (iii) to establish a reserve price which will establish the minimum bid for the Broadway Property. If no bid reaches the reserve price established by the Vazquez Trustee, the Vazquez Trustee may withdraw the Sale Motion and cancel the Auction.

JURISDICTION

13. This Court has jurisdiction over the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334(b).

14. This is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409(a).

15. The statutory bases for the relief sought herein are Bankruptcy Code §§ 105 and 363.

16. No prior request has been made to this Court or any other court for the relief sought herein.

FACTUAL BACKGROUND

A. The Bankruptcy Case

17. Vazquez and four related entities, Bayway Hand Car Wash Corp. (“Bayway”), Harlem Hand Car Wash Corp. (“Harlem”), J.V. Car Wash Ltd. (“J.V.”) and Webster Hand Car Wash Corp. (“Webster” and, together with Bayway Harlem and J.V., collectively, the “Business Debtors” and, together with the Vazquez, collectively, the “Debtors”), each filed a voluntary petition for reorganization under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”) on October 16, 2013 (the “Commencement Date”).

18. The Debtors’ bankruptcy cases are being jointly administered pursuant to the Bankruptcy Court’s Order dated November 16, 2013.

19. By Order dated May 28, 2014, the Bankruptcy Court directed the appointment of a Chapter 11 trustee for the Debtors. The Vazquez Trustee serves as the Chapter 11 trustee for the Individual Debtor. Donald V. Biase serves as the Chapter 11 trustee for the

Business Debtors (the “Business Debtors’ Trustee” and, together with the Vazquez Trustee, collectively, the “Trustees”).

20. As of the Commencement Date, each of the Business Debtors owned and operated a car wash facility at a different location in the New York metropolitan region and Vazquez was the one hundred percent (100%) owner of the Business Debtors.²

21. During the course of the Debtors’ bankruptcy cases, the Business Debtors have ceased operating their car wash businesses. In August 2015, the Business Debtors’ Trustee sold the car wash operations and real estate owned by Webster. In March 2016, the Business Debtors’ Trustee closed the car wash operated by Harlem and the Vazquez Trustee sold the real estate owned by the Individual Debtor from which Harlem operated. In March 2017, the Business Debtors’ Trustee closed the car wash operated by J.V. and the Vazquez Trustee began to market for sale the Broadway Property from which J.V. operated.

22. Upon information and belief, the Debtors’ bankruptcy cases were precipitated by an action commenced against the Debtors in the United States District Court for the Southern District of New York, styled *Ronald Lora, et al. v. J.V. Car Wash Limited, et al.*, Docket No. 11-CV-9010 (LLS) in which a number of alleged employees of the Business Debtors asserted claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*; the

² The tax returns for J. V., reflects that Sara Vazquez, Jose Vazquez’ mother, owned fifty percent (50%) of this entity. The Schedules filed by Jose Vazquez at the outset of his bankruptcy case reflects that he owns one hundred percent (100%) of this entity. Sara Vazquez has not disputed this. As a result, the Trustees take the position that Jose Vazquez owns one hundred percent (100%) of this entity for the purpose of the Chapter 11 cases. Pursuant to an agreement reached with the Vazquez Trustee (see *infra* ¶¶ 48-52 at pp. 20-22), Sara Vazquez has agreed to waive her interest in J.V. and any of the other Business Debtors.

New York Lab. Law §§ 190, *et seq.* and § 650, *et seq.* and the New Jersey wage and hour law, *N.J.S.A.* § 34:11-4.1, *et seq.* and for unlawful retaliation (the “FLSA Litigation”). The Trustees settled the claims asserted in the FLSA Litigation and paid substantial amounts to the named plaintiffs and their counsel from the proceeds of the sale of the Debtors’ other assets.

23. In response to certain supplemental bar dates, numerous other alleged employees of the Business Debtors have filed proofs of claim asserting claims similar to the claims asserted in the FLSA Litigation against Vazquez and the Business Debtors (the “New Employee Claims”). The New Employee Claims total over \$12,000,000. In addition, counsel to these alleged employees filed proofs of claim seeking over \$4,150,000 for prosecuting the New Employee Claims. The Trustees and Vazquez contest the validity of the New Employee Claims and are in the processing of investigating them.

B. The Broadway Property

24. As of the Commencement Date, Vazquez and his father, Andres Vazquez, jointly owned the property located at 4778 Broadway, New York, New York, which is identified as Block 2233, Lot 10 on the Tax Maps of the City of New York (the “Broadway Property”) from which J.V. operated its car wash business.

25. After the Commencement Date, Andres Vazquez died and, upon information and belief, left his interest in the Broadway Property to his wife, Sara Vazquez, who is Jose Vazquez’s mother. Upon further information and belief, Eunice Aridi, Jose Vazquez’s sister, holds a power of attorney to act on behalf of Sara Vazquez, and is the executrix

under the Last Will and Testament of Andres Vazquez. As a result, the Broadway Property currently is owned by Vazquez and the Decedent's Estate.

26. As detailed below (see infra ¶¶ 48-52, pp. 20-22), the Vazquez Trustee has reached an agreement with the Decedent's Estate to sell the entire Broadway Property and to allocate the net sale proceeds between the Individual Debtor's bankruptcy estate (the "Vazquez Estate") and the Decedent's Estate and its beneficiaries.

27. The Broadway Property is adjacent to property owned by the City of New York and used as a branch of the New York Public Library, commonly known as 4790 Broadway, New York, New York (the "Library Property"). On August 25, 2017, the City of New York issued a Request for Proposals for the development of affordable housing on the Library Property (the "Library Project RFP"). The City conducted a pre-submission conference regarding the Library Project RFP on September 12, 2017. The Library Project RFP requires submissions by November 20, 2017.

28. The Vazquez Trustee, his retained real estate broker and his professionals believe that the Library Project RFP enhances the value of the Broadway Property and that concluding the Auction and determining the Sale Motion prior to the deadline for submissions with respect to the Library Project RFP will yield the best price for the Broadway Property.

C. The Environmental Investigation and Conditions

29. Prior to its acquisition by the Individual Debtor and his father, the Broadway Property was used as a gas station. To permit the Vazquez Trustee to understand the environmental conditions at the Broadway Property and to obtain the best possible offer

for the Broadway Property, the Vazquez Trustee undertook an environmental investigation of the Broadway Property.

30. Initially, the Vazquez Trustee retained All Environmental, Inc., d/b/a/ AEI Consultants (“AEI”) to perform a Phase I investigation of the Broadway Property. Based on the results of that investigation, the Vazquez Trustee expanded the scope of his retention of AEI and AEI completed a Phase II environmental investigation of the property for the Vazquez Trustee.

31. Upon completion of the Phase II report, in accordance with applicable New York state law, the Vazquez Trustee notified the New York State Department of Environmental Conservation (“NYSDEC”) of certain conditions at the Broadway Property. In cooperation with the NYSDEC, the Vazquez Trustee and AEI have undertaken a Remedial Investigation and Feasibility Study (“RIFS”) with respect to the conditions at the Broadway Property. This process is ongoing.

32. The Vazquez Trustee has made the Phase I and Phase II environmental investigation reports available to all prospective purchasers who requested them and signed a confidentiality agreement covering these materials. He will make these reports available to all bidders in connection with the Auction. He also will make information developed during the RIFS available to the Stalking Horse Bidder and all prospective bidders.

33. To assist the Vazquez Trustee to engage in that ongoing process and obtain advice regarding various issues of New York real estate law, with the approval of the Bankruptcy Court, the Vazquez Trustee retained Herrick, Feinstein, LLP (“Herrick”) as his special environmental and real estate counsel.

D. Marketing of the Broadway Property

34. By Order dated April 19, 2017 [Docket Entry 863], the Vazquez Trustee retained Century 21 AMH Commercial, a division of Century 21 American Homes, as his broker (the “Broker”) to market and sell the Broadway Property. The Broker is a member of the nationally-recognized Century 21 real estate network (“Century 21”).

35. Since its retention, the Broker has worked diligently to expose the Broadway Property to the market.

36. The Broker’s marketing activities included issuing press releases announcing the listing of the Broadway Property to New York City real estate focused media publications, including Real Deal, Commercial Observer, NY/NJ Real Estate Journal, and Crain’s New York.

37. The Broker listed the Broadway Property on the 30th LoopNet, CoStar, and various other commercial websites used by New York and national commercial real estate brokers. The Broker also listed the Broadway Property on LoopNet, Property Shark, LandandFarm, and Century21.com, property listing websites used by New York and national commercial real estate brokers.

38. The Broker pursued the following additional marketing efforts:

- The Broker sent solicitation materials advertising the sale of the Broadway Property directly to over ten thousand (10,000) parties.
- Through contact lists procured from various sources, including LIBOR, the New York Department of State (for non-profit organizations specializing and experienced in community housing expansion), and prepared contact lists, the Broker made efforts to contact parties that might be interested in the Broadway Property or similar opportunities via various email marketing campaigns, including real estate brokers in Manhattan, Queens and Brooklyn, as well as in Nassau and Westchester Counties. These e-mail

campaigns encompassed distributions to between 250 and 25,000 contacts each.

- The Broker placed advertisements on various New York area, national and international real estate marketing websites, including Showcase, LoopNet, CityFeet, and the New York Times Real Estate section, as well as the Century 21 listing syndication network of over 850 websites across the United States and internationally. These efforts included premium spotlight advertising on the Showcase and LoopNet marketplaces.
- The Broker made direct outbound telephone calls to introduce the Broadway Property to over 800 developers, architects, capital partners and attorneys that previously have participated in similar transactions.
- The Broker included the Broadway Property in its weekly broker emails to the New York City/Long Island metropolitan area real estate community. It also periodically included this Property in the Broker's and other organization's national "Hot Properties" emails. These solicitations reached a national audience of principals, brokers, and other interested parties totaling about 800,000.
- The Broker also used local New York City contact lists and executed mailings to lists with smaller, more-focused distributions – e.g. Investment Sales, Real Estate Brokers, and Developers with Manhattan holdings.
- The Broker presented this Property through the Century 21 Commercial Investment Network, which has about 500 member offices in the continental United States and offices in over 70 countries and/or territories around the world.
- The Broker announced the opportunity to purchase the Broadway Property to individuals and organizations listed in the member directories of the Society of Industrial & Office Realtors ("SIOR"), the Certified Commercial Investment Member ("CCIM") and the National Association for Industrial & Office Parks ("NAIOP"), a commercial real estate development association. The Broker also presented this Property at national real estate and deal making conferences (e.g. International Council of Shopping Centers).
- The Broker caused two signs (each 60" x 60") to be placed on the Broadway Property publicly announcing its availability for sale and directing interested parties to contact the Broker.

39. Through these efforts the Broker received inquiries about the Broadway Property from approximately five hundred and seventy-five (575) parties. There have been five (5) parties that have requested and received copies of the Phase II report regarding the

Broadway Property. Of these five (5) parties, three (3) parties requested and received both Phase I and Phase II reports regarding the Broadway Property.

40. The Broker has received written offers for the Broadway Property from eight (8) different interested parties. Other parties made verbal offers or expressions of interest to the Broker or the Vazquez Trustee, who advised the party making the verbal offer to submit their respective offer in writing, but none of them did.

41. Of the eight (8) written offers for the Broadway Property, six (6) of the offerors did not supply the Broker with any proof that they had adequate, financial capability to consummate the offer. None of the other offerors (except the Stalking Horse and one other prospective purchaser) provided the Vazquez Trustee with adequate proof of their ability to consummate their offers.

42. Of the eight (8) written offers for the Broadway Property, all eight (8) of the offerors received counteroffers that the Vazquez Trustee made through the Broker and/or the Vazquez Trustee's draft of a Purchase and Sale Agreement. The Stalking Horse made one of these eight (8) written offers for the sum of \$12.3 million (U.S.), with a deposit of ten percent (10%) of the purchase price, *i.e.* \$1.23 million (U.S.).

43. The eight (8) offers ranged from \$3.6 million (U.S.) to \$12.5 million (U.S.), with the Stalking Horse offer for \$12.3 million (U.S.) being substantially higher than all of the other offers, except the two offers of \$12.5 million (U.S.), one of which was not supported by any proof of funds and failed to respond to the draft sale agreement transmitted by the Vazquez Trustee and the other of which was only received after the

Vazquez Trustee had reached an agreement with the Stalking Horse. The Broker has advised this party of the Stalking Horse offer and the anticipated auction.

44. Peter Farkas has acted as the broker for the Stalking Horse with respect to its proposed purchase of the Broadway Property. Consistent with the Broker's engagement agreement, the Broker has offered to share the commission payable in connection with the sale with the Stalking Horse's broker.

E. The Stalking Horse Bidder/Bid

45. The Vazquez Trustee has reviewed and considered the eight (8) offers the Broker received for the Broadway Property and directed the Broker to make counteroffers to all prospective purchasers. Ultimately, the Vazquez Trustee decided to proceed with the offer from the Stalking Horse Bidder.

46. The Vazquez Trustee and his counsel negotiated the terms of the Stalking Horse Agreement and Sale with the Stalking Horse Bidder. Among other things, the Vazquez Trustee and the Stalking Horse Bidder agreed that the Stalking Horse Agreement would be subject to higher and better offers, bidding procedures, and an auction.

47. Other principal terms of the Stalking Horse Agreement are set forth above. See supra ¶ 11, pp. 6-8.

F. The Agreement with the Decedent's Estate

48. Because title to the Broadway Property is vested jointly in Vazquez and his father, the Vazquez Trustee cannot sell the entire property on his own. Instead, the Vazquez Trustee must either sell the Broadway Property pursuant to Bankruptcy Code

§ 363(h) or obtain the consent of the Decedent's Estate (as successor to the father's interest) to the sale.

49. The Vazquez Trustee believes that it would be impractical to partition Vazquez's undivided half interest in the Broadway Property and that a sale of Vazquez's undivided half interest in the Broadway Property would realize substantially less than Vazquez's share of the sale proceeds to be derived from the sale of the entire Broadway Property and the allocation of the proceeds embodied in the agreement between the Vazquez Trustee and the Decedent's Estate.

50. Accordingly, in connection with the closing of J.V.'s car wash operations, the Vazquez Trustee and the executrix of the Decedent's Estate, directly and through their respective counsel entered into discussions regarding the terms and conditions of the sale and the application of the sale proceeds. Ultimately, the Vazquez Trustee and the Decedent's Estate reached a resolution as to these issues, the key terms of which will be incorporated into the Sale Order.

51. The parties' agreement includes the following terms:

- Payments due at closing, including the broker's commission and normal and customary closing credits and adjustments will be deducted from the purchase price and paid to the applicable party.
- The remaining, "net" sale proceeds will be divided equally between the two owners, subject to the following adjustments (reserves for which may be established at the closing):
 - Fifty percent of the professional fees and costs of negotiating the Stalking Horse Agreement, securing and maintaining the Broadway Property, preparing and prosecuting the Sale Motion, and conducting the Closing will be paid to the Vazquez Estate (whose professionals incurred these costs) from the Co-Owner's share of the Net Sale Proceeds.

- Fifty percent of the fees of the environmental consultant, AEI, incurred with respect to the Broadway Property and the fees and costs of Herrick LLP, as special environmental counsel also will be paid to the Vazquez Estate (whose professionals incurred these costs) from the Co-Owner's share of the Net Sale Proceeds.
- Fifty percent of certain costs of maintaining and preserving the property after the appointment of the Trustees, including the real estate taxes paid by the Vazquez Trustee with respect to the Broadway Property also will be paid to the Vazquez Estate (which paid the full amount of these charges) from the Co-Owner's share of the Net Sale Proceeds.
- Sara Vazquez, the beneficiary of the Decedent's estate will be paid approximately \$19,000 from Vazquez Estate's share of the Net Sale Proceeds in exchange for her relinquishing any ownership interest in J.V. and in satisfaction of her asserted claim for taxes she paid on account of the income derived from J.V.
- The Decedent's Estate reserves the right to review the Reimbursable Property Expenses and to object to the appropriateness or reasonable amount of certain of the Reimbursable Property Expenses. If the Vazquez Trustee and the Co-Owner cannot resolve any such objection, the applicable amount shall be escrowed and the dispute shall be resolved by the Bankruptcy Court.

52. The Vazquez Trustee believes that these terms are reasonable and necessary to facilitate the sale of the Broadway Property.

RELIEF REQUESTED AND GROUNDS FOR RELIEF

53. The Vazquez Trustee believes that an auction sale of the Broadway Property is in the best interests of Vazquez, his estate, his creditors and the creditors of the Business Debtors. Accordingly, by this Motion, the Vazquez Trustee respectfully requests, pursuant to Bankruptcy Code §§ 105 and 363 and Bankruptcy Rules 2002 and 6004: (i) entry of an order approving the form of the Stalking Horse Agreement and the Break-Up Fee, establishing the Bidding Procedures, scheduling the Auction and the Sale Hearing, and approving the form and method of notice of the Sale, the Auction and Sale Hearing (the

“Bidding Procedure Order”); and (ii) entry of the sale order approving the sale of the Broadway Property free and clear of liens, claims, encumbrances and interests to the Stalking Horse or the Successful Bidder and approving a Back-up Bidder in case the Successful Bidder does not close (the “Sale Order”).

54. The Vazquez Trustee wishes to conclude the sale of the Broadway Property as expeditiously as possible. At the same time, however, the Vazquez Trustee wishes to ensure that all financially-qualified, interested parties are provided with a reasonable opportunity to submit competing bids so the Vazquez Estate receives the maximum return on the sale of the Broadway Property.

55. The Vazquez Trustee expressly reserves the right to modify the relief requested in this Motion prior to or at the applicable hearings, including the proposed Bidding Procedures.

I. Approval of the Bidding Procedures, Break-Up Fee and Notice Provisions

56. In connection with the Sale Motion, the Vazquez Trustee seeks approval of the Bidding Procedures Order, which incorporates the Bidding Procedures set forth in Paragraph 12 (*supra* at pp. 9-11), including the manner in which the notice of Auction and Sale Hearing is to be provided.

A. *The Bidding Procedures are Reasonable and Appropriate*

57. The Vazquez Trustee believes that the Auction of the Broadway Property conducted in accordance with the Bidding Procedures will maximize the value of the Broadway Property. Accordingly, the Vazquez Trustee requests that the Court authorize

the sale of the Broadway Property pursuant to the Bidding Procedures set forth herein (*supra* ¶ 12, pp. 9-11).

58. Exposing a debtor's assets to auction sale is consistent with the goal of bankruptcy proceedings to maximize the value of a debtor's assets. *See Burtch v. Ganz (In re Mushroom Transp. Co.)*, 382 F.3d 325, 339 (3d Cir. 2004); *Official Committee of Unsecured Creditors of Cybergenics Corp. v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003); *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-64 (8th Cir. 1997). Bidding procedures are appropriate when they further this goal. *See Calpine Corp. v. O'Brien Envt'l Energy, Inc. (In re O'Brien Envt'l Energy, Inc.)*, 181 F.3d 527, 535-57 (3d Cir. 1999); *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998).

59. The Vazquez Trustee believes that establishing the Bidding Procedures will maximize the value of the Broadway Property. As noted above, although the Vazquez Trustee and the Broker engaged in extensive marketing efforts and decided to proceed with the Stalking Horse Bid, there are other parties who remain interested in the Broadway Property, especially in light of the Library Project RFP. The Bidding Procedures establish a deadline for other Qualified Bidders to submit offers for the Broadway Property. They also impose reasonable requirements for the qualification of the bidders so that the Vazquez Trustee can confirm that the Bankruptcy Court will be able to approve the sale and the bidder will be able to consummate it.

60. The Bidding Procedures also impose a degree of uniformity over the offers so that the Vazquez Trustee can promptly and effectively review, analyze and compare all bids received and determine which bid or bids are in the best interest of the Vazquez Estate.

Through the Auction, the Bidding Procedures will provide a forum in which all Qualified Bidders can make additional, increased bids for the Broadway Property until the highest and best offer is obtained. They also provide for the Vazquez Trustee to share information about the Broadway Property and the Investigation in advance of the bidding deadline and the auction sale so that all bidders can provide non-contingent bids.

61. The Vazquez Trustee reserves the right to establish a reserve price (minimum bid) for the Broadway Property and not to proceed with the Auction or at the Auction not to declare a successful bidder if the reserve price is not obtained at the Auction.³

62. Based on the foregoing, the Vazquez Trustee respectfully requests that the Court approve the Bidding Procedures.

B. The Break-Up Fee is Reasonable and Necessary to Facilitate the Sale.

63. Given the potential environmental issues with respect to the Broadway Property and the Stalking Horse's need to investigate the suitability of the Broadway Property for development, the Stalking Horse was not willing to enter into the Stalking Horse Agreement unless it provided a break-up fee should the Stalking Horse not be the Successful Bidder at the Auction of the Broadway Property. The Stalking Horse insisted on the Break-Up Fee as a condition of the Stalking Horse Agreement to compensate the Stalking Horse for its substantial time, energy, resources and expenses and because of the

³ As noted above (supra ¶ 11 at p. 7), the Stalking Horse Agreement permits the Stalking Horse to conduct due diligence with respect to the Broadway Property. While the Vazquez Trustee is reasonably confident that the Stalking Horse will be satisfied with its due diligence, it remains possible that the Stalking Horse may withdraw its bid. If this occurs, the Vazquez Trustee may continue with the Auction subject to the reserve price (if he receives other offers) or may withdraw the Sale Motion and cancel the Auction if he receives no other bids he deems satisfactory.

benefit to the Vazquez Estate and the Co-Owner from obtaining a stalking horse to establish a reasonable, minimum value for the Broadway Property.

64. Accordingly, the Stalking Horse Agreement provides for the Stalking Horse to receive a break-up fee of \$250,000 from the proceeds of the closing of the sale of the Broadway Property (the “Break-Up Fee”) if the Vazquez Trustee or the Bankruptcy Court determines that the Stalking Horse has not submitted the highest and best offer for the Broadway Property. (PSA, Section 4.2 at p. 7.)

65. The Break-Up Fee represents slightly more than two percent (2%) of the proposed purchase price provided for in the Stalking Horse Agreement. The Vazquez Trustee believes that this is a fair and reasonable payment given that the Stalking Horse was the first entity to submit a firm offer and proof of funds in connection with the proposed sale of the Broadway Property and the Vazquez Trustee engaged in substantial negotiations with the Stalking Horse regarding the Stalking Horse Agreement before any other party submitted a comparable, firm offer. Also, the Vazquez Trustee believes that the presence of the Stalking Horse will spur other parties to submit bids.

66. The Vazquez Trustee also recognizes that the Stalking Horse will undertake a significant investigation of the conditions of the Broadway Property, the costs of which it will not recoup if it is not the Successful Bidder. Furthermore, the Vazquez Trustee believes that it would be difficult and potentially costly to compensate the Stalking Horse for its engagement by providing the Stalking Horse with an expense reimbursement, subject to review and approval by the Vazquez Trustee, other parties in interest and, ultimately, the Bankruptcy Court.

67. Bidding incentives, like the Break-Up Fee, are valuable to encourage parties to submit formal offers to a bankruptcy estate when, as here, there is a substantial chance that the bidder may not ultimately acquire the property due to the bankruptcy estate's obligation to maximize the value of the debtor's assets and accept a higher and better offer. They assist the bankruptcy estate in obtaining a substantial initial offer. The presence of a substantial "stalking horse" also can lead other interested parties to submit bids.

68. Approval of break-up fees in connection with the sale of significant assets has become an established practice in this district and in others within the Third Circuit. See, e.g., *In re Saint Michael's Medical Center, Inc.*, Case No. 15-24999 (VFP)(Bankr. D.N.J. Aug. 25, 2015); *In re Revel AC, Inc.*, Case No. 14-22654 (GMB) (Bankr. D.N.J. Sept. 5, 2014); *In re Ashley Stewart Holdings, Inc.*, Case No. 14-14383 (MBK) (Bankr. D.N.J. Apr. 3, 2014); *In re RIH Acquisitions NJ, LLC*, Case No. 13-34483 (GMC) (Bankr. D.N.J. Nov. 19, 2013); *In re Centaur, LLC*, Case No. 10-10799 (KJC) (Bankr. D. Del. July 28, 2010); *In re RNI Wind Down Corp.*, Case No. 06-10110 (CSS) (Bankr. D. Del. Feb. 24, 2006); *Russell-Stanley Holdings, Inc.*, Case No. 05-12339 (BLS) (Bankr. D. Del. Sept. 8, 2005); *In re Pharm. Formulations Inc.*, Case No. 05-11910 (MFW) (Bankr. D. Del. Aug. 8, 2005); *In re AAIPharma Inc.*, Case No. 05-11341 (CSS) (Bankr. D. Del. June 8, 2005). They are appropriate where they provide a benefit to the bankruptcy estate and the sale process. *In re O'Brien Env't'l Energy, Inc.*, 181 *F.3d* 527, 536-47 (3d Cir. 1999). They also can be approved when they either induce an initial bid or preserve a continued bid. *In re Reliant Energy Channelview LP*, 594 *F.3d* 200, 2006-08 (3d Cir. 2010).

69. Here, the Break-Up Fee is appropriate because it was necessary to convince the Stalking Horse to enter the bidding for the Broadway Property. The Stalking Horse Bid provides a floor from which bidding will commence. But the Stalking Horse would not have entered the bidding without the Break-Up Fee. Also, to the extent the Stalking Horse is the Successful Bidder, no Break-Up Fee will be paid.

70. The only circumstance in which the Break-Up Fee will be paid is if there is active bidding for the Broadway Property and the Stalking Horse Bid is exceeded by the Successful Bidder. In this way, the Debtors' bankruptcy estates will have benefitted from the Break-Up Fee because the ultimate purchase price would exceed the Stalking Horse Bid.⁴

C. Auction and Sale Notice Procedures

71. Pursuant to Bankruptcy Rule 2002(a) and (c), the Vazquez Trustee is required to notify creditors of the proposed sale of the Broadway Property, including a disclosure of the time and place of the Auction, the terms and conditions of the sale and the deadline for filing any objections. The Vazquez Trustee proposes to provide notice of the Auction and the Sale Hearing and the Bidding Procedures to enable interested parties to participate in the Auction and the Sale Hearing as set forth below.

72. First, the Vazquez Trustee proposes to serve a *Notice of Bidding Procedures, Auction Date and Sale Hearing* in the form attached to this Motion as Exhibit "B" (the "Sale Notice"), which provides the information required by Bankruptcy Rule 2002(c),

⁴ To reinforce this, the Bidding Procedures provide for a minimum overbid of \$300,000, i.e. in excess of the Break-Up Fee. So there could never be a situation in which the Break-Up Fee was paid and the estate received less than the amount of the Stalking Horse Bid.

within three (3) business days of the entry of the Bidding Procedures Order, by first-class mail, postage prepaid, to (a) all potential purchasers identified by the Vazquez Trustee and the Broker, (b) the Office of the United States Trustee, (c) all known creditors, including all known entities holding or asserting a security interest in or lien against the Broadway Property, (d) any other parties who have requested notice pursuant to Bankruptcy Rule 2002, and (e) all government agencies required to receive notice of proceedings under the Bankruptcy Rules (collectively, the “Service List”).

73. In addition, the Vazquez Trustee proposes to provide notice to unknown creditors and other new parties interested in acquiring the Broadway Property by publishing notice of the Auction and Sale Hearing in the form attached to this Motion as Exhibit “C” (the “Publication Notice”) in The New York Times Sunday Edition Real Estate Section (a) at least once in the seven (7) days following the entry of the Bid Procedures Order and (b) at least once in the seven (7) days prior to the Bid Deadline. The Vazquez Trustee also proposes that the Broker provide notice of the Auction and the Bid Deadline via the LoopNet website.

74. The Sale Notice and the Publication Notice will provide that any party, whether or not on the Service List, that wishes to obtain a copy of the Sale Motion, including all exhibits, and, with respect to those parties receiving only Publication Notice, the Bidding Procedure, may make such a request in writing to counsel to the Vazquez Trustee, Becker LLC, 354 Eisenhower Parkway, Plaza II, Suite 1500, Livingston, New Jersey 07039, Attention: J. Alex Kress, Esq., Telephone: (973) 422-1100, Facsimile: (973) 422-9122, Email: *akress@becker.legal*.

75. The Vazquez Trustee submits that the notice and method of service proposed herein constitutes good and adequate notice of the sale of the Broadway Property and the proceedings to be held with respect thereto. Therefore, the Vazquez Trustee respectfully requests that the Court approve the foregoing notice procedures.

II. Approval of the Sale (Part II)

76. In Part II of this Motion, the Vazquez Trustee seeks approval of the sale of the Broadway Property free and clear of liens, claims, encumbrances and interests.

A. *The Sale of the Broadway Property Should Be Approved.*

77. The Vazquez Trustee submits that ample authority exists for the approval of the proposed sale of the Broadway Property. Bankruptcy Code § 363 provides, in relevant part, that a trustee or debtor in possession “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Additionally, Bankruptcy Code § 105(a) provides that “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

78. Under applicable case law in this circuit, if a trustee’s or debtor’s proposed use, sale, or lease of property pursuant to Bankruptcy Code § 363(b) represents a reasonable business judgment on the part of the debtor, such a transaction should be approved. See *Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986). See also *In re Del. & Hudson R.R. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (courts have applied the “sound business purpose” test to evaluate motions brought pursuant to section 363(b)).

79. The “sound business purpose” test requires that the trustee or debtor establish four elements to sell property outside the ordinary course of business, namely (a) that a “sound business purpose” justifies the sale of assets outside the ordinary course of business, (b) that adequate and reasonable notice has been provided to interested persons, (c) that the trustee or debtor has obtained a fair and reasonable price, and (d) good faith. See *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); *Travelers Cas. & Sur. Co. v. Future Claimants Representative (In re Congoleum Corp.)*, Case No. 07-2785(FLW), 2008 U.S. Dist. Lexis 23496, at *11 (D.N.J. Mar. 25, 2008). See also *In re Titusville Country Club*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Sovereign Estates, Ltd.*, 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989). Courts have made clear that a trustee’s or a debtor’s showing of a sound business justification need not be unduly exhaustive, but, rather, a trustee or debtor is “simply required to justify the proposed disposition with sound business reason.” *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984).

80. The Vazquez Trustee believes, based on the consideration of the above factors, the proposed sale of the Broadway Property should be approved.

81. The Vazquez Trustee and the Broker have worked diligently to actively market the Broadway Property so as to produce the greatest possible value to the Vazquez Estate and its creditors.

82. As noted above, the Broker has used various methods – direct solicitation, emailing marketing campaigns, broker listing services, and others – to identify prospective purchasers for the Broadway Property. The Broker has received over 575 inquiries, shown the Broadway Property to numerous prospective purchasers, received multiple offers and

made counterproposals to all offers. In the end, the terms of the sale to the Stalking Horse are the best terms that the Vazquez Trustee has received to date and they remain subject to higher or better offers.

83. The Bidding Procedures described herein will ensure that the Vazquez Trustee receives the maximum value for the Broadway Property and that the purchase price ultimately realized by the Vazquez Estate will be fair and reasonable. The open and competitive nature of the Bidding Procedures will allow the Vazquez Trustee to enter into an agreement that is the product of good faith and arms' length negotiations between the Vazquez Trustee and purchasers as well as guarantee that the purchase price set forth therein will represent the highest and/or best price obtainable for the Broadway Property.

84. The decision to sell is based upon the Vazquez Trustee's sound business judgment. The assets of the Business Debtors are not sufficient to pay the creditors of the Vazquez Estate and the Business Debtors and there is a substantial overlap in the creditor pools of the Business Debtors and the Vazquez Estate. The Business Debtors' Trustee has already sold the assets of all of the other Debtors – Bayway, Webster, Harlem and J.V. Selling the Broadway Property is necessary to consummate a Chapter 11 Plan in the jointly administered cases, to make a distribution to creditors and, depending on the resolution of the New Employee Claims, may create a surplus for Vazquez and his family.

85. Upon obtaining Court approval of the Sale, the Vazquez Trustee and the Business Debtors' Trustee promptly will finalize a strategy for satisfying the claims against Vazquez and the Business Debtors, which likely will involve a plan of reorganization for the Debtors.

86. The Vazquez Trustee submits that consideration of the business reasons articulated herein permit this Court to authorize the Vazquez Trustee to sell the Broadway Property.

B. Sale Free and Clear of Liens, Claims, Encumbrances and Interests

87. In accordance with Bankruptcy Code § 363(f), a trustee or debtor in possession may sell property under “free and clear of any interest in such property of an entity other than the estate” if one of the following conditions is satisfied:

- (1) applicable non-bankruptcy 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.

See 11 U.S.C. § 363(f). See also *Citicorp Home Owners Servs. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (Bankruptcy Code § 363(f) written in disjunctive; court may approve sale “free and clear” provided at least one of the subsections is met).

88. To facilitate the sale of the Broadway Property, the Vazquez Trustee requests authorization to sell free and clear of any and all liens or interest that may be asserted with such liens to attach to the sale proceeds. Applicable case law provides that a sale of a debtor’s assets free and clear of all liens, claims, encumbrances and interests is permissible under Bankruptcy Code § 363(f) as long as the liens, claims, encumbrances and interests attach to the net proceeds of the sale. See *Foyer Adam Sec., Inc. v. De Matteis/MacGregor*,

JV, 209 F.3d 252, 259 (3d Cir. 2000) (“The holdings of the court suggest that any interest in property that can be reduced to a money satisfaction constitutes a claim for purposes of section 363(f) and, therefore, attaches to the proceeds of the sale.”).

89. All parties asserting an interest in the Broadway Property will have notice of the sale and an opportunity to object to the Sale. In the event that any such creditor fails to object, the Court may deem such failure as consent to the sale. See *Hargrave v. Township of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to sale motion, secured creditor deemed to consent under Bankruptcy Code § 363(f)(2)).

90. The provisions of Bankruptcy Code § 363(f) are satisfied because the aggregate purchase price exceeds the liens of the Broadway Property, which the Vazquez Trustee contends are \$0, satisfying Bankruptcy Code § 363(f)(3). To the extent there are any liens or encumbrances, the Sale Order will provide that they shall attach to the proceeds in the same order and priority they hold against the Broadway Property and that the holders of any liens and encumbrances will be paid out of the sale proceeds either at the closing or upon the confirmation of the Plan or entry of a further Order of the Court.

91. Furthermore, any unpaid real estate taxes and any judgment liens on the Broadway Property will be satisfied at the time of the sale or will attach to the proceeds of a sale of the Broadway Property with the same force, effect and priority as such liens have on the Broadway Property, subject to the rights and defenses, if any, of the Vazquez Trustee and any party in interest with respect thereto.

92. Accordingly, the Vazquez Trustee submits that the sale of the Broadway Property free and clear of liens, claims and encumbrances satisfies the statutory prerequisites of Bankruptcy Code § 363(f).

C. Sale Free and Clear of Interests of Co-Owner 363(h)

93. The Sale Motion seeks authorization not only to sell Vazquez's undivided interest in the Broadway Property, but the interest of the Co-Owner, the Decedent's Estate and its beneficiaries. This relief is authorized pursuant to Bankruptcy Code § 363(h) under the circumstances present here. In any event, based on the agreements made between the Vazquez Trustee and the Co-Owner, the Vazquez Trustee anticipates that the Co-Owner will consent to the Sale.

94. The Bankruptcy Code authorizes a sale of property owned by the debtor and a non-debtor where partition is not practical, the value of selling an undivided interest would be less and the balance of the equities favors a sale:

Notwithstanding subsection (f) of this section, the trustee may sell both the estate's interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if –

- (1) partition in kind of such property among the estate and such co-owners is impracticable;
- (2) sale of the estate's undivided interest in such property would realize significantly less for the estate than sale of such property free of the interests of such co-owners; [and]
- (3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners...

11 *U.S.C.A.* § 363(h). The only exception to this general rule is where the property is “used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.” 11 *U.S.C.A.* § 363(h)(4).

95. Here, the Broadway Property is integrated into a single city block. Moreover, especially in light of the Library RFP, and the general development plans in the neighborhood surrounding the Broadway Property, its highest and best value is for development. The environmental conditions on the Broadway Property also make partition unworkable and reinforce the benefits of developing the Broadway Property. There is no detriment to the Co-Owner; in fact, they consent to the proposed sale of the entire Broadway Property.

96. The Co-Owner and the Vazquez Trustee have agreed to equitably divide the proceeds of the Sale. Payments due at closing, including the broker’s commission and normal and customary closing credits and adjustments will be deducted from the purchase price and paid to the applicable party. The remaining Net Sale Proceeds will be divided equally between the two owners, subject to the adjustments set forth in Paragraph 51 above.

97. The Vazquez Trustee’s agreement with the Co-Owner and the Beneficiaries also resolves Sara Vazquez’s claim for amounts she paid on account of income attributed to her from J.V. and resolves any potential claim she might have to any of the Business Debtors.

98. For the foregoing reasons, the Vazquez Trustee believes that the Sale Order can and should direct the sale of the Broadway Property free and clear of the interests of the Co-Owner.

D. Relief from Transfer Taxes 1146(a)

99. The Auction and Sale are being made in order to permit the Vazquez Trustee to propose a plan for Vazquez. The only impediment to proceeding with the plan immediately is the substantial, unresolved claims of the New Employee Claimants.

100. Accordingly, the Vazquez Trustee requests that the Sale be free of any transfer taxes. *See* 11 U.S.C. § 1146(a).

E. Payment of Broker's Commission (LBR 6004-5)

101. Pursuant to D.N.J. LBR 6004-5, the Vazquez Trustee respectfully submits that the Order approving the Sale of the Broadway Property in accordance with the Bidding Procedures Order provide that, upon the closing of the Sale of this Property, without further order of this Court, the Vazquez Trustee is authorized to pay the Broker and the broker for the Successful Bidder, if any, a commission from the proceeds of this sale in amount provided in the Broker's retention agreement, i.e. (5% of the first \$5 million and 3% of any amount in excess of \$5 million). Based on the Stalking Horse Bid, the amount of the commission would be \$469,000.00 (U.S.). Prior to the Sale Hearing, the Vazquez Trustee will submit a certification setting forth the calculation of the commission to be paid and identifying the party (or parties) to whom the commission will be paid. As provided for in the Orders authorizing the Vazquez Trustee to retain the Broker, the commission will be allocated between the Broker and the broker for the Successful Bidder as agreed between them.

F. Waiver of Stay of Order (6004(h))

102. Because the Stalking Horse Agreement permits an immediate closing and this may be important to other potential bidders based on the deadline for submitting a response to the Library RFP (which is due by November 20, 2017), the Vazquez Trustee respectfully requests that the Court waive the automatic stay of the Order approving the Sale as permitted by Fed. R. Bankr. P. 6004(h).

CONCLUSION

WHEREFORE, the Vazquez Trustee respectfully requests that the Court enter the form of Orders submitted herewith (1) approving the Bidding Procedures, the Stalking Horse Agreement, the Break-Up Fee, the Sale Notice and the Publication Notice with respect to the Broadway Property, (2) approving the Sale of the Broadway Property free and clear of liens, claims, encumbrances and interests and (3) granting such other and further relief as the Court deems equitable and just.

BECKER LLC
Attorneys for Donald F. Conway
Chapter 11 Trustee for Jose Louis Vazquez

By: /s/ J. Alex Kress, Esq.
J. Alex Kress, Esq.

Dated: October 10, 2017

EXHIBIT A

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT (the “**Agreement**”) is made as of this ^{25th} day of September 2017 (the “Effective Date”), by and between Donald F. Conway, solely in his capacity as Chapter 11 trustee for Jose Louis Vazquez (“**Debtor**”), having an address c/o The Mercadien Group, 3625 Quakerbridge Road, Hamilton, New Jersey 08619 (sometimes hereafter referred to as the “**Trustee**”) and the Estate of Andres Vazquez, having an address c/o The Law Offices of Mitchell Malzberg, Attn.: Mitchell Malzberg, Esq., 6 Main Street, Suite 7, P.O. Box 5122, Clinton, NJ 08809 (the “**Decedent’s Estate**” and, together with the Trustee, collectively, “**Seller**”); Madd Equities, LLC having an address of 15 Verbena Avenue, Suite 200, Floral Park, New York 11001 (“**Purchaser**”) and Jorge Madruga, an individual residing at 34 Arden Lane, Sands Point, New York 11050 (“**Guarantor**”).

WITNESSETH:

WHEREAS, the Sellers are the owners of 4778 Broadway, New York, New York, designated as Block 2233, Lot 10, and as more particularly described in Exhibit A annexed hereto (the “**Land**”); and

WHEREAS, on or about October 16, 2013, Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the District of New Jersey (the “**Bankruptcy Court**”), bearing Case No. 13-32646 (the “**Debtor’s Bankruptcy Case**”), which is being jointly administered with several related cases as In re Bay Way Hand Car Wash Corp., et al., Jointly Administered Case No. 13-32632 (MBK); and

WHEREAS, on or about June 4, 2014, Donald F. Conway was appointed as Chapter 11 Trustee in the Debtor’s Bankruptcy Case; and

WHEREAS, solely in his capacity as Trustee in the Debtor’s Bankruptcy Case, the Trustee acts on behalf of the Debtor’s bankruptcy estate (the “**Debtor’s Estate**”); and

WHEREAS, Andres Vazquez died, testate, and his Last Will and Testament was accepted to Probate by the Surrogate’s Court of the County of Bergen, State of New Jersey (the “**Surrogate’s Court**”), on May 15, 2015; and

WHEREAS, Letters Testamentary were issued by the Surrogate’s Court to Eunice Aridi (“**Executrix**”), as Executrix on May 18, 2015; and

WHEREAS, the Seller desires to sell its right, title and interest in the Property to Purchaser on the terms and conditions set forth herein; and

WHEREAS, Purchaser desires to purchase from the Seller, the Seller’s right, title and interest in the Property from the Seller on the terms and conditions set forth herein; and

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WHEREAS, Guarantor desires to guaranty the obligations of Purchaser under this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1. SALE OF THE PREMISES.

1.1 Property to be Sold and Conveyed. Subject to the terms and conditions of this Agreement and the entry of the Sale Order (as defined below), the Seller agrees to sell, assign, transfer, convey and deliver its right, title and interest, if any, in and to, and Purchaser agrees to purchase and accept at the price set forth herein, (a) the Land and (b) any improvements, buildings, structures or appurtenances located on the Land (together with the Land, collectively, the "**Property**"), all of which will be free and clear of liens, claims and encumbrances, if any, except for those liens, claims and/or encumbrances which cannot be discharged by the Bankruptcy Court (the "**Permitted Encumbrances**"). The Seller's right, title and interest in the Property is to be sold in an "As Is" condition.

1.2 Exclusions. Excluded from the Property to be sold and conveyed hereunder shall be any personal property or personal effects located on, in or about the Property, some or all of which may be owned by the current or prior occupant of the Property or third parties other than the Seller. In no event however shall the Seller be obligated to remove any personal property or personal effects from the Property prior to Closing.

ARTICLE 2. CONSIDERATION.

2.1. Purchase Price. In consideration of the sale, transfer, assignment and delivery of the Seller's right, title and interest in the Property, Purchaser shall assume all Environmental Conditions (as defined in Section 2.3) and pay to the Seller the sum of TWELVE MILLION THREE HUNDRED THOUSAND and 00/100 DOLLARS (\$12,300,000.00) (the "**Purchase Price**"), which shall be paid as follows:

- (a) An initial deposit equal to SIX HUNDRED FIFTEEN THOUSAND 00/100 DOLLARS (\$615,000.00) (the "**Initial Deposit**") will be paid upon the execution of this Agreement and shall be held in escrow by Becker LLC (the "**Escrow Agent**") in a non-interest bearing trust account.
- (b) An additional deposit equal to Six Hundred Fifteen Thousand 00/100 DOLLARS (\$615,000.00) (the "**Additional Deposit**" and, together with the Initial Deposit, collectively, the "**Deposit**") will be paid upon the Purchaser completing its due diligence as provided in Section 5.1 of this Agreement and shall be held in escrow by the Escrow Agent in a non-interest bearing trust account. If the Additional Deposit is not paid within five (5) business days of the end of the Due Diligence Period (as defined in Section 5.1), the Seller may

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terminate this Agreement and Seller shall receive the Initial Deposit as liquidated damages.

- (c) At Closing, Purchaser shall pay Seller the balance of the Purchase Price by certified, cashiers' or bank check or federal funds wire transfer, as Seller shall elect.
- (d) The Deposit shall be held and disbursed by Escrow Agent in the following manner:

- (i) to Seller at the closing upon consummation of the Closing of Title; or

- (ii) to Purchaser upon termination of this Agreement pursuant to Section 10.1 below; or

- (iii) to Seller upon receipt of written demand therefor, stating that Purchaser has defaulted in the performance of Purchaser's obligations under this Agreement and the facts and circumstances underlying such default or that Seller is otherwise entitled to the Deposit under the provisions of this Agreement; provided however, that Escrow Agent shall not honor said demand until at least five (5) business days after it has sent a copy of such demand to Purchaser, nor thereafter if Escrow Agent shall have received written notice of objection from Purchaser; or

- (iv) to Purchaser upon receipt of written demand therefor, stating that either (x) this Agreement has been terminated pursuant to a provision hereof which states that Purchaser is entitled to the Deposit upon termination, and certifying the basis for such termination, or (y) Seller has defaulted in performance of Seller's obligations under this Agreement and the facts and circumstances underlying such default or that Purchaser is otherwise entitled to the Deposit under the provisions of this Agreement; provided, however, that Escrow Agent shall not honor such demand until at least five (5) business days after it has sent a copy of such demand to Seller, nor thereafter if Escrow Agent shall have received written notice of objection from Seller.

2.2 Adjustments. All adjustments, including without limitation, for real estate taxes, assessments, sewer and water charges, shall be made as of the day immediately preceding the Closing, and the adjustment for real estate taxes shall be computed on the basis of the current tax bill.

2.3 Environmental Conditions. Purchaser agrees to undertake and to assume the liability for the investigation and remediation of the environmental conditions, including but not limited to the underground storage tank systems, and the presence of Hazardous Substances, at, on, under or affecting the Property, and at any location beyond the boundaries of the Property to

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which Hazardous Substances emanating or that emanated from the Property or from any other real estate, may have come or hereafter may come to be located on the Property, (collectively, “**Environmental Conditions**”).

For the purposes of this Agreement, “**Hazardous Substances**” shall mean any material, any pollutant, contaminant, chemical or industrial or toxic substance or waste or petroleum products, asbestos, urea formaldehyde, radon, polychlorinated biphenyls, flammable explosives, nuclear radioactive fuel or waste, or any other substance, waste, material, substance, pollutant or contaminant that may cause damage to human health or the environment, safety or real property and/or any substance for which the generation, manufacture, storage, treatment or release is prohibited or regulated under any Environmental Law, and shall include any material or substance defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous wastes”, “toxic substances”, “toxic pollutants”, “contaminants” or “pollutants”, or words of similar import, pursuant to any federal, state or local law, ordinance, code, rule, or regulation.

For the purposes of this Agreement, the term “Environmental Law” shall mean, collectively, any local, state or federal law, statute or regulation, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. (“FWPCA”); the Toxic Substances Control Act of 1976, 15 U.S.C. § 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Federal Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. (“FCCA”); the National Environmental Policy Act of 1975, 42 U.S.C. § 4321; the Rivers and Harbours Act of 1899, 33 U.S.C. § 401 et seq.; the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531 et seq.; the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. § 651 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300(f) et seq.; the Hazardous Materials Transportation Act, 42 U.S.C. §§ 1471, 1472, 1655, 1801 et seq.; the Federal Insecticide, Fungicide & Rodenticide Act, 7 U.S.C. § 136 et seq.; the Atomic Energy Act, 42 U.S.C. § 3011 et seq.; the New York State Environmental Conservation Law; the New York State Navigation Law; New York City Charter, § 1404, §11-15 of the NYC Zoning Resolution, New York Compilation of Codes, Rules and Regulations Parts 360-376; and any other law, statute, ordinance, rule, regulation, guidance, guideline or common law which relates to (a) the existence and/or remedy of contamination on property; (b) the protection of persons, property, animals, or the environment from exposure to any Hazardous Materials or contamination from Hazardous Materials, radiation or other emanations; (c) the use, generation, storage, removal recovery, treatment, transport, disposal, and control of Hazardous Materials, including hazardous wastes and building materials; (d) the prevention of, control of, or response to the exposure of employees or other persons to any Hazardous Materials or radiation; or (e) the prevention of, control of, or response to the emission or discharge of Hazardous Materials in the workplace or environment.

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2.4 Indemnity. Purchaser shall at all times indemnify, defend and hold harmless Seller, their agents, employees and contractors, against and from any and all claims, suits, liabilities, actions, debts, damages, costs, losses, obligations, judgments, charges and expenses, including, but not limited to, sums paid in settlement of claims, reasonable attorneys' fees and disbursements, engineering and other professional expert fees and disbursements, and any other sums of any nature whatsoever suffered or incurred by Seller with respect to (a) any actual or suspected discharge of Hazardous Materials, the threat of a discharge of any Hazardous Materials, or the actual or suspected presence of any Hazardous Materials on, in, upon, under or affecting the Property whether or not the same originates or emanates from the Property or any other real estate; (b) damages from injury to, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction or loss, incurred pursuant to any Environmental Laws; (c) any other environmental matter affecting the Property within the jurisdiction of the EPA, DEP or any other federal, state or local environmental agency or political subdivision or any court, administrative panel or tribunal; and/or (d) any matter of any kind or nature relating to the Property. The provisions of this Section 2.4 shall survive the Closing (as defined herein).

2.5 Guaranty. Guarantor hereby guaranties the full and complete performance of all of Purchaser's obligations under this Agreement as if those obligations were the individual obligations of Guarantor. The foregoing guaranty shall include, without limitation (a) the payment of the Purchase Price as set forth in this Article 2, (b) any willful and material inaccuracy in or any material breach of any representation and warranty made by Purchaser in this Agreement or in any document or other paper delivered by Purchaser pursuant to this Agreement; and (c) any failure by Purchaser to duly and timely perform or fulfill any of its material covenants or agreements required to be performed by Purchaser under this Agreement or any document or other paper delivered by Purchaser pursuant to this Agreement. This guaranty shall be for the benefit of the Trustee, the Debtor's Estate, their respective agents, successors, heirs and assigns (collectively, the "**Seller Parties**"). The provisions of this Section 2.5 shall survive the Closing (as defined herein).

ARTICLE 3. CLOSING.

3.1. Closing Date. The parties agree that the consummation of the transaction contemplated by this Agreement (the "**Closing**") shall take place (i) not later than thirty (30) days following the entry of the Sale Order, if approved in the form and substance reasonably acceptable to the Seller and Purchaser, TIME BEING OF THE ESSENCE; or (ii) at such another time as may be agreed upon by the parties hereto or their respective counsel. The date and time at which the Closing actually occurs is hereinafter referred to as the "**Closing Date**."

3.2. Closing Place. The Closing shall take place at the offices of Purchaser's counsel or at any other place as may be agreed upon by the parties hereto or their respective counsel.

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3.3. Seller's Deliveries. At the Closing, the Seller shall, on compliance by Purchaser with the obligations of Purchaser to be complied with under this Agreement prior to or at the Closing, deliver to Purchaser each of the following:

(a) A deed for the Seller's right, title and interest in the Property, in recordable form, to convey to Purchaser the Seller's right, title and interest in the Property, substantially in the form attached hereto as Exhibit B, duly executed by the Trustee, solely in his capacity as Chapter 11 Trustee for the Debtor, and the Executrix, solely in her capacity as Executrix for the Decedent's Estate, and acknowledged (the "**Deed**"). Title to the Property shall be good, marketable and insurable at regular rates, by any reputable title insurance company licensed to do business in the State of New York, free and clear of all liens, mortgages, judgments, except as to the Permitted Encumbrances, which Permitted Encumbrances shall include any liens relative to any Environmental Conditions at the Property. Seller shall deliver the Property free and clear of any and all tenancies, unless Purchaser specifically agrees to assume such tenancies as of the time of Closing.

(b) An affidavit sworn to by the Seller stating under penalty of perjury that Seller is not a foreign person as defined in Section 1445 of the Code and stating the Debtor's United States taxpayer identification number.

(c) A duly executed IRS form 1099-S.

3.4. Purchaser's Deliveries. At the Closing, Purchaser shall, on compliance by the Seller with the obligations of the Seller to be complied with under this Agreement prior to or at the Closing, deliver to Seller each of the following:

(a) Payment of the Purchase Price as provided herein;

(b) A closing statement;

(c) Any tax information regarding Purchaser that the Settlement Agent (as that term is used in Section 6045 of the Code) is required to report to the Internal Revenue Service pursuant to the Code.

(d) A duly executed certification of Purchaser that all representations and warranties of Purchaser included herein are true and correct as of the day of Closing.

3.6. Pre-submission. Each party agrees to submit to the other party's attorneys copies of all documents to be delivered by such party at the Closing at least two days prior to Closing.

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3.7. Fees and Taxes.

Except for (i) the Seller's legal fees and costs and (ii) any real estate transfer fees that are the obligations of Seller as Seller, and (iii) all recordation fees and expenses in connection with the recordation of any discharges or releases in connection with any mortgages or other monetary liens or encumbrances affecting the Property. Purchaser will pay all of the costs of Closing regarding, related to or in any way connected to this transaction, including, but not limited to the following:

- (a) All deed recordation fees and expenses, if any, in connection with the recordation of the deed and/or deeds;
- (b) All settlement fees and other charges of the title company due in connection with the closing of this transaction;
- (c) The premiums, title search fees and all other costs relating to the issuance of the title policy, and any and all special endorsements issued in connection with this transaction, whether pursuant to the title commitment or otherwise;
- (d) The cost of any survey obtained by Purchaser;
- (e) The fees and disbursements of Purchaser's counsel and other professionals and consultants engaged by Purchaser; and any other expenses(s) incurred by Purchaser or its representative(s) in inspecting or evaluating the Property or closing of this transaction; and
- (f) All fees for any licenses, permits, certificates of occupancy, or approvals required by any governmental or quasi-governmental agency for transfer of the Property.

3.8. Assessments. If, on the Closing Date, the Property or any part thereof shall be or shall have been affected by assessments, whether payable in annual installments or lump sum, then for the purposes of this Agreement all such assessments, shall be deemed to be claims against Purchaser that survive the Closing. All assessments made after the Closing shall be the sole obligation of Purchaser while Purchaser holds title to the Property.

ARTICLE 4. SALE MOTION AND COURT APPROVAL; BIDDING PROCEDURES.

4.1 Court Approval; Better Offers. This Agreement shall be conditioned upon (a) Seller not receiving, after notice and a hearing, a higher or better offer for the Property and (b) the Bankruptcy Court approving of both the sale and the sale procedures as described in this Section 4.2. Accordingly, nothing in this Agreement shall prohibit the Sellers from continuing to market the Property and to solicit offers for the Property, provided that any such offers shall be submitted in according with the Bidding Procedures Order (as hereinafter defined).

4.2 Sale Motion Bidding Procedures. As soon as reasonably practical, Trustee shall file a motion (the "**Sale Motion**") with the Bankruptcy Court pursuant to Bankruptcy Code §§ 105 and 363 and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy**

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Rules”) seeking (a) entry of the Bidding Procedures Order (as hereinafter defined) and approval of the Breakup Fee (as hereinafter defined) and (b) entry of an order (the “**Sale Order**”) approving the sale of the Property free and clear of all liens, claims, encumbrances and interests pursuant to Bankruptcy Code § 363. Purchaser agrees that it will, at Purchaser’s own cost, promptly take all actions as are reasonably requested by the Seller to assist in obtaining the Bankruptcy Court’s entry of the Bidding Procedures Order and the Sale Motion, including, without limitation, furnishing affidavits, financial information or other documents or information for filing with the Bankruptcy Court and making Purchaser’s employees and representatives available to testify before the Bankruptcy Court.

(a) Intentionally omitted.

(b) *Bidding Procedures Motion and Order.* The Sale Motion will seek: (a) entry of an order (the “**Bidding Procedures Order**”): (i) approving the form of this Agreement, (ii) establishing and approving bidding procedures and notices with respect to the sale of the Property, (iii) approving the Breakup Fee (as hereinafter defined), (iv) establishing an initial overbid of at least Three Hundred Thousand Dollars and No Cents (\$300,000.00) (the “**Initial Overbid**”), and (v) scheduling an auction of the Property (the “**Auction**”) and a hearing to approve the Sale Motion (the “**Sale Hearing**”).

(c) *Breakup Fee.* The Bidding Procedures Order shall provide that if Seller or the Bankruptcy Court determines that Purchaser has not submitted the highest and best offer for the Property, Seller shall pay Purchaser a break-up fee of Two Hundred Fifty Thousand Dollars and No Cents (\$250,000.00) (the “**Breakup Fee**”).

4.3 Entry of Sale Order Required. The obligations of the Seller and Purchaser under this Agreement are expressly conditioned upon entry of the Sale Order by the Bankruptcy Court, in form and substance reasonably acceptable to Purchaser, approving this Agreement and authorizing the Trustee to execute, deliver and perform this Agreement and containing the terms described below in Section 4.4. In the event the Bankruptcy Court fails to enter the Sale Order within ninety (90) days after the full execution hereof, Purchaser or the Seller may terminate this Agreement by written notice to each other. If Purchaser or the Seller terminates this Agreement

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pursuant to this Section 4.3, then this Agreement shall be null and void and there shall be no further liabilities or obligations upon Purchaser, the Trustee, the Debtor's Estate, the Executrix or the Decedent's Estate pursuant to this Agreement, except as to any indemnifications that specifically survive the termination of this Agreement.

4.4 Sale Free and Clear of Liens. The Sale Order shall provide that, pursuant to Bankruptcy Code §§ 363(b) and 363(f), the sale of the Property to Purchaser shall be free and clear of all liens, claims and encumbrances affecting the Property, other than the Permitted Encumbrances.

4.5 Contract Void if Not Approved. If, at or after the Auction, Seller accepts an offer from a party other than Purchaser, whether or not this Agreement previously has been approved or authorized by the Bankruptcy Court, except to the extent that Purchaser has become the back-up bidder for the Property in accordance with the Bidding Procedures Order and the Sale Order, (a) this Agreement shall be null and void with respect to the Trustee, the Debtor's Estate, the Executrix, the Decedent's Estate and Purchaser and any assignee of Purchaser, and (b) the Trustee, the Debtor's Estate, the Executrix, the Decedent's Estate and Purchaser and any assignee of Purchaser shall have no further rights or obligations hereunder.

ARTICLE 5. NO CONTINGENCIES OTHER THAN DUE DILIGENCE.

5.1 Due Diligence. On not less than two (2) business days' notice to Seller, Purchaser may enter onto the Property to conduct an inspection of the Property (the "**Inspection**"); provided that (a) Purchaser promptly repairs any damage to the Property caused by such entry, (b) Purchaser restores the Property to the condition that existed prior to such entry, (c) Purchaser complies with all applicable legal requirements, (d) Purchaser provides copies of all reports and results of tests and studies to Seller upon Seller's request (e) Purchaser indemnifies and holds Seller harmless from any claim, action, injury, or otherwise, occurring in connection with Purchaser's access to the Property and (f) Purchaser shall obtain insurance in the amount of no less than \$1,000,000 in connection with its access to the Property, which shall name Seller as an additional insured. Notwithstanding anything herein to the contrary, Purchaser shall not perform any invasive environmental testing (i.e. Phase II Environmental Site Assessment) at or on the Property. The Purchaser shall complete the Inspection and any other due diligence Purchaser may require within thirty (30) days from the Effective Date (the "**Due Diligence Period**"). **TIME SHALL BE OF THE ESSENCE** with respect to the deadlines set forth in this Section 5.1.

5.2 No Other Contingencies. There is no financing contingency or any other contingency to Purchaser's obligations under this Agreement other than as provided in Section 5.1. This sale is an "all cash" sale.

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ARTICLE 6. PHYSICAL CONDITION OF PROPERTY.

6.1. The Property is being sold "as is". Seller does not make any representations as to the physical condition of the Property, or any other matter or thing affecting or related to the Property except as otherwise specifically set forth herein. Purchaser hereby acknowledges that Purchaser has inspected the Property and agrees to take title to the Property "AS IS", "WHERE IS" and "WITH ALL FAULTS". Except as set forth in this Agreement, Seller. Seller's agents or representative make no representations, warranties, or guarantees, expressed, implied or statutory, written or oral, respecting the Property or the physical condition thereof. Seller is not liable or responsible for or bound in any manner by, any express or implied representations, warranties, covenants, agreements, obligations, guarantees, statements, information or inducements pertaining to the Property or any part thereof, title to the Property, the physical condition thereof, the fitness and quality thereof, the value and profitability thereof, or any other matter or thing whatsoever with respect thereto. Without limiting the foregoing, Purchaser acknowledges and agrees that, except as expressly set forth in this Agreement, neither Seller nor any member, employee, agent or representative of Seller is liable or responsible for or bound in any manner by (and Purchaser has not relied upon) any verbal or written or implied representations, warranties, covenants, agreements, obligations, guarantees, statements, information or inducements pertaining to the Property or any part thereof, and any other information respecting same furnished by or obtained from Seller or any agent or representative of Seller. Purchaser agrees, warrants and represents that, except as set forth in this Agreement, Purchaser has relied, and shall rely, solely upon its own investigations of all such matters concerning the Property and that Purchaser assumes all risks with respect thereto. Purchaser acknowledges and agrees that, except as otherwise provided in this Agreement, Purchaser is purchasing the Property in its "AS IS" condition. Purchaser, by paying the consideration for the Property and accepting the deed to the Property at closing, releases seller from, and agrees to waive all claims of liability for or attributable to any environmental or other condition of the Property. The provisions of this sub-article 6.1 shall survive the closing.

6.2. Except as provided in Section 5.1, Purchaser is not entitled to enter onto the Property to conduct any inspections without the consent of Seller. Should Seller provide such consent, Purchaser agrees to restore in a timely and expeditious manner any portion of the Property damaged by Purchaser's entry onto the Property in exactly the same condition existing prior to such entry and Purchaser shall be responsible for repairing any damage to the Property. Purchaser shall fully indemnify and hold Seller and Debtor's Estate harmless from and against any and all losses, damages, claims, suits, legal judgments, costs, expenses and legal fees, including attorneys' fees, which the Trustee, the Debtor's Estate, the Executrix or the Decedent's Estate may at any time sustain arising from Purchaser's entry onto the Property or the entry by Purchaser's agents. The obligation of Purchaser to indemnify and hold which the Trustee, the Debtor's Estate, the Executrix or the Decedent's Estate harmless shall survive the termination of this Agreement and Closing. Purchaser, on its own behalf and on behalf of any of its agents, hereby waives and gives up any and all claims that it has or may ever have against the Trustee,

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the Debtor's Estate, the Executrix or the Decedent's Estate for any loss or injury that it or its agents may have or ever have relative to or resulting from the entry onto the Property.

6.3 Except for the Sale Order, Seller shall not be obligated to obtain any licenses, permits, certificates of occupancy (or equivalents) or approvals issued by governmental or quasi-governmental bodies, benefiting the Property and required for the transfer of the Property. Seller shall not be responsible to cleanup, remove, resolve or minimize the impact of or otherwise deal with any spill or discharge of any Hazardous Substance on or from the Property required by the New York Department of Environmental Conservation or the New York Department of Environmental Protection, or otherwise required by any applicable environmental laws, rules and regulations of the Federal, State, County, City or Municipal governments and of all other governmental authorities having or claiming jurisdiction over the Property or appurtenances thereto.

6.4 The provisions of this Article 6 shall survive the Closing or termination of this Agreement.

ARTICLE 7. WARRANTIES AND REPRESENTATIONS.

7.1. Warranties, Representations and Covenants of Seller.

7.1.1 *Warranties, Representations and Covenants of the Trustee.* The Trustee warrants and represents that:

(a) Subject to the entry of the Sale Order, the Trustee has full power, capacity, and authority to: (i) execute and deliver this Agreement in his capacity as Chapter 11 Trustee for the Debtor; and (ii) to consummate the transactions set forth in this Agreement.

(b) The execution, delivery and performance by the Trustee of the terms of this Agreement does not conflict with any agreement to which the Trustee is a party.

(c) This Agreement is the legal, valid and binding obligation of the Trustee, enforceable against the Trustee in accordance with its terms, subject only to the entry of Sale Order and to general equitable principles (whether asserted in an action at law or equity).

(d) The Trustee is not a foreign person as such term is defined under Section 1445(f)(3) of the Code.

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7.1.2 *Warranties, Representations and Covenants of Executrix.* The Executrix warrants and represents that:

(a) The Executrix has full power, capacity, and authority to: (i) execute and deliver this Agreement in her capacity as Executrix for the Decedent's Estate; and (ii) to consummate the transactions set forth in this Agreement.

(b) The execution, delivery and performance by the Executrix of the terms of this Agreement does not conflict with any agreement to which the Executrix is a party.

(c) This Agreement is the legal, valid and binding obligation of the Executrix, enforceable against the Executrix in accordance with its terms, subject only to general equitable principles (whether asserted in an action at law or equity).

(d) The Executrix is not a foreign person as such term is defined under Section 1445(f)(3) of the Code.

7.2. Warranties and Representations of Purchaser. Purchaser warrants and represents that:

(a) Purchaser has the power, capacity and authority to execute and deliver this Agreement, to perform hereunder, and to consummate the transactions contemplated hereby. The execution, delivery and performance by Purchaser of this Agreement and each and every agreement, document and instrument provided for herein have been duly authorized and approved as and if necessary according to any organizational documents (if applicable) or agreements requiring such authorization or approval. This Agreement, and each and every other agreement, document and instrument to be executed, delivered and performed by Purchaser in connection herewith, constitutes the valid and legally binding obligation of Purchaser enforceable against Purchaser in accordance with their respective terms, except as enforceability may be limited by applicable equitable principles, or by bankruptcy, insolvency, reorganization, moratorium, or similar laws from time to time in effect affecting the enforcement of creditors' rights generally.

(b) The execution and delivery of this Agreement and each and every agreement, document and instrument to be executed and delivered in connection herewith by Purchaser does not violate or constitute an occurrence of default under any provision of, or conflict with, result in acceleration of any obligation under, or give rise to a right by any party to terminate its obligations under, any mortgage, deed of trust, conveyance to secure debt, note, loan, lien, lease, agreement, instrument, or any order, judgment, decree or other arrangement to which Purchaser is a party or is bound or by which its assets are affected.

(c) Purchaser has, and will continue to have at all times prior to Closing, sufficient cash on hand to pay the Purchase Price with no need for financing.

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(d) Guarantor is an officer and managing member of the Purchaser.

(e) Purchaser (i) is not included on any Government List (as hereinafter defined); (ii) is not subject to the prohibitions contained in Presidential Executive Order No. 133224 (September 23, 2001) or in any enabling or implementing legislation or other Presidential Executive Orders in respect thereof; (iii) has not been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any offense under the criminal laws against terrorism, the criminal laws against money laundering, the Bank Secrecy Act, as amended, the Money Laundering Control Act of 1986, as amended, or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Public Law 107-56 (October 26, 2001), as amended. For purposes of this Agreement, the term "Government List" means (1) the Specially Designated Nationals and Blocked Persons Lists maintained by the Office of Foreign Assets Control, United States Department of the Treasury ("OFAC"), (2) the Denied Persons List and the Entity List maintained by the United States Department of Commerce, (3) the List of Terrorists and List of Disbarred Parties maintained by the United States Department of State, (4) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the lists, laws, rules and regulations maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation, (5) any other similar list maintained by the United States Department of State, the United States Department of Commerce or any other governmental authority or pursuant to any Executive Order of the President of the United States of America, and (6) any list or qualification of "Designated Nationals" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, as all such Government Lists may be updated from time to time. For purposes of this Agreement, "party" means (i) Purchaser, (ii) all persons or entities that control are controlled by, or are under common control with Purchaser, (iii) all persons or entities which have an ownership interest in Purchaser, whether direct or indirect, and (iv) all persons or entities for whom or on whose behalf Purchaser acts.

(f) Purchaser is a knowledgeable, experienced and sophisticated buyer of real estate, and that it is relying solely on its own expertise and that of its professionals in purchasing the Property. Upon Closing, Purchaser will assume the risk that adverse matters, including, but not limited to, adverse physical and environmental conditions, that may or may not have been revealed by Purchaser's inspections and investigations.

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7.3. Survival.

(a) Survival of Representations and Warranties of the Seller. All representations, warranties, agreements, covenants and obligations made or undertaken by the Seller in this Agreement are material, have been relied upon by Purchaser but shall not survive the Closing hereunder and shall merge in the performance of the obligation hereunder, except as otherwise set forth herein.

(b) Survival of Representations, Covenants and Warranties of Purchaser. All representations, warranties, agreements, covenants and obligations made or undertaken by Purchaser in this Agreement or in any document or instrument executed and delivered pursuant hereto are material, have been relied upon by the Seller but shall not survive the Closing hereunder and shall merge in the performance of the obligation hereunder, except as otherwise set forth herein.

ARTICLE 8. CONDITIONS TO CLOSING.

8.1. Conditions to Closing.

(a) The Bankruptcy Court shall have entered the Sale Order in form and substance reasonable acceptable to both the Seller and Purchaser.

(b) The Seller shall have delivered all items described in Section 3.3.

(c) The representations and warranties made by the parties in this Agreement and the Schedules and Exhibits hereto or any document or instrument delivered hereunder or on the Closing Date shall be true and correct on the Closing Date with the same force and effect as though such representations and warranties had been made on and as of such time (except for changes contemplated by this Agreement), provided, however that either party may waive this provision as to any representation or warranty of the other party; and

(d) No injunction shall have been issued by any court, governmental agency or legislative body staying the Sale Order or otherwise restraining or prohibiting the consummation of this Agreement or the consummation of the transactions contemplated hereby.

ARTICLE 9. CONDEMNATION.

9.1. Condemnation. If the Property is condemned in whole or in such part that, in Purchaser's reasonable judgment, it cannot be used effectively for Purchaser's reasonable use and Purchaser elects, in its sole discretion, to terminate this Agreement, then this Agreement, upon notice to the Seller, which shall include all documents regarding any and all condemnations, shall be terminated and thereafter neither party shall have any further obligation to the other hereunder, with the exception of those provisions that by the express term thereof survive the

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(Substitution Page 9/20/2017)

termination of this Agreement. If the Property is condemned in part and Purchaser does not elect to terminate, this Agreement shall continue in full force and effect and without adjustment to the consideration required from Purchaser hereunder, provided, however, at the Closing, the Seller shall deliver to Purchaser all the net proceeds of such condemnation received by the Seller or an assignment to Purchaser of the Seller's rights to receive such proceeds whereupon Purchaser shall have the sole right to prosecute, or to continue to prosecute, said condemnation claim. Prior to any cancellation of this Agreement pursuant to this Article 9, Purchaser may, at Purchaser's sole cost, participate with the Seller in all condemnation proceedings relating to the Property. So long as this Agreement shall remain in effect, the Seller shall not compromise any award as to any taking without Purchaser's prior written consent or approval by the Bankruptcy Court. Purchaser's intention to terminate or to continue to Closing as provided in this Section shall be made and notice given to the Seller within fifteen (15) days after Purchaser receives written notice of the commencement of such condemnation action. The Seller is not obligated to take any action regarding any condemnation action.

ARTICLE 10. TERMINATION AND REMEDIES.

10.1. Termination. Anything contained in this Agreement to the contrary notwithstanding, this Agreement only may be terminated at any time prior to the Closing Date (the "**Agreement Termination Date**") as follows:

(a) by Purchaser, by written notice (the "Termination Notice") delivered during the Due Diligence Period, **TIME BEING OF THE ESSENCE**, stating that the property is unsuitable for the Purchaser's intended development due to (i) the existing environmental conditions and/or (ii) zoning regulations;

(b) by failure to obtain approval from the Bankruptcy Court of the Sale Order, as set forth in Section 4.3 hereof;

(c) by mutual written consent of Purchaser and the Seller; or

(d) upon the receipt by the Seller and approval by the Bankruptcy Court of a higher or better offer for the Property from a party other than Purchaser as set forth in Sections 4.3 and 4.5 hereof; provided however, that Purchaser's right to receive the Breakup Fee shall survive this termination.

10.2. Notice of Termination. Any party desiring to terminate this Agreement pursuant to Section 10.1 shall give written notice of such termination to the other party to this Agreement.

10.3. Effect of Termination. In the event this Agreement shall be rightfully terminated pursuant to Section 10.1, the Deposit shall be returned to Purchaser in accordance with Section 2.1(d) and no party shall have any further obligations or liability for any damages or expenses

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under this Agreement, unless otherwise indicated herein. In such event, each party shall pay all expenses incurred by it in connection with this Agreement. In the event of any other termination, all further obligations of the parties under this Agreement shall be terminated without further liability of any party to the other, except as to Purchaser's indemnity obligations, but each party shall retain any and all rights incident to a breach by the other party of any covenant, representation or warranty under this Agreement.

ARTICLE 11. REMEDIES.

11.1. If Purchaser defaults in its obligations hereunder, Seller shall have the right to (i) retain the Deposit as liquidated damages, such damages being difficult, if not impossible to ascertain, and not as a penalty; and (ii) pursue all remedies available at law. If Seller shall default in its obligations hereunder, then Purchaser, as its sole and exclusive remedy, shall be entitled to a return of the Deposit.

ARTICLE 12. BROKERS.

12.1 Purchaser represents and warrants to Seller that there is no real estate brokerage firm involved in consummating this transaction except for Century 21 AMH Commercial, a division of Century 21 American Homes, 7626 Broadway, Elmhurst, New York 11373. Seller shall pay to Century 21 AMH Commercial a commission in accordance with its agreement with Century 21 AMH Commercial. In the event that any other real estate broker, salesperson, or agent claims entitlement to a real estate brokerage commission arising out of this subject transaction as a result of its relationship to Purchaser, Purchaser shall indemnify and hold Seller harmless from and against any and all such claims for commission, including but not limited to, Seller's attorney fees and costs of suit. The representations, indemnities and hold harmless agreements set forth herein shall survive the Closing or termination of this Agreement.

ARTICLE 13. MISCELLANEOUS.

13.1. Entire Agreement. This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof, and no prior or other writing or oral agreement or undertaking pertaining to any such matter shall be effective for any purpose. This Agreement may not be changed or modified, nor any provision hereof waived, except in writing by the party to be charged thereby.

13.2. Exhibits Incorporated. All Schedules and Exhibits attached hereto are incorporated herein by reference, and all blanks in such Exhibits, if any, will be filled in as required in order to consummate the transactions contemplated herein and in accordance with this Agreement.

13.3. Recording. In no event shall Purchaser record this Agreement of Sale or any memorandum of this Agreement of Sale. After entry of the Sale Order, if Purchaser is the

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successful bidder, Purchaser may record a Notice of Settlement in connection with this transaction.

13.4. Notices. Any notice, consent, approval, waiver, or election that any party shall be required or permitted to make or give under this Agreement shall be in writing and shall be sent by a nationally recognized overnight mail courier, and shall be effective upon the date of delivery via overnight courier and addressed to the respective parties at the addresses below:

(a) If to Purchaser or Guarantor:

Madd Equities LLC
15 Verbena Avenue, Suite 200
Floral Park, New York 11001
Attention: Jorge Madruga
Facsimile:
Email:

With copy to:

Rosen Law LLC
216 Lakeville Road
Great Neck, New York 11020
Attention: Gary Rosen, Esq.
Facsimile: 516-334-3000
Email: grosen@rosenlawllc.com

(b) If to Seller:

Donald F. Conway,
in his capacity as Chapter 11 Trustee
for Jose Louis Vazquez
c/o The Mercadien Group
3625 Quakerbridge Road
Hamilton, New Jersey 08619
Facsimile: (609) 689-9720
Email: DConway@Mercadien.com

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With copy to:

J. Alex Kress, Esq.
Becker Meisel LLC
Eisenhower Plaza II
354 Eisenhower Parkway, Suite 1500
Livingston, New Jersey 07039
Facsimile: (973) 422-9122
Email: akress@becker.legal

And to

Mitchell Malzberg, Esq.
Law Offices of Mitchell Malzberg
6 Main Street, Suite 7
P.O. Box 5122
Clinton, NJ 08809
Facsimile: (908) 933-0808
Email: mmalzberg@mmpclawfirm.com

And to

Seth D. Friedland, Esq.
Herrick Feinstein LLP
Two Park Avenue
New York, NY 10016
Facsimile: (212) 545-2364
Email: sfriedland@herrick.com

Any party listed above may, from time to time, change the address to which notice shall be sent by like notice given to the other parties listed above, except that no party may change its address to other than a street address. Any notice given that does not conform to this Section shall be effective only upon receipt. The parties acknowledge and agree that the respective attorneys of the parties shall be authorized to receive and send notices on behalf of their clients.

13.5. Governing Law. This Agreement shall be governed by and construed under the laws of the State of New Jersey, without regard to conflict of law principles.

13.6 Jurisdictions. The parties hereto agree that, during the period from the date hereof until the date on which the Debtor's Bankruptcy Case is closed or dismissed (the "**Bankruptcy Period**"), any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought exclusively in the Bankruptcy Court. The parties further agree that,

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following the Bankruptcy Period, any suit, action or proceeding with respect to this Agreement or the transactions contemplated hereby shall be brought against any of the parties exclusively in either the United States District Court for the District of New Jersey or any state court of the State of New Jersey located in such district, and each of the parties hereby irrevocably consents to the jurisdiction of such court and the Bankruptcy Court (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in the such courts or that any such suit, action or proceeding which is brought in such courts has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of the Bankruptcy Court, the United States District Court for the District of New Jersey or any state court of the State of New Jersey.

13.7. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

13.8. Interpretation. This Agreement shall be construed reasonably to carry out its intent without presumption against or in favor of either party. If any provision hereof shall be declared invalid by a court or in any administrative proceedings, then the provisions of this Agreement shall be construed in such manner so as to preserve the validity hereof and the substance of the transaction herein contemplated to the extent possible. The paragraph and/or section headings and the arrangement of this Agreement is for the convenience of the parties hereto and do not in any way affect, limit, amplify or modify the terms and provisions hereof.

13.9. Singular, Plural, Etc. Wherever herein the singular number is used the same shall include the plural and the masculine gender shall include the feminine and neuter genders and vice versa, as the context shall require.

13.10. Counterparts. This Agreement may be executed in several counterparts, which shall constitute one and the same instrument. Facsimile and e-mailed signatures will be treated as original signatures for the purposes of this Agreement.

13.11. Calculation of Time Periods. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is not a business day, the period in question shall end on the next succeeding business day. Time shall be of the essence for all the terms and conditions of this Agreement with respect to Purchaser's obligations. For the purposes of this Section 13.11, "business day" means a day other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

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13.12. Dollars. Any reference in this Agreement to \$ shall mean U.S. dollars.

13.13. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, executors, administrators, successors and assigns.

13.14. Assignment. Purchaser shall have the right to assign this Agreement to a designee provided, that Purchaser and Guarantor shall be and remain jointly and severally liable with any such designee for payment of the Purchase Price and all other obligations of Purchaser under this Agreement.

13.15. Parties Represented by Counsel. The parties hereto have been advised by experienced counsel, and have participated jointly, in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted in its entirety by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. Purchaser acknowledges that the Purchase Price reflects the "AS IS," "WHERE IS" nature of this sale and any faults, liabilities, defects, or other adverse matters that may associated with the Property. The Purchaser and Purchaser's counsel have fully reviewed the disclaimers and waivers set forth in this Agreement, and understand the significance and effect thereof. The Purchaser acknowledges and agrees that the disclaimers and other agreements set forth herein are an integral part of this Agreement, and the Seller would not have agreed to sell the Property to the Purchaser for the Purchase Price without the disclaimers and other agreements set forth in this Agreement.

13.16. Waiver. Any failure on the part of either party hereto to comply with any of its obligations, agreements or conditions hereunder may be waived by the other party hereto. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

13.17. Attorneys' Fees. In the event that any action or proceeding is commenced to obtain a declaration of rights hereunder, to enforce any provision hereof, or to seek rescission of this Agreement for default contemplated herein, whether legal or equitable, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees in addition to all other relief to which it may be entitled therein. All indemnities provided for herein shall include, but not be limited to, the obligation to pay costs of defense in the form of court costs and reasonable attorneys' fees.

13.18. Further Assurances. Each party covenants that (i) it will use commercially reasonable efforts to consummate the transactions set forth herein and (ii) at any time, and from time to time, after the Closing Date, it will execute such additional instruments and take such actions as may be reasonably requested by the other parties to confirm or perfect or otherwise to carry out the intent and purposes of this Agreement. If Seller after the Closing receives payment

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on any rent pursuant to the Leases, Seller shall immediately remit such amount received to Purchaser, together with such information identifying the account to which such payment relates as is reasonably available to Seller, and in any event not later than three (3) business days of receipt by Seller.

13.19. Escrow Agent. The parties hereto acknowledge that Becker LLC is counsel for the Trustee in connection with the transactions contemplated in this Agreement, merely acting as a stakeholder under this Agreement, and therefore nothing in this Agreement shall preclude Escrow Agent from continuing to represent the Trustee including, without limitation, with regard to any dispute or controversy arising out of this Agreement, the transactions contemplated thereby, or any other matter. In the event that a dispute arises as to disposition of the Deposit, the Escrow Agent may retain the Deposit until directed to disburse such funds by a court of competent jurisdiction or place the Deposit in the control of a court of competent jurisdiction to await the determination of such court or the mutual written agreement of Seller and Purchaser with respect to disposition of the Deposit. In the event the funds are placed in the control of a court of competent jurisdiction, the Escrow Agent shall have no further obligation under this Agreement. Escrow Agent shall have no liability whatsoever arising out of or in connection with its activity as escrow agent except for its gross negligence or willful misconduct or fraud. Seller and Purchaser jointly and severally agree to indemnify and hold harmless Escrow Agent from and against any and all loss, cost, claim, cause of action, damage, liability, and expense (including reasonable attorneys' fees and expenses and court costs) which may be incurred by reason of its acting as Escrow Agent unless same arises out of Escrow Agent's gross negligence, fraud or willful misconduct.

[Signatures Follow]

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9/13/2017

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

WITNESS:

SELLER:

DONALD F. CONWAY, IN HIS CAPACITY AS
CHAPTER 11 TRUSTEE FOR JOSE LOUIS
VAZQUEZ

By: _____
Name: Donald F. Conway
Title: Chapter 11 Trustee of Jose Louis Vazquez

WITNESS:

EUNICE ARIDI, IN HER CAPACITY AS
EXECUTRIX OF THE ESTATE OF ANDRES
VAZQUEZ

By: _____
Name: Eunice Aridi
Title: Executrix of the Estate of Andres Vazquez

WITNESS:

PURCHASER:

MADDD EQUITIES LLC

By: 
Name: Jorge Madruga
Title: Member

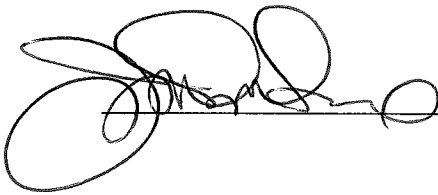
EXECUTION COPY
9/13/2017

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

WITNESS:

SELLER:

DONALD F. CONWAY, IN HIS CAPACITY AS
CHAPTER 11 TRUSTEE FOR JOSE LOUIS
VAZQUEZ



By: Donald F. Conway
Name: Donald F. Conway
Title: Chapter 11 Trustee of Jose Louis Vazquez

WITNESS:

EUNICE ARIDI, IN HER CAPACITY AS
EXECUTRIX OF THE ESTATE OF ANDRES
VAZQUEZ

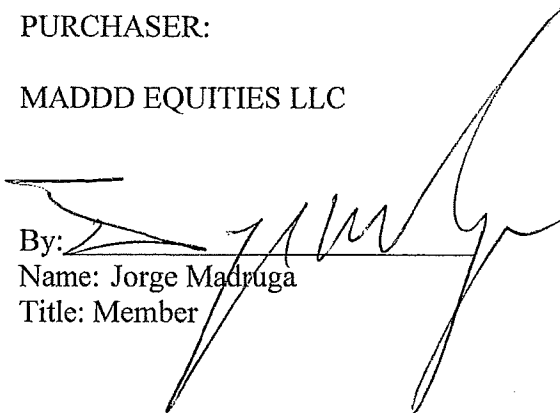
By: _____
Name: Eunice Aridi
Title: Executrix of the Estate of Andres Vazquez

WITNESS:

PURCHASER:

MADDD EQUITIES LLC

By: Jorge Madruga
Name: Jorge Madruga
Title: Member



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9/13/2017

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

WITNESS:

SELLER:

DONALD F. CONWAY, IN HIS CAPACITY AS
CHAPTER 11 TRUSTEE FOR JOSE LOUIS
VAZQUEZ

By: _____

Name: Donald F. Conway

Title: Chapter 11 Trustee of Jose Louis Vazquez

WITNESS:

EUNICE ARIDI, IN HER CAPACITY AS
EXECUTRIX OF THE ESTATE OF ANDRES
VAZQUEZ

By:  _____

Name: Eunice Aridi

Title: Executrix of the Estate of Andres Vazquez

WITNESS:

PURCHASER:

MADDD EQUITIES LLC

By:  _____

Name: Jorge Madruga

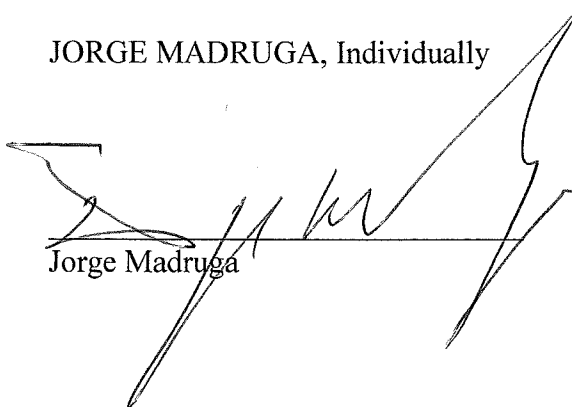
Title: Member

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WITNESS:

GUARANTOR:

JORGE MADRUGA, Individually



Jorge Madruga

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EXHIBIT A

THE PROPERTY

[LEGAL DESCRIPTION TO BE ADDED OR ATTACHED]

1187 2411

SCHEDULE A

ALL those certain lots, pieces or parcels of land situate, lying and being in the Borough of Manhattan, City, County and State of New York, being part of Lots 12, 13 and 14 on a certain map entitled "Map of 92 Acres of Land situate in the 12th Ward of the City of New York being part of the Estate of Isaac Dyckman, deceased, known as part first of the Dyckman Homestead Property", dated 6-1-1870, Randolph Rosa, Surveyor, and filed in the Office of the Register of the County of New York, 6-20-1870 as Map No. 713 excepting such part of said lots as has been taken for the opening and widening of Broadway, and which said residue of said lots, taken together, is bounded and described as follows:

BEGINNING at the point on the southerly side of Broadway distant 225 feet 1/4 inch easterly from the corner formed by the intersection of the southerly side of Broadway with the easterly side of Dyckman Street, which said point of beginning is at the point formed by the intersection of the said southerly side of Broadway with the division line between Lots Nos. 11 and 12 on said map;

THENCE easterly along the southerly side of Broadway, a distance of 75 feet to the point formed by the intersection of the said southerly side of Broadway with the division line between Lots Nos. 14 and 15 on said Map;

THENCE southerly at an interior angle of 90 degrees 41 minutes 8 seconds with the southerly side of Broadway and a long said division line between Lots Nos. 14 and 15, a distance of 156 feet 11 7/8 inches to the northerly line of Lot No. 31 on said map;

THENCE westerly at a right angle with the last mentioned course and along the northerly lines of Lots Nos. 31, 32 and 33 on said map, a distance of 75 feet to the division line between Lots Nos. 11 and 12 on said map;

THENCE northerly at a right angle with the last mentioned course, and at an interior angle of 89 degrees 18 minutes 52 seconds with the southerly side of Broadway and a long said division line between Lots Nos. 11 and 12 on said map, a distance of 157 feet 10 5/8 inches to the point or place of BEGINNING.

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EXHIBIT B

FORM OF DEED

Prepared By: _____

DEED

THIS DEED, made the _____ day of _____, 2017

BETWEEN

Donald F. Conway, in his capacity as Chapter 11 Trustee (the "Trustee"), for Jose Louis Vazquez the debtor in the matter pending in the United States Bankruptcy Court for the District of New Jersey (the "Bankruptcy Court") styled, In re Jose Louis Vazquez, Case No. 13-32646 (the "Debtor"), having an address at c/o The Mercadien Group, 3625 Quakerbridge Road, Hamilton, New Jersey 08619, and Eunice Aridi, in her capacity as the Executrix under the Last Will and Testament of Andres Vazquez, having an address c/o Mitchell Malzberg, Esq., Law Office of Mitchell Malzberg, 6 Main Street, Suite 7, P.O. Box 5122, Clinton, NJ 08809 ("Executrix" and, together with the Trustee, collectively referred to herein as the "Grantor")

AND

_____ (the "Grantee") having address at _____

The words "Grantor" and "Grantee" shall mean all Grantors and all Grantees listed above.

For and in consideration of the sum of _____ DOLLARS (**\$XX,XXX,XXX.XX**), the receipt and sufficiency of which is hereby acknowledged, the Grantor grants and conveys to Grantee all of Grantor's right, title and interest in and to the real property described below (the "Property").

The property consists of all that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Block of 2233, Lot 10 with the address of 4778 Broadway, New York, New York.

The Property referred to in this Deed is described as follows:

SCHEDULE "A" DESCRIPTION ATTACHED HERETO

Together with all buildings and improvements erected thereon, and all tenements, hereditaments and appurtenances thereto; subject to all unpaid real property taxes, tax sale certificates, assessments, zoning and other governmental restrictions, regulations, licenses, and all covenants, conditions,

restrictions, easements, rights-of-way and other matters of record, and such state of facts as an accurate survey would reveal.

BEING the same premises conveyed to Grantor by Deed made by _____, dated _____, recorded _____ in Reel _____ Page _____ in the Office of the Register of the City of New York, County of New York.

This conveyance is made pursuant to that Order: (1) *Authorizing and Approving the Sale by Donald F. Conway, Chapter 11 Trustee for Jose Louis Vazquez of the Real Property Known as 4778 Broadway, New York, New York to _____ Free and Clear of Liens, Interests, Claims and Encumbrances Pursuant to Sections 105 and 363 of the Bankruptcy Code*; (2) *Approving the Purchase and Sale Agreement Between the Vazquez Trustee and _____*; (3) *Waiving the Stay as to the Sale of This Real Property Provided for by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure*; and (4) *Granting Related Relief* entered on _____, by the Honorable Michael B. Kaplan, U.S.B.J. in that certain action entitled In re Bay Way Hand Wash Corp., et al in the United States Bankruptcy Court for the District of New York, Case No. 13-32632 (MBK) pursuant to Sections 363(b), (f) and (m), and 1146(a) of the Bankruptcy Code of Title 11 of the United States Bankruptcy Code whereby the said transfer shall be free and clear of all Liens and Claims (as further set forth in the Order, a copy of which is attached hereto.)

The Deed is only for the right, title and interest of the Grantor in his capacity as Chapter 11 bankruptcy for the Debtor for the Property described in Schedule A hereto. Grantor makes no warranties, covenants, or representations as to the Property except as contained herein.

This Deed is signed and attested to by the Grantor's proper corporate officers or authorized person(s) as of the date at the top of the first page.

Witness/Attest:

GRANTOR:

By: _____
Name: Donald F. Conway
Title: Chapter 11 Bankruptcy
Trustee for Jose Louis Vazquez

Witness/Attest:

GRANTOR:

By: _____
Name: Eunice Aridi
Title: Executrix of the Estate
of Andres Vazquez

STATE OF NEW YORK)
) SS.:
COUNTY OF _____)

On the _____ day of _____, in the year **2017**, before me, the undersigned, a Notary Public in and for said State, personally appeared DONALD F. CONWAY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as the Chapter 11 Trustee for Jose Louis Vazquez, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

UNIFORM FORM CERTIFICATE OF PROOF OF EXECUTION BY A SUBSCRIBING
WITNESS
(Within New York State)

State of New York)
County of _____) ss.:

On the _____ day of _____ in the year **2017**, before me, the undersigned,
personally appeared _____, the subscribing witness to
the foregoing instrument, with whom I am personally acquainted, who, being by me duly
sworn, did depose and say that he resides in _____
_____ (if the place of residence is in a
city, include the street and street number, if any, thereof); that he know(s) Donald F.
Conway to be the individual described in and who executed the foregoing instrument; that
said subscribing witness was present and saw said Donald F. Conway execute the same;
and that said witness at the same time subscribed his/her name as a witness thereto.

Signature and Office of individual
taking proof

STATE OF NEW YORK)
) SS.:
COUNTY OF _____)

On the _____ day of _____, in the year **2017**, before me, the undersigned, a Notary Public in and for said State, personally appeared EUNICE ARIDI, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity as the Executrix of the Estate of Andres Vazquez, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

UNIFORM FORM CERTIFICATE OF PROOF OF EXECUTION BY A SUBSCRIBING
WITNESS
(Within New York State)

State of New York)
County of _____) ss.:

On the _____ day of _____ in the year **2017**, before me, the undersigned,
personally appeared _____, the subscribing witness to
the foregoing instrument, with whom I am personally acquainted, who, being by me duly
sworn, did depose and say that he resides in _____
_____ (if the place of residence is in a
city, include the street and street number, if any, thereof); that he know(s) Eunice Aridi to
be the individual described in and who executed the foregoing instrument; that said
subscribing witness was present and saw said Eunice Aridi execute the same; and that
said witness at the same time subscribed his/her name as a witness thereto.

Signature and Office of individual
taking proof

SCHEDULE "A"
DESCRIPTION OF PROPERTY

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in compliance with D.N.J. LBR 9004-2(c)
BECKER LLC
354 Eisenhower Parkway
Plaza II, Suite 1500
Livingston, New Jersey 07039
Phone: (973) 422-1100
Attorneys for Donald F. Conway, Chapter 11 Trustee
for Jose Louis Vazquez (one of the jointly
administered Chapter 11 Debtors herein)
J. ALEX KRESS, ESQ.
Email address: *akress@becker.legal*

In re:

BAYWAY HAND CAR WASH CO., et al.

Debtors.

Jointly Administered Under

Case No. 13-32632 (MBK)

Judge: Michael B. Kaplan

Chapter 11

NOTICE OF BIDDING PROCEDURES, AUCTION DATE AND SALE HEARING

PLEASE TAKE NOTICE that Donald F. Conway in his capacity as Chapter 11 Trustee (the "*Vazquez Trustee*") for Jose Louis Vazquez ("*Vazquez*") has filed a motion (the "*Sale Motion*") with the United States Bankruptcy Court for the District of New Jersey, (the "*Bankruptcy Court*"), seeking authority to conduct an auction (the "*Auction*") to sell the following real property:

**Lot(s) 10; Block(s) 2233
4778 Broadway
New York, New York**

(the "*Broadway Property*"). **The Auction** will be conducted on **November**, **2017, at 11:00 a.m.** (the "*Auction Date*") at Herrick, Feinstein, LLP, Two Park Avenue, New York, New York 10016. **A hearing to confirm and approve the sale** of the Broadway Property (the "*Sale Hearing*") will be conducted **on November**, **2017, at :00 .m.** in the Courtroom of the Honorable Michael B. Kaplan, U.S.B.J., at the United States Bankruptcy Court for the District of New Jersey, Clarkson S. Fisher U.S. Courthouse,

402 East State Street, Trenton, New Jersey 08608 (“*Judge Kaplan’s Courtroom*”). **Objections to the Sale Motion must be submitted or before November, 2017, at 4:00 p.m. (the “*Objection Deadline*”).** Objections, if any, to the Sale Motion must: (i) be in writing; (ii) specify with particularity the basis of the objection; and (iii) be filed with the Bankruptcy Court and simultaneously served so as to be actually received by Objection Deadline by (a) counsel to the Vazquez Trustee at the following address: Becker LLC, Attention: J. Alex Kress, Esq., 354 Eisenhower Parkway, Plaza II, Suite 1500, Livingston, New Jersey 07039, (b) counsel to the Co-Owner at the following address: Law Offices of Mitchell Malzberg, Attn.: Mitchell J. Malzberg, Esq., 6 Main Street, Suite 7, P.O. Box 5122, Clinton, NJ 08809; (c) counsel to Jose Vazquez, at the following address: Saul Ewing LLP, Attn.: Sharon Levine, Esq., One Riverfront Plaza, 1037 Raymond Boulevard, Suite 1520, Newark, NJ 07102-5426; (d) counsel to the Business Debtors’ Trustee at the following address: Wasserman, Jurista & Stolz, P.C., 110 Allen Road, Suite 304, Basking Ridge, NJ 07920 and (e) the Office of the United States Trustee, Attn: Peter J. D’Auria, Esq., Attorney Advisor, One Newark Center, 1085 Raymond Boulevard, Suite 2100, Newark, NJ 07102

PLEASE TAKE FURTHER NOTICE that, through the Sale Motion, the Vazquez Trustee seeks to sell the Broadway Property free and clear of all liens, claims and encumbrances, with valid liens, claims and encumbrances to attach to the sale proceeds, including the interests of the co-owner, the Estate of Andres Vazquez, deceased.

PLEASE TAKE FURTHER NOTICE that any party that wishes to obtain a copy of the Sale Motion, including all exhibits, and a copy of the form of Agreement of Sale approved by the Bankruptcy Court (the “*Stalking Horse Agreement*”), may make such a request in writing to Becker, LLC, 354 Eisenhower Parkway, Plaza II, Suite 1500, Livingston, New Jersey 07039, Attn.: J. Alex Kress, Facsimile (Fax) No.: (973) 422-9122, E-mail: akress@becker.legal.

PLEASE TAKE FURTHER NOTICE that the following requirements and procedures (collectively, the “*Bidding Procedures*”) shall apply to any competing offer for the Broadway Property:

- a. Auction. At present, the Vazquez Trustee has received a qualified bid on the Broadway Property in the amount of **\$12,300,000.00** in cash (the “*Stalking Horse Bid*”) and, if the Vazquez Trustee receives any other qualified bids, the Vazquez Trustee will auction the Broadway Property on the Auction Date. If the Vazquez Trustee does not receive any other qualified bids, the Auction will be cancelled and the Vazquez Trustee will proceed to the Sale Hearing with respect to the Stalking Horse Bid.
- b. Entry into a Stalking Horse Real Estate Agreement of Sale. The Vazquez Trustee has identified a prospective purchaser, Maddd Equities LLC or its designee (the

“*Stalking Horse*”). The Vazquez Trustee and the Stalking Horse have entered into the Stalking Horse Agreement to sell the Broadway Property to the Stalking Horse. Pursuant to the Sale Motion, and the Stalking Horse Agreement, the Stalking Horse’s offer remains subject to higher or otherwise better offers.

- c. Breakup Fee: The Stalking Horse Agreement provides that if the Stalking Horse is not the successful bidder at the Auction, the Stalking Horse shall receive a breakup fee of \$250,000 (the “*Breakup Fee*”), which has been approved by the Bankruptcy Court and will be payable to the Stalking Horse.
- d. Bidder Qualifications: In order to be a qualified bidder, a party must establish that the bidder has liquid assets or a combination of liquid assets and non-contingent financing commitments in an amount sufficient to close on the sale of the Broadway Property. In addition, the bidder must disclose any connection between the bidder and the Debtors, the Trustees, the Trustees’ respective counsel and financial advisors and any creditors. The bidder also must disclose all agreements, if any, between the bidder, any other potential bidder for the Broadway Property and any of the Debtors, the Trustees and the Trustees respective counsel in connection with the sale of the Broadway Property.
- e. Qualified Bids. In order to bid on the Broadway Property, a bidder must submit to the Vazquez Trustee’s counsel by [_____, 2017] **not later than, at 4:00 p.m.** (the “*Bid Deadline*”) the following: (i) a written bid in an amount of at least \$_____ in cash, (ii) a proposed form of sale agreement which shall be substantially similar to, and shall be marked to show any changes from, the form of the Stalking Horse Agreement, (iii) an earnest money deposit to Vazquez Trustee’s counsel equal to ten percent (10%) of the bid (the “*Deposit*”) in the form of a certified check or wire transfer payable to the trust account of Vazquez Trustee’s counsel, and (iv) proof that the bidder has the financial ability to close the proposed sale (a “*Qualified Bid*”).
- f. Due Diligence/Confidentiality. Any party desiring due diligence regarding the Broadway Property prior to the Bid Deadline set forth in e. above, may contact the Vazquez Trustee’s retained real estate broker, Richard Gambino, Century 21 AMH Commercial, 7626 Broadway, Elmhurst, NY 11373, Phone No. (718) 446-1300 for information about the Broadway Property and to obtain access to the Broadway Property. All Environmental, Inc. d/b/a AEI Consultants of Jersey City, New Jersey has completed a Phase I, Environmental Site Assessment/Preliminary Assessment, and a Phase II Site Investigation Report of the Broadway Property and is in the midst of preparing a Remedial Investigation and Feasibility Study and related interim reports (the “*Investigation*”). The results of the Investigation will be made available to prospective purchasers, upon execution of a confidentiality agreement.

- g. Escrow of Bid Deposits. All Deposits shall be held by Vazquez Trustee's counsel in a non-interest bearing bank account. Within two (2) business days after entry of the Sale Order, Deposits shall be returned to all bidders except the Successful Bidder (defined below) and the Back-Up Bidder (defined below). The Deposit of the Successful Bidder or the Back-Up Bidder, as applicable, shall be applied to the purchase price in accordance with the Agreement approved by the Bankruptcy Court (the "**Approved Contract**").
- h. Deposit Forfeit. The Deposit will be forfeited as liquidated damages and the Successful Bidder (defined below) held liable for compensatory damages if the Successful Bidder fails to close by reason of its breach of the Approved Contract.
- i. No Contingencies. Bids must not be subject to financing, due diligence, engineering or any other contingencies not expressly approved by the Vazquez Trustee.
- j. Initial Overbid and Bid Increments. Bidders who have submitted a Qualified Bid may improve their bids at the Auction. The initial overbid shall be \$300,000 and the initial, additional increment shall be \$100,000.00 (as such bidding increment may be modified by the Vazquez Trustee, in his sole discretion, at the Auction). The bidding shall be continuous and shall not end until all bidders have been given the opportunity to submit their last and best offers.
- k. Back-Up Bids. At the conclusion of the Auction, the Vazquez Trustee will announce the highest or otherwise best bid (the "**Successful Bidder**") for the Broadway Property and the second highest or otherwise best bid (the "**Back-Up Bidder**") for the Broadway Property. If, for any reason, the Successful Bidder fails to consummate the purchase of the Broadway Property, (i) the Back-Up Bidder will be deemed to have submitted the highest or otherwise best bid and (ii) the Vazquez Trustee shall be authorized to effect the sale of the Broadway Property to the Back-Up Bidder as soon as is commercially reasonable without further order of the Bankruptcy Court. The Vazquez Trustee's counsel shall retain the Back-Up Bidder's deposit in a trust account until the sale to the Successful Bidder closes, at which time the deposit (plus accrued interest, if any) shall be returned to the Back-Up Bidder. (If the Back-Up Bidder provides the Vazquez Trustee's counsel with a federal tax identification number, the trust account shall be an interest-bearing trust account; but, otherwise, the Back-Up Bidder's Deposit shall remain in a non-interest bearing trust account.)
- l. Reservation of Rights to Change Terms of Sale. The Vazquez Trustee reserves the right (i) to impose additional or different terms and conditions at or before the Auction, (ii) to extend the deadlines set forth in the Bidding Procedures and to

adjourn the Auction or the Sale Hearing without further notice other than a public announcement at the Auction or an announcement in open court or notation of the Court's Calendar on the date of the Sale Hearing, and (iii) to establish a reserve price which will establish the minimum bid for the Broadway Property. If no bid reaches the reserve price established by the Vazquez Trustee, the Vazquez Trustee may withdraw the Sale Motion and cancel the Auction.

PLEASE TAKE FURTHER NOTICE that the Vazquez Trustee reserves the right to reject any or all bids if, in the Vazquez Trustee's judgment, any such bid is not for a fair and adequate price or results from collusion among one or more prospective bidders.

BECKER LLC

Attorneys for Donald F. Conway,
Chapter 11 Trustee for Jose Louis Vazquez

By: /s/ J. Alex Kress, Esq.
J. Alex Kress, Esq.

Dated: October 10, 2017

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:

BAYWAY HAND CAR WASH CO., et al.

Debtors.

Jointly Administered Under

Case No. 13-32632 (MBK)

Chapter 11

NOTICE OF AUCTION SALE OF REAL PROPERTY: 4778 BROADWAY (BLOCK 2233, LOT 10), CITY OF NEW YORK, NEW YORK COUNTY, NEW YORK

Donald F. Conway in his capacity as Chapter 11 Trustee (the "*Vazquez Trustee*") for Jose Louis Vazquez ("*Vazquez*"), proposes to sell certain real property, as more particularly described below, by way of a motion pursuant to 11 U.S.C. § 363 (the "*Motion*"). Copies of the Motion and the procedures governing the Auction (defined below) are available upon written request to Becker LLC, Attention: J. Alex Kress, Esq., 354 Eisenhower Parkway, Plaza II, Suite 1500, Livingston, New Jersey 07039 akress@becker.legal ("*Vazquez Trustee's Counsel*").

AUCTION AND SALE HEARING DATE

Pursuant to the Order Establishing and Approving Bidding Procedures With Respect to the Sale of Substantially All of the Debtors' Assets (the "*Bidding Procedures Order*") entered by the United States Bankruptcy Court for the District of New Jersey (the "*Bankruptcy Court*") on October [], 2017, the Vazquez Trustee was granted authority to conduct an auction (the "*Auction*") to sell the following real property: **Block 2233, Lot 10; 4778 Broadway, New York, New York** (the "*Broadway Property*"). The sale will be free and clear of all liens, claims, encumbrances and interest pursuant to 11 U.S.C. § 363.

The Auction will be conducted on **November [], 2017, at 1:00 p.m.** at Herrick Feinstein LLP, Two Park Avenue, New York, NY 10016. **A hearing to confirm and approve the sale** of the Broadway Property (the "*Sale Hearing*") will be conducted on **November [], 2017, at 11:00 a.m.** in the Courtroom of the Honorable Michael B. Kaplan, U.S.B.J., at the United States Bankruptcy Court for the District of New Jersey, Clarkson S. Fisher U.S. Courthouse, 402 East State Street, Trenton, New Jersey 08608 ("*Judge Kaplan's Courtroom*").

BID AND OBJECTION DEADLINES

If any person wishes to submit a bid for the Broadway Property, they must do so in accordance with the procedures adopted in the Bidding Procedures Order. **The deadline for submitting bids is October [], 2017 not later than, at 4:00 p.m.** (the "*Bid Deadline*").

If any creditor or other party in interest in the bankruptcy cases has an objection to the Motion, they must file and serve a written objection in accordance with the Bidding Procedures Order no later than **November [], 2017, at 4:00 p.m.** (the "*Objection Deadline*"). In the event of an objection, a hearing will be held at Judge Kaplan's Courtroom.

If no objection to the Motion is filed with the Clerk of the Bankruptcy Court and served upon the person named below on or before Objection Deadline, the Motion may be approved by the Court.