

Bid Procedures Hearing Date: November 2, 2017, at 11:00 a.m. (EST)
Bid Procedures Objection Deadline: October 26, 2017, at 5:00 p.m. (EST)
Auction Date: January 31, 2018, at 11:00 a.m. (EST)
Debtor Transaction Sale Hearing Date: November 9, 2017, at 11:30 a.m. (EST)
Debtor Transaction Sale Hearing Objection Deadline: November 2, 2017, at 5:00 p.m. (EST)
Public Auction Sale Hearing Date: February 8, 2018, at 2:30 p.m. (EST)
Public Auction Sale Hearing Objection Deadline: February 1, 2018, at 5:00 p.m. (EST)

WHITE & WOLNERMAN, PLLC
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Counsel for the Debtor and
Debtor in Possession

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

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In re:

Chapter 11

BIG TIME HOLDINGS, LLC,

Case No. 17-40960-nhl

Debtor.

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**NOTICE OF DEBTOR'S MOTION FOR ENTRY OF (A) AN ORDER APPROVING
BIDDING PROCEDURES WITH RESPECT TO THE SALE OF DEBTOR'S
REAL PROPERTY AND (B) AN ORDER APPROVING THE SALE OF THE
DEBTOR'S REAL PROPERTY FREE AND CLEAR OF ALL LIENS,
CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS**

NOTICE IS HEREBY GIVEN, as follows:

1. On September 20, 2017, Big Time Holdings, LLC (the "Debtor") filed a motion (the "Motion") with the United States Bankruptcy Court for the Eastern District of New York (the "Bankruptcy Court") requesting entry of (A) an order approving bidding procedures (the "Bidding Procedures") with respect to the sale of the Debtor's real property located at 200-15 Linden Blvd., St. Albans, New York (the "Property") and (B) an order approving the sale of the Property free and clear of all liens, claims, encumbrances, and other interests.

2. As set forth in more detail in the Motion, the Debtor proposes to effectuate a financial restructuring of its estate in one of two ways, as follows: (i) the Debtor will attempt to obtain a loan to refinance the debt secured by the Property in an amount sufficient to fully pay off such secured debt, all unsecured claims against this estate and all costs related to the

administration of the estate, *provided* a closing on such refinancing occurs no later than November 15, 2017; or alternatively (ii) sell the Property (the “Sale”).

3. With respect to the Sale, the Debtor proposes to either (i) sell the Property for \$450,000.00 (the “Debtor Sale Transaction”), subject to the terms more fully set forth in the Motion, *provided* that the Debtor files an asset purchase agreement for such sale on or prior to October 16, 2017 and a closing on such sale occurs no later than November 15, 2017; or alternatively (ii) sell the Property pursuant to a public auction (the “Auction”) in accordance with the Bidding Procedures (the “Public Auction Sale”).

4. A hearing to approve this process and the proposed Bidding Procedures (the “Bidding Procedures Hearing”) will be held before the Honorable Nancy Hershey Lord, United States Bankruptcy Judge, in her Courtroom, Room 3577 at the United States Bankruptcy Court located at 271 Cadman Plaza East, Brooklyn, New York 11201, on **November 2, 2017 at 11:00 a.m. (EST)**.

5. Objections, if any, to entry of an order approving this process and the Bidding Procedures must be made in writing, state with particularity the grounds therefor, and shall be (i) filed with the Court electronically by registered users of the Court’s electronic case filing system, and by all other parties in interest, mailed to the Clerk of the United States Bankruptcy Court for the Eastern District of New York, Conrad B. Duberstein U.S. Bankruptcy Courthouse, 271 Cadman Plaza East, Brooklyn, New York 11201, and (ii) served upon: (a) White & Wolnerman, PLLC, 950 Third Avenue, 11th Floor, New York, New York 10022, Attention: David Wolnerman, Esq.; and (b) the Office of the United States Trustee for the Eastern District of New York, 201 Varick Street, Suite 1006, New York, New York 10014, Attention: William Curtin, Esq., so as to be filed and actually received by no later than **5:00 p.m. (EST) on October 26, 2017**.

6. The Auction of the Property, to the extent required, will be held at the office of White & Wolnerman, PLLC, 950 Third Ave., 11th Floor, New York, New York, on **January 31, 2018 at 11:00 a.m. (EST)**, subject to the terms of the Bidding Procedures.

7. As applicable, a hearing (each, a “Sale Hearing”) for approval of (i) the Debtor Sale Transaction will be held on **November 9, 2017 at 11:30 a.m. (EST)**; and (ii) the Public Auction Sale will be held on **February 8, 2018 at 2:30 p.m. (EST)**, each before the Honorable Nancy Hershey Lord, United States Bankruptcy Judge, in her Courtroom of the Bankruptcy Court, Room 3577, 271 Cadman Plaza East, Brooklyn, New York 11201.

8. Objections, if any, to entry of an order approving the Debtor Sale Transaction must be made in writing, state with particularity the grounds therefor, and shall be (i) filed with the Court electronically by registered users of the Court’s electronic case filing system, and by all other parties in interest, mailed to the Clerk of the United States Bankruptcy Court for the Eastern District of New York, Conrad B. Duberstein U.S. Bankruptcy Courthouse, 271 Cadman Plaza East, Brooklyn, New York 11201, and (ii) served upon: (a) White & Wolnerman, PLLC, 950 Third Avenue, 11th Floor, New York, New York 10022, Attention: David Wolnerman, Esq.;

and (b) the Office of the United States Trustee for the Eastern District of New York, 201 Varick Street, Suite 1006, New York, New York 10014, Attention: William Curtin, Esq., so as to be filed and actually received by no later than **5:00 p.m. (EST) on November 2, 2017.**

9. Objections, if any, to entry of an order approving the Public Auction Sale must be made in writing, state with particularity the grounds therefor, and shall be (i) filed with the Court electronically by registered users of the Court's electronic case filing system, and by all other parties in interest, mailed to the Clerk of the United States Bankruptcy Court for the Eastern District of New York, Conrad B. Duberstein U.S. Bankruptcy Courthouse, 271 Cadman Plaza East, Brooklyn, New York 11201, and (ii) served upon: (a) White & Wolnerman, PLLC, 950 Third Avenue, 11th Floor, New York, New York 10022, Attention: David Wolnerman, Esq.; and (b) the Office of the United States Trustee for the Eastern District of New York, 201 Varick Street, Suite 1006, New York, New York 10014, Attention: William Curtin, Esq., so as to be filed and actually received by no later than **5:00 p.m. (EST) on February 1, 2018.**

10. At the applicable Sale Hearing, the Bankruptcy Court may enter such orders as it deems appropriate under applicable law and as required by the circumstances and equities of the Debtor's chapter 11 case.

Dated: New York, New York
September 20, 2017

WHITE & WOLNERMAN, PLLC

By: /s/ David Wolnerman
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*Attorneys for the Debtor and
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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

-----X
In re:

Chapter 11

BIG TIME HOLDINGS, LLC,

Case No. 17-40960-nhl

Debtor.

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**DEBTOR’S MOTION FOR ENTRY OF (A) AN ORDER APPROVING
BIDDING PROCEDURES WITH RESPECT TO THE SALE OF DEBTOR’S
REAL PROPERTY AND (B) AN ORDER APPROVING THE SALE OF THE
DEBTOR’S REAL PROPERTY FREE AND CLEAR OF ALL LIENS,
CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS**

TO THE HONORABLE NANCY HERSHEY LORD
UNITED STATES BANKRUPTCY JUDGE:

Big Time Holdings, LLC, debtor and debtor in possession in the above-captioned Chapter
11 case (the “Debtor” or the “Company”) respectfully represents as follows:

Background

1. On March 1, 2017 (the “Commencement Date” or the “Petition Date”), the Debtor
filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, in the United States
Bankruptcy Court for the Eastern District of New York (the “Court”).

2. The Debtor is a limited liability company whose sole member is Monique DeFour
Jones (“MDJ”). The Debtor is the owner of the deed to a 2 unit mixed commercial/residential
use building located at 200-15 Linden Blvd., in St. Albans, New York (the “Property”).

3. On or about November 4, 2014, Flushing Bank commenced an action (the “Foreclosure Proceeding”) against MDJ, the Debtor and others to foreclose on a mortgage executed by MDJ and secured by the Property.

4. Thereafter, on December 5, 2016 judgment was entered in favor of Flushing Bank in the amount of \$208,486.28 and a foreclosure sale was scheduled to take place on March 3, 2017.

5. This bankruptcy filing is intended to prevent the forfeiture of the Debtor’s asset through a reorganization process that will inure to the benefit of all of the Debtor’s creditors and other parties in interest.

Jurisdiction and Venue

6. This court has jurisdiction to consider this motion (the “Motion”) and the relief requested herein pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Summary of Relief Requested

7. It is the Debtor’s intention to procure an exit financing loan in an amount sufficient to pay off the allowed secured claim of Flushing Bank, as well as all other claims against this estate and to satisfy the costs of administering this case (the “Exit Financing”). However, to the extent the Debtor is unable to obtain such exit financing on a timely basis, the Debtor requests authorization to sell the Property pursuant to a structured Bankruptcy Code section 363 sale that will undoubtedly allow this estate to realize a purchase price well in excess of what will likely be realized pursuant to a state-court foreclosure sale.

8. In this regard, the Debtor proposes to proceed along a dual track, as follows: (i) the Debtor shall have until November 15, 2017 to close on the Exit Financing; and (ii) to the extent the Debtor is unable, for whatever reason, to close on the Exit Financing by November 15, 2017, the Property will be sold in accordance with the procedures set forth herein.

9. With respect to the sale of the Property, the Debtor has already received indications of interest from at least one potential purchaser willing to purchase the Property for \$450,000.00 (the “Debtor Sale Transaction”) – an amount more than sufficient to satisfy Flushing Bank’s allowed secured claim, as well as all other claims against this estate and to satisfy the costs of administering this case. Accordingly, the Debtor is requesting authorization to pursue the Debtor Sale Transaction, provided that (i) on or prior to October 16, 2017 (the “Debtor Sale APA Deadline”) the Debtor files with the Court a fully executed asset purchase agreement (the “Debtor Sale APA”) providing, among other things, for (a) the purchase of the Property at a purchase price of no less than \$450,000.00; (b) a \$45,000.00, non-refundable deposit; (c) no financing, due diligence or other buyer “outs”; (d) a closing by no later than November 15, 2017 (the “Debtor Sale Closing Deadline”); and (e) together with proof of such purchaser’s financial wherewithal to close on the Debtor Sale Transaction by no later than the Debtor Sale Closing Deadline at the purchase price provided in the Debtor Sale APA, time being of the essence; and (ii) in the event the Debtor fails to file the Debtor Sale APA by the Debtor Sale APA Deadline or a closing on such sale does not occur on or before the Debtor Sale Closing Deadline, whichever occurs earlier, the Property will be sold through Maltz Auctions pursuant to the Bidding Procedures (the “Public Auction Sale”).

10. By this Motion, the Debtor is requesting entry of a bidding procedures order (the “Bidding Procedures Order”) in substantially the form attached to this Motion as Exhibit “A,”

approving the terms and conditions for the sale of the Property (the “Bidding Procedures”) in the event the Debtor fails to file the Debtor Sale APA by the Debtor Sale APA Deadline or a closing on such sale does not occur on or before the Debtor Sale Closing Deadline, whichever occurs earlier, in substantially the form attached as Exhibit “1” to the proposed Bidding Procedures Order.

11. The Debtor proposes two alternative sale hearing dates – (i) in the event the Debtor files the Debtor Sale APA by the Debtor Sale APA Deadline, a hearing (the “Debtor Transaction Sale Hearing”) to consider approval of the Debtor Sale Transaction shall be held on November 9, 2017 at 11:30 a.m.; and (ii) in the event the Debtor fails to file the Debtor Sale APA by the Debtor Sale APA Deadline or a closing on such sale does not occur on or before the Debtor Sale Closing Deadline, whichever occurs earlier, a hearing (the “Public Auction Sale Hearing”, and together with the Debtor Transaction Sale Hearing, each a “Sale Hearing”) to consider approval of the sale of the Property to the Successful Purchaser shall be held on February 8, 2018 at 2:30 p.m.

12. In this regard, the Debtor is also seeking entry of a sale order (the “Sale Order”) approving, at the Debtor Transaction Sale Hearing or Public Auction Sale Hearing, as applicable, the sale of the Property free and clear of all liens, claims, encumbrances, and other interest (the “Sale”) pursuant to the Debtor Sale Transaction or to the successful bidder at the auction for the Property (the “Auction”), as determined by the Bidding Procedures, as applicable. The Sale Order shall be filed and served upon the Notice Parties no less than twenty-three (23) days’ prior to the applicable sale hearing

13. The Debtor reserves the right to file additional affidavits and present such further testimony and documents as may be appropriate in support of the relief requested in this Motion.

The Proposed Bidding Procedures and Auction

14. To maximize the value the Debtor receives for the Property, the Debtor, with the assistance of Maltz Auctions, will be conducting an Auction on January 31, 2018 at 11:00 a.m. at White & Wolnerman, PLLC, 950 Third Avenue, 11th Floor, New York, New York 10022, or such later time or other place as determined by the Debtor. The Bidding Procedures contain the terms and procedures that will govern the submission of bids for the Property.

15. At the Auction, and subject to the Bidding Procedures, all Qualified Bidders (as defined in the Bidding Procedures) will be allowed to bid on the Property. The Debtor will determine the highest or best bid or bids for the Property with the goal of maximizing the total value of the Debtor's estate. In evaluating competing bids, the Debtor intends to consider positively the following factors, among others and without limitation: (i) the amount of consideration offered; (ii) the allocation of consideration between cash and other components, if any; and (iii) the amount and nature of liabilities assumed.

16. Within three (3) business days after entry of the Bidding Procedures Order, the Debtor will serve copies of the Bidding Procedures and the Bidding Procedures Order on (i) all parties who are known to claim liens or other interests upon the Property; (ii) the Internal Revenue Service; (iii) other government agencies to the extent required; (iv) the office of the United States Trustee, and (v) each party that has filed a notice of appearance and request for service of documents (collectively referred to herein as the "Notice Parties").

Summary of Bidding Procedures

17. The Bidding Procedures provide in pertinent part¹ that in order to be permitted to bid on the Property, prior to the commencement of the Auction, each prospective bidder (“Bidder”) must deliver to Maltz Auctions a certified check or bank check made payable to “White & Wolnerman, PLLC, as Attorneys” in the amount of Thirty Thousand Dollars (\$30,000.00) (the “Qualifying Deposit”), which amount shall serve as a partial good faith deposit against payment of the purchase price by such competing Bidder as White & Wolnerman, PLLC (“WW”) determines to have made the highest or best bid for the Property (the “Successful Purchaser”).

18. Within 48 hours after conclusion of the Auction, the Successful Purchaser shall deliver to WW, by certified check or bank check made payable to “White & Wolnerman, PLLC, as Attorneys” or by wire in immediately available federal funds, an amount equal to 10% of the high bid realized at Auction minus the Qualifying Deposit (together with the Qualifying Deposit, the “Deposit”) plus a six (6%) percent “Buyer’s Premium”. The Buyer’s Premium shall be deemed to have been earned immediately upon the fall of the hammer and is due within 48 hours after conclusion of the Auction.

19. Failure of the Successful Purchaser to tender the 10% Deposit of the high bid at Auction and the Buyer’s Premium within 48 hours after conclusion of the Auction shall result in an immediate default under the terms of these Terms and Conditions of Sale and the Memorandum of Sale and shall result in the forfeiture of all earnest monies paid, including the Buyer’s Premium. The Successful Purchaser and the competing Bidder who WW determines to have made the second highest or best bid for the Property (the “Second Highest Bidder”) must

¹ To the extent that there are any inconsistencies between the description of the Bidding Procedures contained herein and (i) the terms and conditions of the Purchase Agreement and/or (ii) the Bidding Procedures, the terms of the Bidding Procedures control.

execute, and thereby agree to be bound by these Terms and Conditions of Sale and the Memorandum of Sale.

20. At the conclusion of the Auction, Maltz will return the Qualifying Deposits to all Bidders, except for the Successful Purchaser and the Second Highest Bidder. The Second Highest Bidder's Qualifying Deposit shall be returned within two (2) business days following approval of the Auction by the Bankruptcy Court ("Court Approval Date").

21. The Successful Purchaser must pay the balance of the Purchase Price for the Property to WW by certified check or bank check or by wire in immediately available federal funds. The Successful Purchaser must close title to the Property at a date that is no more than thirty (30) days after the Court Approval Date, **TIME BEING OF THE ESSENCE as to the Successful Purchaser**, although such date may be extended solely by the Attorney for the Debtor. Notwithstanding the foregoing, Debtor shall grant the Successful Bidder a single thirty (30) day extension, at the request of the Successful Bidder, provided Successful Bidder posts an additional, non-refundable deposit equal to ten (10%) percent of the Purchase Price prior to the thirtieth (30th) day following court approval (the "Additional Deposit"). The Additional Deposit shall be made by certified check or bank check made payable to White & Wolnerman, PLLC, as Attorneys" or by wire in immediately available federal funds and, together with the original Deposit, shall be deemed the "Deposit". If the Successful Bidder elects for an extension, the Closing shall take place on or before the sixtieth (60th) day following court approval, **TIME BEING OF THE ESSENCE as to the Successful Bidder**. If the Successful Purchaser elects to exercise the Extension, the Successful Purchaser shall be responsible for all real estate taxes incurred from the 30th day after the Court Approval Date through closing and shall pay interest

on the Purchase Price at a nine (9%) percent annual rate from the 30th day after the Court Approval Date through to the actual day of closing.

22. If the Successful Purchaser fails to post the total required ten (10%) percent Deposit and six (6%) percent Buyer's Premium within 48 hours following the Public Sale ("Successful Purchaser's Default"), WW, in its sole and absolute discretion, may, within three (3) business days of Successful Purchaser's Default, deem the Second Highest Bidder to hold all benefits and obligations under the Terms and Conditions of Sale and Memorandum of Sale, as the new Successful Purchaser (the "New Successful Purchaser"). The New Successful Purchaser shall not receive credit for any Deposit and/or Buyer's Premium forfeited by the initial Successful Purchaser. The New Successful Purchaser must close title to the Property no later than forty five (45) days following receipt of written notice to the New Successful Purchaser of Successful Purchaser's Default (the "New Successful Purchaser's Closing"), **TIME BEING OF THE ESSENCE as to the New Successful Purchaser**, although such date may be extended solely by WW. Notwithstanding the foregoing, WW shall grant the New Successful Purchaser a single thirty (30) day extension (the "New Successful Purchaser's Extension"), at the request of the New Successful Purchaser, provided the New Successful Purchaser posts an additional, non-refundable deposit equal to ten (10%) percent of the Purchase Price prior to the thirtieth (30th) day following receipt of notification of Successful Purchaser's Default (the "New Successful Purchaser's Additional Deposit"). The New Successful Purchaser's Additional Deposit shall be made by certified check or bank check made payable to White & Wolnerman, PLLC, as Attorneys" or by wire in immediately available federal funds and, together with the original Deposit, shall be deemed the "Deposit". If the New Successful Purchaser elects to exercise the New Successful Purchaser's Extension, the Closing shall take place on or before the seventy fifth

(75th) day following receipt of notification of Successful Purchaser's Default, **TIME BEING OF THE ESSENCE as to the New Successful Purchaser**, although such date may be extended solely by the Debtor. If the New Successful Purchaser elects to exercise the New Successful Purchaser's Extension, the New Successful Purchaser shall be responsible for all real estate taxes incurred from the 45th day following receipt of notification of Successful Purchaser's Default through closing and shall pay interest on the Purchase Price at a nine (9%) percent annual rate from the 45th day following receipt of notification of Successful Purchaser's Default through to the actual day of closing.

23. The Property is being sold "**AS IS**" "**WHERE IS**", "**WITH ALL FAULTS**", without any representations, covenants, guarantees or warranties of any kind or nature, and free and clear of any liens, claims, or encumbrances of whatever kind or nature, with such liens, if any, to attach to the proceeds of sale in such order and priority as they existed immediately prior to the Closing, and sale of the Property is subject to, among other things (a) any state of facts that an accurate survey may show; (b) any covenants, restrictions and easements of record; (c) any state of facts a physical inspection may show; (d) any building or zoning ordinances or other applicable municipal regulations and violations thereof; and (e) environmental conditions; provided, however, **the Property shall be delivered free and clear of any and all monetary liens**. By delivering their respective Qualifying Deposits, all Bidders acknowledge that they have had the opportunity to review and inspect the Property, the state of title thereof and laws, rules and regulations applicable thereto, and will rely solely thereon and on their own independent investigations and inspections of the Property in making their bids. The Property will be sold subject to any and all violations requiring corrective action.

Objections to Sale

24. Objections, if any, to the Sale Motion, shall be filed with this Court and served so as to be **received** no later than seven (7) days prior to the applicable Sale Hearing (the “Objection Deadline”), by (i) White & Wolnerman, PLLC, attorneys for the Debtor and Debtor in Possession, 950 Third Avenue, 11th Floor, New York, New York 10022, Attention: David Y. Wolnerman, Esq.; and (ii) the Office of the United States trustee for the Eastern District of New York, 201 Varick Street, Suite 1006, New York, New York 10014, Attention: William Curtin, Esq. Only timely filed and served responses, objections, and other pleadings should be considered by the Court at the Sale Hearing.

25. The Debtor further requests that the Bidding Procedures Order provide that the failure of any objecting person or entity to timely file an objection to the Sale Motion shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Sale Motion or the consummation of the sale contemplated by agreement with the Successful Bidder, including the transfer of the Property free and clear of any liens, claims, encumbrances, and interests.

The Bidding Procedures Order Should be EnteredThe Bidding Procedures Should be Approved

26. The Bidding Procedures, which are standard for the sale of assets in chapter 11 cases, will ensure that the Debtor’s estate received the greatest benefit available from the sale of the Property. The Bidding Procedures have been structured to attract the maximum number of bidders while allowing the Debtor the flexibility to select the bid that provides maximum value to the Debtor’s estate. Finally, the Bidding Procedures set out a timeframe that will allow potential purchasers sufficient time to conduct due diligence, arrange financing, and construct

and submit informed competing bids, while still providing for the expeditious sale of the Property.

27. The Debtor submits that the Bidding Procedures are reasonably designed to ensure that the Debtor and its estate receive the maximum benefit available from the sale of the Property, and therefore warrant Court approval.

The Time, Place and Notice Proposed for Each of the Auction and Sale Hearing are Reasonable and Should be Approved

28. Bankruptcy Rule 6004 prescribes the notice that must be given of a proposed sale of property pursuant to section 363(b) of the Bankruptcy Code. Pursuant to Bankruptcy Rule 6004(a), notice must be given of a proposed use, sale or lease of property, not in the ordinary course of business, which satisfies the requirements of Bankruptcy Rule 2002(a)(2) and (c)(1), among others.

29. Bankruptcy Rule 2002(a) requires that "the clerk, or some other person as the court may direct, "give "the debtor, the trustee, all creditors and indenture trustees at least 20 days' notice by mail of: (2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business " Fed. R. Bankr. P. 2002(a). Bankruptcy Rule 2002(c) requires that this notice include "the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections." Fed. R. Bankr. P. 2002(c).

30. Bankruptcy Rule 6004(c) requires that a motion pursuant to section 363(f) of the Bankruptcy Code for authority to sell property free and clear of liens or other interests "shall be served on the parties who have liens or other interest in the property to be sold." Fed. R. Bankr. P. 6004(c).²

² Rule 2002(1) provides that the Court "may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice." Fed. R. Bankr. P. 2002(1). Given the notice proposed and the fact that Maltz Auctions will be providing copies of the Bidding Procedures, the Bidding

31. As noted, the Auction (to the extent required) shall be held on January 31, 2018, and the Public Auction Sale Hearing (to the extent required) shall be held on February 8, 2018 at 2:30 p.m. The Debtor also proposes that within three (3) business days after entry of the Bidding Procedures Order, the Debtor will serve copies of the Bidding Procedures and the Bidding Procedures Order on the Notice Parties. Notice of the Auction and Public Auction Sale Hearing shall be provided to the Notice Parties so as to provide such parties with the requisite twenty (20) days' notice of the Auction and the Public Auction Sale Hearing.

32. Such notice (together with the proposed Bidding Procedures provided to the Notice Parties and the Bidding Procedures to be provided to such parties upon Court approval) sets forth all the information a potential bidder and any other party in interest should require about the bidding process for the Properties, including: notice of the Bidding Procedures and information on how to obtain a copy of the Bidding Procedures; the Bid Deadline; the time, date, and location of the Auction; and the time, date, and location of the Sale Hearing.

33. The Debtor submits that these notice procedures satisfy the requirements of Bankruptcy Rule 6004.

The Sale Order Should be Entered

The Sale of the Property is an Exercise of the Debtor's Sound Business Judgment

34. Bankruptcy Code section 363(b) governs transactions outside the ordinary course of business involving property of the debtor's estate. Specifically, that section provides, in relevant part, that, "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate " 11 U.S.C. § 363(b).

Procedures Order, and a sale notice to prospective purchasers, and will post these materials on their website, the Debtor proposes that further notice pursuant to Rule 2002(l) is not warranted under the circumstances.

35. Under applicable case law, a transaction must represent a reasonable exercise of business judgment on the part of the debtor in possession to be approved under section 363(b) of the Bankruptcy Code. See *In re Chateaugay Corp.*, 973 F.2d 141 (2d Cir. 1992); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 772 F.2d 1063, 1071 (2d Cir. 1983); *In re Adelphia Communications Corp.*, No. 02-41729 (REG) (Bankr. S.D.N.Y. July 31, 2002); see also, *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992), appeal dismissed, 3 F.3d 49 (2d Cir. 1993), quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985) ("the business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company,'" which has continued applicability in bankruptcy).

36. In addition, Bankruptcy Code section 105(a) grants the Court the authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). This provision is "the basis for a broad exercise of power [by the Court] in the administration of a bankruptcy case." *In re Flores*, 291 B.R. 44, 54 (Bankr. S.D.N.Y. 2003).

37. The difficult decision to sell the Property was made by the Debtor's management after considering the benefits of such a sale, and the potential lack of viable alternatives. By selling the Property, the Debtor anticipates making a 100% distribution to unsecured creditors and distributing the remaining sale proceeds to the Debtor's owners in accordance with the priorities set forth in the Bankruptcy Code.

38. For these reasons, the Debtor's sale of the Property is within the Debtor's sound business judgment and warrants approval by the Court.

The Property Should be Sold Free and Clear of
Liens, Claims, Encumbrance and other Interests

39. Pursuant to section 363(f) of the Bankruptcy Code, a debtor may sell property under Bankruptcy Code section 363(b) free and clear of liens, claims and encumbrances if one of the following conditions is satisfied: (i) applicable nonbankruptcy law permits the sale of the property free and clear of such interest; (ii) the entity holding the lien, claim or encumbrance consents to the sale; (iii) the 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 the property; (iv) the interest is in bona fide dispute; or (v) the entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of its interest. 11 U.S.C. § 363(f). *See In re Smart World Tech., LLC*, 423 F.3d 166, 169 n. 3 (2d Cir. 2005) (Section 363 permits sales of assets free and clear of claims and interests. It thus allows purchasers ... to acquire assets [from a debtor] without any accompanying liabilities"); *In re Dundee Equity Corp.*, No. 89-B-10233, 1992 WL 53743, at *3 (Bankr. S.D.N.Y. Mar. 6, 1992) ("Section 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met").

40. The Debtor requests that the Court authorize the sale of the Property free and clear of all liens, claims, encumbrances, and other interests (collectively, "Liens"). The sale of the Property pursuant to the Bidding Procedures will satisfy section 363(f) because any entities holding Liens on the Property will have received notice of this Motion and the Notice of Auction and Sale Hearing. All parties in interest will have been given sufficient opportunity to object to the relief requested in this Motion, and any such entity that does not object to the Sale should be deemed to have consented. *See Futuresource LLC v. Reuters Ltd.*, 312 F.3d 281, 285-86 (7th Cir. 2002) ("It is true that the Bankruptcy Code limits the conditions under which an interest can be extinguished by a bankruptcy sale, but one of those conditions is the consent of the interest holder, and lack of objection (provided of course there is notice) counts as consent. It could not

be otherwise; transaction costs would be prohibitive if everyone who *might* have an interest in the bankrupt's assets had to execute a formal consent before they could be sold") (internal citations omitted); *Hargrave v. Township of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)); *Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa 1988) (same); *see also In re Enron Corp.*, 2003 WL 21755006 at *2 (AJG) (Bankr. S.D.N.Y. 2003) (order deeming all parties who did not object to proposed sale to have consented under section 363(f)(2)). As such, to the extent that no party holding a Lien objects to the relief requested in this Motion, the sale of the Property free and clear of all Liens satisfies section 363(f)(2) of the Bankruptcy Code.

41. Further, the Debtor believes that section 363(f)(5) is satisfied, as (i) any entity holding a Lien on the Property could be compelled to accept a monetary satisfaction of its Liens, and (ii) the Debtor proposes that any Lien on the Property sold pursuant to the Bidding Procedures shall attach to the net proceeds of the sale of that Property, subject to any claims and defenses the Debtor may possess with respect thereto. As such, the sale of the Properties free and clear of all Liens satisfies section 363(f)(5) of the Bankruptcy Code.

42. In addition, the Debtor submits that the Property may be sold free and clear of all successor liability claims. Notwithstanding reference to the conveyance free and clear of "any interest" in section 363(f) of the Bankruptcy Code, that section has been interpreted to allow the sale of a debtor's assets free and clear of successor liability claims as well. *See, e.g., In re Trans World Airlines, Inc.* 322 F.3d 283, 288-90 (3d Cir. 2003) (sale of assets pursuant to section 363(f) of the Bankruptcy Code barred successor liability claims for employment discrimination and rights under travel voucher program); *Am. Living Systems v. Bonapfel (In re All Am. of*

Ashburn, Inc.), 56 B.R. 186, 189-90 (Bankr. N.D. Ga. 1986), *affd*, 805 F.2d 1515 (11th Cir. 1986) (sale pursuant to section 363(1) barred successor liability for products defect claim); *Rubinstein v. Alaska Pacific Consortium (In re New England Fish Co.)*, 19 B.R. 323, 328 (Bankr. W.D. Wash. 1982) (sale pursuant to section 363(f) was free and clear of successor liability claims for employment discrimination and civil rights violations).

43. Even if section 363(f) of the Bankruptcy Code were limited only to in rem interests, a bankruptcy court may authorize the sale of a debtor's assets free and clear of successor liability claims against the estate under its equitable powers. *See Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948-49 (Bankr. N.D. Ohio 1987) (stating that the absence of specific authority to sell assets free and clear of claims poses no impediment to such a sale, as such authority is implicit in the court's general equitable powers). The sale of the Property should therefore be made free and clear of all Liens, including successor liability interests, pursuant to section 363(f) of the Bankruptcy Code.

44. Furthermore, the amount of Flushing Bank's lien on the Property is the subject of a bona fide dispute. Specifically, the Debtor submits that at least a certain portion of Flushing Bank's lien representing legal fees incurred in connection with this case should be disallowed. In addition, the Debtor objects to Flushing Bank's attempt to charge the Debtor for the pre-petition receiver's fee, such receiver having refused to turnover estate funds it was holding, thereby forcing the Debtor to incur additional legal fees and preventing the Debtor from, among other things, making post-petition mortgage payments in accordance with Section 362(d)(3)(B) of the Bankruptcy Code.

The Purchaser Should be Afforded All Protections
Under Section 363(m) as a Good Faith Purchaser

45. Section 363(m) of the Bankruptcy Code protects a good faith purchaser's interest in property purchased from the debtor notwithstanding that the sale conducted under section 363(b) was later reversed or modified on appeal. Specifically, section 363(m) states that:

The reversal or modification on appeal of an authorization under [section 363(b)] ... does not affect the validity of a sale ... to an entity that purchased ... such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale ... were stayed pending appeal.

11 U.S.C. § 363(m). *See Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994) ("Section 363(m) ... provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal"); *In re Stein & Day, Inc.*, 113 B.R. 157, 162 (Bankr. S.D.N.Y. 1990) ("pursuant to 11 U.S.C. § 363(m), good faith purchasers are protected from the reversal of a sale on appeal unless there is a stay pending appeal").

Transfer taxes

46. Section 1146(a) of the Bankruptcy Code expressly exempts sales and transfers made under a plan of reorganization from stamp taxes and other applicable transfer taxes. Specifically, section 1146(a) provides that "[t]he issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of this title, may not be taxed under any law imposing a stamp tax or similar tax." 11 U.S.C. § 1146(a).

47. The United States Court of Appeals for the Second Circuit has construed section 1146(a) to include transfers that are authorized outside a chapter 11 plan of reorganization, provided that such sales and transfers enable the confirmation or consummation of a chapter 11

plan. *See City of New York v. Jacoby-Bender, Inc. (In re Jacoby-Bender, Inc.)*, 758 F.2d 840, 842 (2d Cir. 1985) (allowing the transfer by the debtor of a deed to a building free of local transfer taxes, notwithstanding that the transfer was authorized by the bankruptcy court separate from the debtor's plan of reorganization, because the transfer was "necessary to the consummation of a plan"); *see also In re Beulah Church of God in Christ Jesus, Inc.*, 316 B.R. 41, 51 (Bankr. S.D.N.Y. 2004) (the court noted that "it is reasonable to conclude that Congress did not intend to impose an arbitrary and illogical temporal distinction on sales necessary or integral to a chapter 11 plan" and allowed the sale of real estate free of transfer taxes notwithstanding that the sale was approved before confirmation of a plan of reorganization); *In re Permar Provisions, Inc.*, 79 B.R. 530, 534 (Bankr. E.D.N.Y. 1987) (allowing the sale of real property free of transfer taxes prior to confirmation of a plan because "absent the sale of the real property, in all probability, the plan would not have been confirmed"); The Debtor has filed its proposed chapter 11 plan. To the extent the Debtor is unable to obtain sufficient financing to reorganize as a going concern, it is clear that the sale of the Property is necessary to the confirmation of this plan. Indeed, the sale of the Property will provide the funds needed to pay secured, administrative and other priority claims in full on the effective date of the plan, and pay unsecured creditors in full. The Sale is also likely to provide a distribution to equity. As such, under applicable precedent, the sale of the Property is "under a plan" as that term is used in section 1146(a) of the Bankruptcy Code and the Court should find that the sale of the Property is exempt from all stamp taxes or similar taxes pursuant to section 1146(a) of the Bankruptcy Code.

The Court Should Waive or Reduce the Periods Required By
Rule 6004(h) of the Federal Rules of Bankruptcy Procedure

48. Pursuant to Rule 6004(h) (formerly Rule 6004(g)) of the Bankruptcy Rules, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for 10 days after entry of the order, unless the court orders otherwise. Fed. R. Bankr. P. 6004(h). The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before the order is implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h).

49. Although Bankruptcy Rule 6004(h) and the Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the 10-day stay period, Collier suggests that the 10-day stay period should be eliminated to allow a sale or other transaction to close immediately "where there has been no objection to the procedure." 10 COLLIER ON BANKRUPTCY§ 6004.09 (Lawrence P. King, et al. eds, 15th ed. rev. rel. 2003). Furthermore, Collier states that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to seek a stay pending such appeal. *Id.*

50. To preserve the value of the Debtor's estate and limit the costs of administering this estate, it is critical that the Debtor close the sale of the Properties as soon as possible after all closing conditions have been met or waived. Accordingly, the Debtor hereby requests that the Court waive the 10-day stay period under Bankruptcy Rules 6004(h), or in the alternative, if an objection to the sale of the Properties is filed, reduce the stay period to the minimum amount of time reasonably required by the objecting party to file its appeal.

Notice

51. No committee, trustee, or examiner has been appointed in this case.

52. Notice of this Motion shall be provided to the Notice Parties. The Debtor submits that under the circumstances no other of further notice need be provided.

WHEREFORE, the Debtor respectfully requests entry of an order authorizing the relief requested herein and such other and further relief as this Court deems just and proper

Dated: New York, New York
September 20, 2017

WHITE & WOLNERMAN, PLLC

By: /s/ David Wolnerman
David Y. Wolnerman, Esq.
950 Third Ave., 11th Floor
New York, New York 10022
Phone: (212) 308-0667

*Attorneys for the Debtor and
Debtor-in-Possession*

TERMS AND CONDITIONS OF SALE

PURSUANT TO AN ORDER OF THE HONORABLE NANCY H. LORD, DATED _____, 2017, AND SUBJECT TO THE OCCURRENCE OF CERTAIN CONDITIONS, THE REAL PROPERTY OF THE DEBTOR LOCATED AT 200-15 LINDEN BLVD., ST. ALBANS, NEW YORK 11412 IS TO BE SOLD AT PUBLIC AUCTION.

1. On March 1, 2017, Big Time Holdings LLC, the debtor and debtor-in-possession (the "Debtor"), filed a voluntary petition for relief under chapter 11 of Title 11, United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Eastern District of New York (the "Court"), commencing case number 17-40960 (NHL). To date, no committee, trustee, or examiner has been appointed, and the Debtor continues to operate and manage its business and property as a debtor-in-possession under Bankruptcy Code §§ 1107(a) and 1108.

2. These Terms and Conditions of Sale are promulgated in connection with the court authorized Public Auction Sale (the "Auction") of the Debtor's real property located at **200-15 LINDEN BLVD., ST. ALBANS, NEW YORK 11412** (the "Property"). The Auction shall be conducted by Maltz Auctions, Inc. ("Maltz"), the Debtor's duly retained real estate broker for the sale contemplated herein.

3. The Debtor is represented by White & Wolnerman, PLLC ("WW"), with offices at 950 Third Ave., 11th Floor, New York, NY 10022.

4. The Auction will be held on January 31, 2018 at 11:00 a.m. (the "Sale Date") at the offices of WW, 950 Third Ave., 11th Floor, New York, NY 10022.

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

6. In order to be permitted to bid on the Property, prior to the commencement of the Auction, each prospective bidder ("Bidder") must deliver to Maltz a certified check or bank check made payable to "White & Wolnerman, PLLC, as Attorneys" in the amount of Thirty Thousand Dollars (\$30,000.00) (the "Qualifying Deposit"), which amount shall serve as a partial good faith deposit against payment of the purchase price by such competing Bidder as WW determines to have made the highest or best bid for the Property (the "Successful Purchaser"). Within 48 hours after conclusion of the Auction, the Successful Purchaser shall deliver to WW, by certified check or bank check made payable to "White & Wolnerman, PLLC, as Attorneys" or by wire in immediately available federal funds, an amount equal to 10% of the high bid realized at Auction minus the Qualifying Deposit (together with the Qualifying Deposit, the "Deposit") plus a six (6%) percent Buyer's Premium (as hereinafter defined). The Buyer's Premium shall be deemed to have been earned immediately upon the fall of the hammer and is due within 48 hours after conclusion of the Auction. Failure of the Successful Purchaser to tender the 10% Deposit of the high bid at Auction and the Buyer's Premium within 48 hours after conclusion of the Auction shall result in an immediate default under the terms of these Terms and Conditions of Sale and the Memorandum of Sale and shall result in the forfeiture of all earnest monies paid, including the Buyer's Premium. The

Successful Purchaser and the competing Bidder who WW determines to have made the second highest or best bid for the Property (the “Second Highest Bidder”) must execute, and thereby agree to be bound by these Terms and Conditions of Sale and the Memorandum of Sale. **At the conclusion of the Auction, Maltz will return the Qualifying Deposits to all Bidders, except for the Successful Purchaser and the Second Highest Bidder. The Second Highest Bidder’s Qualifying Deposit shall be returned within two (2) business days following approval of the Auction by the Bankruptcy Court (“Court Approval Date”).**

7. Pursuant to an order of the Bankruptcy Court, the Successful Purchaser, and the Second Highest Bidder in the event of a Successful Purchaser’s Default (as hereinafter defined), are solely responsible to pay Maltz six percent (6%) of the high bid at Auction (the “Buyer’s Premium”). The sum of the high bid at Auction and the Buyer’s Premium is defined herein as the “Purchase Price”.

8. The Successful Purchaser must pay the balance of the Purchase Price for the Property to WW by certified check or bank check or by wire in immediately available federal funds. The Successful Purchaser must close title to the Property at a date that is no more than thirty (30) days after the Court Approval Date, **TIME BEING OF THE ESSENCE as to the Successful Purchaser**, although such date may be extended solely by the Attorney for the Debtor. Notwithstanding the foregoing, Debtor shall grant the Successful Bidder a single thirty (30) day extension, at the request of the Successful Bidder, provided Successful Bidder posts an additional, non-refundable deposit equal to ten (10%) percent of the Purchase Price prior to the thirtieth (30th) day following court approval (the “Additional Deposit”). The Additional Deposit shall be made by certified check or bank check made payable to White & Wolnerman, PLLC, as Attorneys” or by wire in immediately available federal funds and, together with the original Deposit, shall be deemed the “Deposit”. If the Successful Bidder elects for an extension, the Closing shall take place on or before the sixtieth (60th) day following court approval, **TIME BEING OF THE ESSENCE as to the Successful Bidder**. If the Successful Purchaser elects to exercise the Extension, the Successful Purchaser shall be responsible for all real estate taxes incurred from the 30th day after the Court Approval Date through closing and shall pay interest on the Purchase Price at a nine (9%) percent annual rate from the 30th day after the Court Approval Date through to the actual day of closing.

9. If the Successful Purchaser fails to post the total required ten (10%) percent Deposit and six (6%) percent Buyer’s Premium within 48 hours following the Public Sale (“Successful Purchaser’s Default”), WW, in its sole and absolute discretion, may, within three (3) business days of Successful Purchaser’s Default, deem the Second Highest Bidder to hold all benefits and obligations under the Terms and Conditions of Sale and Memorandum of Sale, as the new Successful Purchaser (the “New Successful Purchaser”). The New Successful Purchaser shall not receive credit for any Deposit and/or Buyer’s Premium forfeited by the initial Successful Purchaser. The New Successful Purchaser must close title to the Property no later than forty five (45) days following receipt of written notice to the New Successful Purchaser of Successful Purchaser’s Default (the “New Successful Purchaser’s Closing”), **TIME BEING OF THE ESSENCE as to the New Successful Purchaser**, although such date may be extended solely by WW. Notwithstanding the foregoing, WW shall grant the New Successful Purchaser a single thirty (30) day extension (the “New Successful Purchaser’s Extension”), at the request of the New Successful Purchaser, provided the New Successful Purchaser posts an additional, non-refundable deposit equal to ten (10%) percent of the Purchase Price prior to the thirtieth (30th) day following receipt of notification of Successful Purchaser’s Default (the “New Successful Purchaser’s Additional Deposit”). The New

Successful Purchaser's Additional Deposit shall be made by certified check or bank check made payable to White & Wolnerman, PLLC, as Attorneys" or by wire in immediately available federal funds and, together with the original Deposit, shall be deemed the "Deposit". If the New Successful Purchaser elects to exercise the New Successful Purchaser's Extension, the Closing shall take place on or before the seventy fifth (75th) day following receipt of notification of Successful Purchaser's Default, **TIME BEING OF THE ESSENCE as to the New Successful Purchaser**, although such date may be extended solely by the Debtor. If the New Successful Purchaser elects to exercise the New Successful Purchaser's Extension, the New Successful Purchaser shall be responsible for all real estate taxes incurred from the 45th day following receipt of notification of Successful Purchaser's Default through closing and shall pay interest on the Purchase Price at a nine (9%) percent annual rate from the 45th day following receipt of notification of Successful Purchaser's Default through to the actual day of closing.

10. The closing shall take place at the offices of WW, with offices at 950 Third Ave., 11th Floor, New York, New York 10022 (the "Closing").

11. The Successful Purchaser, or the New Successful Purchaser, as the case may be, shall pay any and all costs and expenses in connection with the Closing related to obtaining a survey; fee title or mortgage insurance; title company endorsement, search and escrow charges; environmental, engineering or other Property inspections; appraisals, reports and other costs of Property due diligence; and County, State, New York City, or other real property transfer, deed or documentary tax, or other taxes imposed upon the sale due in connection with the transfer of the Property from the Debtor at Closing. The Successful Purchaser acknowledges that it will be responsible for the completion of any ACRIS forms, if required. The Debtor shall not be required to execute any form of title affidavit (but may in its sole and absolute discretion) and all title exceptions customarily omitted from a title policy on account of such title affidavit shall be deemed permitted exceptions. The Successful Purchaser, or the New Successful Purchaser, as the case may be, acknowledges that it will be responsible for the preparation of all Closing documents required including, but not limited to, transfer tax forms. In connection with the Closing and Closing date, the Successful Purchaser or the New Successful Purchaser, as the case may be, is hereby given notice that **TIME IS OF THE ESSENCE against the Successful Purchaser or the New Successful Purchaser, as the case may be, and the failure of the Successful Purchaser or the New Successful Purchaser, as the case may be, to close for any reason whatsoever (except as otherwise provided herein) including its failure to pay the balance of the Purchase Price on the Closing date, will result in an immediate forfeiture of the Deposit and Buyer's Premium and the termination of the Successful Purchaser's or the New Successful Purchaser's, as the case may be, right to acquire the Property under these Terms and Conditions of Sale and the Memorandum of Sale.** The Successful Purchaser or the New Successful Purchaser, as the case may be, shall be obligated to close title to the Property and, except as expressly set forth herein, there is no contingency of any kind or nature that will permit the Successful Purchaser, or the New Successful Purchaser, as the case may be, to cancel or avoid its obligation under these Terms of and Conditions of Sale and the Memorandum of Sale other than the Debtor's inability to deliver insurable title to the Property. Further, the Successful Purchaser or the New Successful Purchaser, as the case may be, shall have demonstrated, to the satisfaction of Maltz and WW, evidence of its ability to conclude the transaction upon these Terms and Conditions of Sale and the Memorandum of Sale, without delay. WW reserves the right to reject any Purchaser or Bidder who the Debtor believes, in its sole discretion, is not financially capable of consummating the purchase of the Property. Expenses incurred by the Successful Purchaser, or any other Bidder, concerning any due diligence shall be the

sole responsibility of such Bidder and, under no circumstances shall Maltz or the Debtor be responsible for, or pay, such expenses.

12. The only commission that will be paid is to the Licensed Real Estate Broker, who registers the Successful Purchaser in accordance with a Broker Participation Agreement and has received confirmation of receipt and acknowledgement of valid registration by Maltz. The commission for such registered real estate broker will be two (2%) of the Successful Bid.

13. Maltz and the Debtor and their professionals have not made and do not make any representations or warranties as to the physical condition, expenses, operations, value of the land or buildings thereon, or any other matter or thing affecting or related to the Property or this Auction, which might be pertinent to the purchase of the Property, including, without limitation, (i) the current or future real estate tax liability, assessment or valuation of the Property; (ii) the potential qualification of the Property for any and all benefits conferred by or available under federal, state or municipal laws, whether for subsidies, special real estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated; (iii) the compliance or non-compliance of the Property, in its current or any future state, with applicable present or future zoning ordinances or other land use law or regulation, or the ability to obtain a change in the zoning or use, or a variance in respect to the Property; (iv) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Property from any source, including, but not limited to, any state, city or federal government or institutional lender; (v) the current or future use of the Property; (vi) the current or future rents, other operating incomes or expenses; (vii) the presence or absence of any laws, ordinances, rules or regulations issued by any governmental authority, agency or board and any violations thereof; (viii) the compliance or non-compliance with environmental laws and the presence or absence of underground fuel storage tanks, any asbestos, any lead paint or other hazardous materials anywhere on the Property, or notes or notices of violations of law or municipal ordinances, orders or requirements noted or issued by any governmental department, agency or bureau having authority as to but not limited to lands, housing, buildings, fire, health, environment and labor conditions affecting the property. Each Bidder hereby expressly agrees and acknowledges that no such representations or warranties have been made. Maltz and the Debtor shall not be liable or bound in any manner by expressed or implied warranties, guarantees, promises, statements, representations or information pertaining to the Property, made or furnished by Maltz or the Debtor or any real estate broker, agent, employee, servant or other person or professional representing or purporting to represent Maltz or Debtor unless such warranties, guaranties, promises, statements, representations or information are expressly and specifically set forth in writing within these Terms and Conditions of Sale and the Memorandum of Sale.

14. The Property is being sold **“AS IS” “WHERE IS”, “WITH ALL FAULTS”**, without any representations, covenants, guarantees or warranties of any kind or nature, and free and clear of any liens, claims, or encumbrances of whatever kind or nature, with such liens, if any, to attach to the proceeds of sale in such order and priority as they existed immediately prior to the Closing, and sale of the Property is subject to, among other things (a) any state of facts that an accurate survey may show; (b) any covenants, restrictions and easements of record; (c) any state of facts a physical inspection may show; (d) any building or zoning ordinances or other applicable municipal regulations and violations thereof; and (e) environmental conditions; provided, however, **the Property shall be delivered free and clear of any and all monetary liens**. By delivering their respective Qualifying Deposits, all Bidders acknowledge that they have had the opportunity to review and inspect the Property, the state of title thereof and laws, rules and regulations applicable

thereto, and will rely solely thereon and on their own independent investigations and inspections of the Property in making their bids. Neither Maltz, the Debtor nor any of their collective representatives makes any representations or warranties with respect to the permissible uses of the Property including, but not limited to, the zoning of the Property. All Bidders acknowledge that they have conducted their own due diligence in connection with the Property and are not relying on any information provided by Maltz, the Debtor, or their professionals. The Property will be sold subject to any and all violations requiring corrective action.

15. The Successful Purchaser has five (5) days from the Court Approval Date to order title, copy of which shall promptly be provided to WW. The Successful Purchaser has twenty (20) days from the Court Approval Date to advise WW (by electronic mail to dwolnerman@wwlawgroup.com) of any and all title issues or defects that would in any way be an impediment to the Closing on the sale of the Property. Failure of the Successful Purchaser to advise WW within twenty (20) days from the Court Approval Date of any such title issues or defects shall be deemed a waiver of any and all rights to raise any such title issues or defects, with WW reserving the right to specify a particular title company to insure title, provided said company is licensed in the State of New York.

16. The Debtor shall convey the Property by delivery of a quitclaim deed. The quality of title shall be that which any reputable title insurance company authorized to do business in the State of New York is willing to approve and insure. If the Successful Purchaser or the New Successful Purchaser, as the case may be, is unable to obtain title insurance, subject to the permissible exceptions contained herein, Debtor may, at its option, arrange for the issuance of a title insurance policy by such a company at the sole cost and expense of the Successful Purchaser, or the New Successful Purchaser, as the case may be.

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

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

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

20. The Auction of the Property is subject to further order of the Bankruptcy Court confirming the Auction.

21. Either Maltz or WW shall notify the Successful Purchaser whether the Auction is confirmed.

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

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

By:_____ Date:_____

Print Name: _____

MEMORANDUM OF SALE – SUCCESSFUL PURCHASER

High Bid Realized at Auction: _____

6% Buyer's Premium: _____

Purchase Price: _____

The undersigned has this ____ day of _____, 2017, agreed to purchase the property located at **200-15 LINDEN BLVD., ST. ALBANS, NEW YORK 11412** (the “Property”) of Big Time Holdings, LLC as the Chapter 11 debtor and debtor-in-possession for the sum of \$_____ DOLLARS and hereby promises and agrees to comply with the annexed Terms and Conditions of Sale of the Property and this Memorandum of Sale.

SUCCESSFUL PURCHASER (Signature)

SUCCESSFUL PURCHASER (Signature)

PRINT NAME

PRINT NAME

ADDRESS

ADDRESS

ADDRESS (City, State, Zip)

ADDRESS (City, State, Zip)

TELEPHONE NUMBER

TELEPHONE NUMBER

EMAIL ADDRESS

EMAIL ADDRESS

Received from _____ the sum of \$30,000 DOLLARS, as a non-refundable deposit for the purchase of the Property pursuant to the Terms and Conditions of Sale.

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

Maltz Auctions, Inc.

SUCCESSFUL PURCHASER ATTORNEY INFORMATION

Name _____

Address _____

Phone _____

MEMORANDUM OF SALE – SECOND HIGHEST BIDDER

Bid Realized at Auction: _____

6% Buyer's Premium: _____

Purchase Price: _____

The undersigned has this ____ day of _____, 2017, agreed to purchase the property located at **200-15 LINDEN BLVD., ST. ALBANS, NEW YORK 11412** (the "Property") of Big Time Holdings LLC as the Chapter 11 debtor and debtor-in-possession for the sum of \$_____ DOLLARS in the event of the Successful Purchaser's Default and if deemed by WW, in its sole and absolute discretion, to hold all benefits and obligations of a Successful Purchaser under the Terms and Conditions of Sale and this Memorandum of Sale and hereby promises and agrees to comply with the annexed Terms and Conditions of Sale of said Property and this Memorandum of Sale.

SECOND HIGHEST BIDDER (Signature)_____
SECOND HIGHEST BIDDER (Signature)_____
PRINT NAME_____
PRINT NAME_____
ADDRESS_____
ADDRESS_____
ADDRESS (City, State, Zip)_____
ADDRESS (City, State, Zip)_____
TELEPHONE NUMBER_____
TELEPHONE NUMBER_____
EMAIL ADDRESS_____
EMAIL ADDRESS

Received from _____ the sum of \$30,000 DOLLARS, as a non-refundable deposit for the purchase of the Property pursuant to the Terms and Conditions of Sale.

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

Maltz Auctions, Inc.**SECOND HIGHEST BIDDER ATTORNEY INFORMATION**

Name _____

Address _____

Phone _____