

Hearing Date & Time:
Date: December 20, 2017
Time: 2:30 pm

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

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In Re:

Confirmed Chapter 11

**DEONARINE PARASRAM D/B/A
VANDI SALES D/B/A
PARASRAM STORE,**

Case No. 16-42657(CEC)

Debtor.
-----X

**NOTICE OF PLAN PROPONENT RANDY BRISMAN’S MOTION FOR
ENTRY OF AN ORDER AUTHORIZING AND APPROVING: AN
AUCTION SALE FOR: (I) THE REAL PROPERTIES LOCATED AT
107-50 SUTPHIN BOULEVARD, JAMAICA, NEW YORK 11435,
DESIGNATED BLOCK 11945, LOT 61; AND 89-29 191st STREET,
HOLLIS, NEW YORK 11423, DESIGNATED BLOCK 10456, LOT 65,;
(II) THE VANDI RELIGIOUS GOODS BUSINESS; (III) PARASRAM’S
GUYANESE AND WEST INDIAN MARKET, FREE AND CLEAR OF
ALL MONETARY LIENS, CLAIMS AND ENCUMBRANCES, WITH
SUCH MONETARY LIENS, CLAIMS AND ENCUMBRANCES TO
ATTACH TO THE PROCEEDS OF SALE; AND (IV) APPROVING THE
BIDDING PROCEDURES FOR THESE ASSETS**

PLEASE TAKE NOTICE that, on November 27, 2017, Randy Brisman (öBrismanö), creditor of Deonarine Parasram d/b/a Vandi Sales d/b/a Parasram Store and proponent of the Confirmed Second Amended Liquidating Plan of Reorganization for the Debtor filed an application seeking the entry of an order, in accordance with §§ 105, and 363 and 365 of title 11, United States Code (the "Bankruptcy Code"), Federal Rules of Bankruptcy Procedure 2002, 6004, and 6006, Local Rule 6004-1: (a) authorizing and approving the terms and conditions for the sale for: (i) the real properties known as and located at 107-50 Sutphin Boulevard, Jamaica, New York 11435, designated Block 11945, Lot 61; and 89-29 191st Street, Hollis, New York 11423, designated

Block 10456, Lot 65; (ii) the Vandi Religious Goods Business; and (iii) the Parasramø Guyanese and West Indian Market; with all these assets being sold free and clear of all momentary liens, claims and encumbrances, with such monetary liens, claims and encumbrances to attach to the proceeds of sale; (b) approving the bidding procedures for the sale of these assets; and (c) granting Brisman such other and further relief as this Court deems just and proper (the "Application"); and Brisman will move before **Hon. Carla E. Craig, Chief United States Bankruptcy Judge at the United States Bankruptcy Court, 271-C Cadman Plaza East, Courtroom 3529, Brooklyn, New York 11201 on December 20, 2017 at 2:30 pm**, for approval of the relief sought in the Application.

PLEASE TAKE FURTHER NOTICE that any objections to the Application must be in writing and shall state with particularity the grounds therefor, and, pursuant to General Order No. M-182 re: Electronic Case Filing Procedures (as amended from time to time), objections to the Applications (formatted with Adobe Acrobat, rider 3.0) shall be filed with the Clerk of the Bankruptcy Court, at [http:// www.nyeb.uscourts.gov](http://www.nyeb.uscourts.gov) (with a copy to Chambers), and served upon and received by counsel for Brisman, Shafferman & Feldman LLP, 137 Fifth Avenue, 9th Floor,

New York, New York 10010, Attn: Joel M. Shafferman, Esq.; and the United States Trustee's Office, 201 Varick Street, Suite 1006, New York, New York 10014, Attn: Mary Lou Martin, Esq., no later than 5:00 P.M. seven (7) days prior to the Hearing Date.

DATED: New York, New York
November , 2017

SHAFFERMAN & FELDMAN LLP
Counsel for Randy Brisman, as Plan Proponent
137 Fifth Avenue, 9th Floor
New York, New York 10010
(212) 509-1802
By: Joel M. Shafferman
Joel M. Shafferman (JMS-1055)

Hearing Date & Time:
Date: December 20, 2017
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**DEONARINE PARASRAM D/B/A
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Debtor.

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**APPLICATION OF RANDY BRISMAN, AS PLAN PROPONENT,
FOR ENTRY OF AN ORDER AUTHORIZING AND APPROVING:
AN AUCTION SALE FOR: (I) THE REAL PROPERTIES
LOCATED AT 107-50 SUTPHIN BOULEVARD, JAMAICA, NEW
YORK 11435, DESIGNATED BLOCK 11945, LOT 61; AND 89-29
191st STREET, HOLLIS, NEW YORK 11423, DESIGNATED
BLOCK 10456, LOT 65, ; (II) THE VANDI RELIGIOUS GOODS
BUSINESS; (III) PARASRAM’S GUYANESE AND WEST INDIAN
MARKET, ALL FREE AND CLEAR OF ALL MONETARY LIENS,
CLAIMS AND ENCUMBRANCES, WITH SUCH MONETARY
LIENS, CLAIMS AND ENCUMBRANCES TO ATTACH TO THE
PROCEEDS OF SALE; AND (IV) APPROVING THE BIDDING
PROCEDURES FOR THESE ASSETS**

**TO: THE HONORABLE CARLA E. CRAIG,
CHIEF UNITED STATES BANKRUPTCY JUDGE:**

Randy Brisman (õBrismanö or the õPlan Proponentö), a creditor of Deonarine Parasram d/b/a Vandi Sales d/b/a Parasram Store (õDebtorö) and proponent of the confirmed Second Amended Liquidating Plan of Reorganization for the Debtor, as and for his application seeking the entry of an order, in accordance with §§ 105, 363, and 365 of title 11, United States Code (the "Bankruptcy Code"), Federal Rules of Bankruptcy Procedure 2002, 6004, and 6006, Local Rule 6004-1: (a) authorizing and approving the terms and conditions for the sale for: (i) the real

properties known as and located at 107-50 Sutphin Boulevard, Jamaica, New York 11435, designated Block 11945, Lot 61 (the "Sutphin Blvd Property"); and 89-29 191st Street, Hollis, New York 11423 (the "191st Street Property"), designated Block 10456, Lot 65; (ii) the Vandi Religious Goods Business ("Vandi Business"); and (iii) the Parasramø Guyanese and West Indian Market ("Parsaram Market") (collectively the "Assets"); with all of the Assets being sold free and clear of all momentary liens, claims and encumbrances, with such monetary liens, claims and encumbrances to attach to the proceeds of sale; (b) approving the bidding procedures for the sale of the Assets; and granting Brisman and S&F such other and further relief as this Court deems just and proper, respectfully represents as follows:

Jurisdiction and Statutory Predicate

1. This Court has jurisdiction to hear this motion under 28 U.S.C. §§157(a) and 1334, and the Order of Reference of the United States District Court for the Eastern District of New York, dated December 5, 2012 (Amon, C.J.). This is a core proceeding pursuant to 28 U.S.C. §157(b). The statutory predicate for the relief sought herein is 11 U.S.C. §§105, 363(b) and (f), and 365(a), (b), and (f), and Federal Rules of Bankruptcy Procedure 2002, 6004, and 6006.

2. The statutory predicates for the relief requested herein are Bankruptcy Code §§105, 363, and 365, Bankruptcy Rules 2002 and 6004, and Local Rule 6004-2.

Background

The Debtor

3. The Debtor is an individual, who alleges to reside at 177-07 Jamaica Avenue, Jamaica New York. The Debtor further alleges to be the owner and sole proprietor of three (3) separate businesses.

4. The Debtor currently holds title to two (2) parcels of real property known as and located at (i) 107-50 Sutphin Blvd., Jamaica, New York 11435 [Block 11945; Lot 61] (the "107-50 Sutphin Blvd. Property"), and (ii) 89-29 191st Street, Hollis, New York 11423 [Block 10456; Lot 65] (the "89-29 191st Property") (the "Non-SDF Properties").

5. Through preliminary research, the Plan Proponent has determined that significant equity may exist in the Non-SDF Properties. In point of fact, based upon discussions with Richard Maltz of Maltz Auctions ("Maltz" or the "Auctioneer"), the Plan Proponent believes that the 107-50 Sutphin Blvd. Property should properly be valued at \$450,000-500,000. In addition, based upon discussions with Maltz, the 89-29 191st Street Property is believed to be valued at \$625,000-\$650,000. Therefore, the aggregate estimated value of the Non-SDF Properties is believed to be in excess of \$1,000,000.00.

Significant Events in the Debtor's Chapter 11 Case

6. On June 16, 2016 (the "Petition Date"), the Debtor filed his skeletal petition, and the Bankruptcy Court directed that the Debtor file all outstanding schedules by or before June 30, 2016.

7. On December 7, 2016, the Debtor filed his first Disclosure Statement [ECF No. 82] (the "Debtor's Disclosure Statement") and Chapter 11 Plan of Reorganization [ECF No. 81] (the "Debtor's Plan").

8. After this Court made a determination that the Debtor's exclusive periods to file and confirm a plan in this case had terminated, on March 22, 2017 Brisman filed a Liquidating Plan of Reorganization for the Debtor (the "Initial Brisman Plan") and Disclosure Statement to Accompany

the Plan (the "Initial Brisman Disclosure Statement") (ECF ## 148 and 149). The hearing to consider approval of the Initial Brisman Disclosure Statement was scheduled for April 19, 2017.

9. In accordance with colloquy the undersigned counsel had with the Court at the hearing held on April 19, 2017 in connection with approval of the Initial Brisman Disclosure Statement, Brisman revised the Initial Brisman Plan and Initial Brisman Disclosure Statement to provide for a public sale of all of the Debtor's assets.

10. On May 3, 2017, the undersigned counsel for Brisman filed a First Amended Liquidating Plan of Reorganization for the Debtor and Disclosure Statement to Accompany the Plan (the "First Amended Brisman Disclosure Statement") (ECF ## 183 and 184).

11. On August 17, 2017, the undersigned counsel for Brisman filed the Second Amended Brisman Disclosure Statement (the "Disclosure Statement") and Second Amended Brisman Plan (the "Plan"), along with redlined copies (ECF ##248-253), and circulated the documents to all interested parties by email. On September 8, 2017, this Court approved the Disclosure Statement (ECF# 256).

12. To further the plan process which contemplates a liquidation of all of the Debtor's assets, on August 28, 2017, Brisman filed and served an application seeking to approve his retention to employ Maltz. (ECF# 254). The Order was approved by this Court on October 19, 2017 (ECF# 274).

13. At a hearing held before this Court on October 11, 2017, this Court confirmed the Second Amended Brisman Plan, over the verbal objections of the Debtor, and denied the Dismissal Motion. On November 2, 2017, this Court signed an order confirming the Second Amended Brisman Plan (ECF #275).

14. The means by which the Second Amended Brisman Plan will be implemented is through a public auction sale of: (1) the Sutphin Blvd Property; (2) the 191st Street Property; (3) the Vandi Business; and (iii) the Parsaram Market (collectively, the "Assets").

THE RELIEF SOUGHT

15. By this Motion, Brisman seeks entry of: (i) an order, substantially in the form annexed hereto as **Exhibit A**, (a) approving certain bidding procedures for, and notice of the Sale and the Terms and Conditions of Sale ("Sales Procedures") (a copy of the proposed Sales Procedures is annexed hereto as **Exhibit B**); (b) establishing a procedure for conducting the Sale process; (c) approving the form, time and scope of notice of the Sale, and (d) granting related relief, including entry of an order authorizing and approving the Sale of the Assets to the bidder(s) making the highest or best offer, free and clear of Liens, with such Liens to attach to the proceeds of the Sale in the same amount, priority, and validity existing as of the respective Petition Date.

The Proposed Sales Procedures

16. The proposed Sales Procedures include: (a) a deposit of 10% of the amount offered; (b) a buyer's premium of 6% of the gross purchase price; and (c) an increase of the deposit by the successful bidder and payment of the buyer's premium within 2 business days after the auction to bring the total deposit to 10% of the highest offered purchase price plus the buyer's premium.

17. Pursuant to the Bidding Procedures, the initial bids for the Vandi Business is \$5000, and the initial bid for the Parasram Market \$10,000 each. Further, pursuant to the Bidding Procedures, in order to be permitted to bid on either the Vandi Business; and the Parsaram Market, the Successful Bidder (as that term is defined in the Bidding Procedures) shall (a) deliver a certified check, or bank check, in an amount of at least 10% of the bid price minus the Qualifying Deposit

(the "Down Payment") plus the applicable 6% auctioneer's buyer's premium (the "Buyer's Premium") within 48 hours of the Auction Sale; and (b) pay the Balance (that being defined as the difference between the successful bid and the Qualifying Deposit and Down Payment) of the purchase price for the Vandi Business and/or the Parasram Market to counsel for the Plan Proponent at the closing of title to the Vandi Business and/or the Parasram Market.

18. Subject to approval of the proposed Bidding Procedures and approval of a separate application by the Plan Proponent for a First and Final Allowance Of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred From July 6, 2016 through November 27, 2017, pursuant to section 503(b) of title 11 of the United States Code (the "Section 503(b) Application"), the Plan Proponent shall be entitled to a credit bid for the sale of the Vandi Business for the amount of any award pursuant to the Section 503(b) Application.

19. The successful purchaser must close title to any of the Assets that it purchases at the public auction on a date that is thirty (30) calendar days after the entry of an order (the "Approval Order") approving the sale of the Assets to the Successful Bidder by the Bankruptcy Court (the "Closing Date") although such date may be extended solely by the Plan Proponent in his discretion. No transaction shall be deemed final until approved by the Court.

20. The Court and all interested parties are respectfully referred to the Bidding Procedures for its more precise terms.

Exemption of Sale of Assets from Transfer Taxes

21. Pursuant to section 1146 of the Bankruptcy Code §1146, the "transfer... 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." See 11 U.S.C. §1146(c).

22. The sale of the Assets is necessary and integral to the implementation of the confirmed Second Amended Brisman Plan. Consequently, Brisman respectfully submits that the sale of the Assets and distribution of the net proceeds through the confirmed Second Amended Brisman Plan falls within the scope of the exemption provided for under Bankruptcy Code §1146(c).

Determination of Highest or Best Offer

23. The successful buyer[s] for the Assets will be the party or parties who tender the highest or best bid, which presents the best opportunity to maximize the value of the Assets for the benefit of the Debtor's estate and his creditors. Any party that is interested in bidding on the Assets must sign a contract substantially similar to the form of the Contract to be provided by the Plan Proponent's attorney, and provide the undersigned Plan Proponent's attorney with a minimum deposit of 10% of the price offered (the "Deposit").

24. The Deposit must be in the form of a bank check, or wire transfer, made payable to "Shaferman & Feldman LLP Attorney Escrow IOLA Account" and be delivered to the Auctioneer (defined below) in accordance with the deadlines set forth in the Sales Procedures.

25. The auction will be held at a place and time to be determined in the Plan Proponent's discretion following Court approval of the public sale procedures outlined herein, and the Assets shall be offered for inspection by appointment at reasonable times, requested by an interested party to the Auctioneer, which will make such arrangements. The auction will be governed by the Sales Procedures approved by the Court. The Plan Proponent reserves the right to change the date, time,

and location of the auction after it has been scheduled, provided that appropriate notice is given to creditors and interested parties.

26. The Plan Proponent's obligation to pay a fee to the Auctioneer shall be the subject of a separate application to be heard by the Court upon appropriate notice.

STATUTORY PREDICATE FOR RELIEF REQUESTED

Authority to Sell the Assets

27. Pursuant to Bankruptcy Rule 6004(f)(1), sales of a debtor's property outside the ordinary business may be by private sale or public auction. The Plan Proponent believes that it is in the best interests of its estate to sell the Assets at a public auction, as set forth in the Bidding Procedures, in order to ensure that it receive the highest and best offer for the Assets.

28. Section 363(b) of the Bankruptcy Code provides that a debtor "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). A debtor's determination to sell or use assets outside the ordinary course of business under section 363, and the procedures employed by a debtor to effect such a sale, are entitled to substantial deference under the business judgment rule. "The business judgment rule's presumption shields corporate decision-makers and their decisions from judicial second-guessing when the following elements are present: (1) a business decision, (2) disinterestedness, (3) due care, (4) good faith, and (5) according to some courts and commentators, no abuse of discretion or waste of corporate assets." In re Integrated Resources, Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992) (internal quotation marks omitted); *see also* In re Boston Generating, LLC, 440 B.R. 302, 330 (Bankr.

S.D.N.Y. 2010); Licensing By Paolo. Inc. v. Sinatra (In re Gucci), 126 F.3d 380, 387 (2d Cir. 1997).

29. The Court of Appeals for the Second Circuit first enunciated this standard by stating: “[t]he rule we adopt requires that a judge determining a §363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such application.” In re Lionel Corp., 722 F.2d at 1070-71.

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

Lionel, 722 F.2d at 1071.

30. The Plan Proponent seeks approval to sell the Sutphin Blvd Property and the 191st Street Property, as well as the Debtor’s other Assets, free and clear of any and all liens, claims or encumbrances in accordance with section 363(f) of the Bankruptcy Code. A trustee may sell property to section 363(b) and 363(f) “free and clear of any interest in such property of an entity other than the estate” if one of the following conditions are satisfied:

- É applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- É such entity consents;
- É 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;
- É such interest is in bona fide dispute; or
- É such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. §363(f).

31. The Plan Proponent believes that the sale of the Sutphin Blvd Property and the 191st Street Property will pay the allowed claims of secured claims, in full. In the Sales Procedures, the minimum bid for the Sutphin Blvd Property is being set at \$325,000, and the minimum bid for 191st Street Property is being set at \$425,000. The Plan Proponent does not believe that there are any claims secured by any of the Debtors' other Assets

32. Consequently, the Plan Proponent proposes that the Assets be sold to all liens be transferred to and attach to the proceeds of the sale, subject to the rights, claims, defenses, and objections, if any, and that Purchaser be deemed a "good faith purchaser" under section 363(m) of the Bankruptcy Code

33. The Plan Proponent is also seeking to sell the Assets, including the Real Property, "As Is" "Where Is" without any representations or warranties of any kind.

34. Subsequent to the Sale, the Plan Proponent intends to seek confirmation of the successful bidder(s) in the following manner:

(i) within 72 hours after the close of the auction, the Plan Proponent will file a declaration (the "Sale Declaration") in further support of the Sale that will include the actual marketing efforts undertaken leading up to the Sale and a detailed report of the Sale, including, but not limited to the:

(a) number of registered, qualified bidders at the auction and how many of those bidders actually submit one or more bids during the auction;

(b) highest or best offer(s) received at the auction (the "High Bid") along with the identity of the bidder(s); and

(c) total amount of liens potentially asserted against the Assets as compared against the High Bid for purposes of supporting the Sale under Bankruptcy Code § 363(f);

(ii) substantially contemporaneous with the filing of the Sale Declaration, the Plan Proponent shall present a proposed sale order on seven (7) additional days notice by first class mail (the "Sale Order Presentment").

35. Furthermore, as part of the Sale Declaration, the Plan Proponent anticipates supplementing this Motion with evidence supporting a finding that the party making the highest or best offer at such public sale, acted in good faith and that the protections of a good faith purchaser under section 363(m) of the Bankruptcy Code are appropriate. In connection with the Sale Order Presentment, the Auctioneer's Report of Sale will also be filed.

Assignment of Contracts and Leases

37. Bankruptcy Code §365 states in relevant part that"... the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. §365(a). The ability to assume or reject an unexpired contract or lease allows a debtor to examine its unexpired contracts and leases and decide which ones it would be beneficial to adhere to and which ones it would be beneficial to reject. See, e.g., Orion Pictures Corporation v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098 (2d. Cir. 1993). This decision involves a debtor's "business judgment," which, in essence, determines whether "[assuming] the contract would be a good business decision or a bad one." Id. at 1099.

38. The Plan Proponent requests that, as provided for in the confirmed Plan in this case and in conjunction with the Sale, he be permitted to assign to the successful purchaser(s) any and all executory contracts and unexpired leases relating to the Assets.

39. Accordingly, the Plan Proponent, in his business judgment, seeks authority to assume and assign any and all executory contracts and unexpired leases relating to the Assets to the successful purchaser at the Auction.

40. Based upon the foregoing, the Plan Proponent submits that the Sale of the Assets, as outlined herein, to the person or entity making the highest or best offer for the Assets, is and will be an exercise of sound business judgment, is in the best interests of the Debtor's estates, and its creditors, and should be approved in all respects.

NOTICE PROCEDURES

41. In addition to the Auctioneer's marketing and advertising efforts, the Plan Proponent is providing additional, separate service of this Motion and accompanying documents. The Plan Proponent has served a Notice of Hearing, this Motion, and all Exhibits attached hereto, upon: (i) the United States Trustee; (ii) all creditors listed on the Debtors' bankruptcy petitions or that have filed proofs of claim in the Debtors' cases; (iii) all parties having requested notices in the Debtor's case; and (iv) all appropriate taxing authorities. The Plan Proponent respectfully represents that service in the aforementioned manner is sufficient under these circumstances to notice the Sale and Sales Procedures.

42. No previous application for the relief requested in this Motion has been made to this or any other Court.

WHEREFORE, the Plan Proponent respectfully requests that this Court enter: (i) an order, substantially in the form annexed hereto as Exhibit A, (a) approving the Sales Procedures; (b) establishing a procedure for conducting the Sale process; (c) approving the form, time and scope of notice of the Sale, and (d) granting related relief; and (ii) an order authorizing and approving the

Sale of the Assets to the bidder(s) making the highest or best offer, free and clear of Liens, with such Liens to attach to the proceeds of the Sale in the same amount, priority, and validity existing as of the respective Petition Dates, along with such other and further relief as this Court finds just and proper under the circumstances.

DATED: New York, New York
November 28, 2017

SHAFFERMAN & FELDMAN LLP
Counsel for Randy Brisman, as Plan Proponent
137 Fifth Avenue, 9th Floor
New York, New York 10010
(212) 509-1802
By: Joel M. Shafferman
Joel M. Shafferman (JMS-1055)

SALES PROCEDURES

Set forth below are the sales procedures and terms and conditions of sale (the **Terms of Sale**) to be employed with respect to the sale of (1) certain real property located at 107-50 Sutphin Boulevard, Jamaica, New York 11435 (the **Sutphin Boulevard Property**) and 89-29 191st Street, Hollis, New York 11423 (the **191st Street Property**)(the **Sutphin Boulevard Property** and the **191st Street Property** shall hereinafter be collectively referred to as the **Real Properties**; (2) the **Vandi Religious Goods Business**; and (3) the **Parasram Guyanese and West Indian Market**. (the **Real Properties**, the **Vandi Religious Goods Business**, and the **Parasram Guyanese and West Indian Market** shall hereinafter be collectively referred to as the **Assets**)

Background

1. On June 16, 2016, 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 **Bankruptcy Court**). The Debtors chapter 11 case is pending under case number 16-42657(CEC).

2. On August 28, 2017, the Bankruptcy Court entered an order authorizing the Randy Brisman, as Plan Proponent's retention of Maltz Auctions (the **Maltz** or **Sales Agent**) with respect to the sale of the Assets.

3. These Terms and Conditions of Sale of the Assets are promulgated in connection with the Bankruptcy Court-authorized Public Sale (the **Public Sale**) as described below, and all sale terms or procedures not specifically described herein shall be at the sole discretion of Randy Brisman, as Plan Proponent (the **Brisman** or **Plan Proponent**).

4. Nothing contained in these Terms and Conditions of Sale is intended to supersede or alter any provisions of the Bankruptcy Code or any orders entered in the Debtors chapter 11 cases, or otherwise interfere with the jurisdiction of the Bankruptcy Court. All of the terms and conditions set forth in these Terms and Conditions of Sale are subject to modification as may be directed by the Debtor or the Bankruptcy Court. The Debtors reserve the right to modify these Terms and Conditions of Sale at the Public Sale or thereafter to maintain consistency with the provisions of the Bankruptcy Code and/or prior orders of the Bankruptcy Court.

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

6. If the Plan Proponent is unable to deliver the Assets, in accordance with these Terms and Conditions of Sale for any reason whatsoever, the Plan Proponent's and Sales Agent's only obligation will be to refund the Deposit (as defined below) and Buyer's Premium (as defined below), without interest, to the Successful Bidder (as defined below) or the New Successful Bidder (as defined below), as the case may be, and upon such refund, the Successful Bidder or the New Successful Bidder, as the case may be, will have no claim or recourse against the Sales Agent, the Plan Proponent, or any of the Plan Proponent's professionals and shall have no further rights under these Terms and Conditions of Sale or Memorandum of Sale.

Description of Assets

7. The assets to be sold at the Public Sale consist of:

Lots	Description
Lot A	The Sutphin Boulevard Property
Lot B	The 191st Street Property
Lot C	The Vandi Religious Goods Business
Lot D	The Parasram's Guyanese and West Indian Market

Qualified Bidder

8. In order to be permitted to bid on the Assets, prior to the commencement of the Public Sale, each prospective bidder (~~%Bidder+~~) must deliver to the Sales Agent an executed copy of these terms and conditions of sale and agree to be bound thereby. In addition, each Bidder must remit a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), certified check, or such other form acceptable to the Debtors, payable to the order of the ~~%Silverman Acampora LLP Attorney Escrow IOLA Account+~~ (the ~~%Qualifying Deposit+~~), which shall serve as a partial good faith deposit against payment of the purchase price. The amount of such Qualifying Deposit shall be based upon the Lot upon which the Bidder intends to bid, as follows:

- Bids for Lot A : \$32,500 (Minimum Bid Price of \$325,000)
- Bids for Lot B: \$42,500 (Minimum Bid Price of \$425,000)
- Bids for Lot C \$5,000
- Bids for Lot D \$10,000

9. Any Bidder who submits a Bid that conforms to the requirements of Paragraph 8 above, shall be considered a ~~%Qualified Bidder+~~.

Public Sale

10. The Public Sale will be held on January 31, 2018 (the ~~%Sale Date+~~) at the Sheraton LaGuardia East Hotel, 135-20 39th Avenue, Flushing, NY 11354. Registration will begin at 10:00 a.m. The Plan Proponent reserves the right to change the location, date and/or time of the Auction Sale.

Selection Of Successful Bid(s)

11. Prior to the conclusion of the Public Sale, the Plan Proponent will, in consultation with his professionals, (a) review and evaluate each Qualified Competing Bid, (b) determine the highest or otherwise best offer(s) for the Assets received at the Auction (each such bid, a ~~%Successful Bid+~~ and each bidder making such a bid, a ~~%Successful Bidder+~~) and (c) communicate to each Qualified Competing Bidder the identity of the Successful

Bidder and the details of the Successful Bid. The determination of the Successful Bid or Successful Bids by the Debtors shall be final, subject to approval by the Bankruptcy Court.

12. The Plan Proponent will sell the Assets to the Successful Bidders pursuant to the terms of the Successful Bid upon the approval of the Successful Bid by the Bankruptcy Court at the Sale Hearing.

13. For the avoidance of doubt, the Plan Proponent shall not consider or support any bid for the Assets received after the close of the Public Sale.

14. The sale price of the Real Properties shall be subject to confirmation of the Plan Proponent and further order of the court.

15. The Successful Bidders will, at the time and place of the conclusion of the Public Sale, sign a memorandum of sale (the **%Memorandum of Sale+**) in accordance with these Terms and Conditions of Sale substantially in the form annexed hereto.

Deposit, Sale and Closing with Respect to Sale of the Real Properties

16. Within two (2) business days after conclusion of the Public Sale, the Successful Bidder[s] with respect to the Real Properties (whether by and through Lot A or Lot B) (the **%Real Property Successful Bidder[s]+**) shall deliver to Shafferman & Feldman LLP, by bank check or bank teller's check made payable to %Shafferman & Feldman LLP Attorney Escrow IOLA Account+ or by wire in immediately available federal funds, an amount equal to ten (10%) percent of such Successful Bid minus the Qualifying Deposit (together with the Qualifying Deposit, the %Deposit+ plus the Buyer's Premium (as hereinafter defined). Failure of such Real Property Successful Bidder[s] to tender the Deposit and the Buyer's Premium within two (2) business days after conclusion of the Public Sale 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 the Deposit paid, including the Buyer's Premium.

17. As set forth in more detail in the order of the Bankruptcy Court setting the terms of the Sales Agent's retention, the Real Property Successful Bidder, and the Second Highest Bidder in the event of a Real Property Successful Bidder's Default (as hereinafter defined), are solely responsible to pay the Sales Agent six (6%) percent of the Successful Bid (the %Buyer's Premium+). The Buyer's Premium shall be deemed to have been earned immediately upon the fall of the hammer. The sum of the Successful Bid and related Buyer's Premium is defined herein as the **%Purchase Price.** In the event that the sale is not consummated, the Buyer's Premium shall be property of the Debtor's estate.

18. The Successful Bidder[s] must pay the balance of the Purchase Price for Lot A and Lot B to the Plan Proponent by bank check or bank teller's check or by wire in immediately available federal funds. The Real Property Successful Bidder[s] must close title to the Assets at a date that is no more than thirty (30) days after the Court Approval Date, **TIME BEING OF THE ESSENCE as to the Real Property Successful Bidder,** although such date may be extended solely by the Plan Proponent. Notwithstanding the foregoing, the Plan Proponent shall grant the Real Property Successful Bidder a single thirty (30) day extension (the **%Extension+**), at the request of the Real Property Successful Bidder, provided the Real Property Successful Bidder posts an additional, non-refundable deposit of ten (10%) percent of the purchase price, for an aggregate non-refundable deposit equal to twenty percent (20%) of the Purchase Price prior to the twentieth (20th) day following

court approval (the **%Additional Deposit+**). The Additional Deposit shall be made by certified check or bank check made payable to the **%Shafferman & Feldman LLP Attorney Escrow IOLA Account+** or by wire in immediately available federal funds and, together with the original Deposit, shall be deemed the **%Deposit.** If the Real Property Successful Bidder elects to exercise the Extension, the Closing shall take place on or before the sixtieth (60th) day following court approval, **TIME BEING OF THE ESSENCE as to the Real Property Successful Bidder**, although such date may be extended solely by the Debtors. If the Real Property Successful Bidder elects to exercise the Extension, the Real Property Successful Bidder shall be responsible for all real estate taxes, including all penalties and interest, 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.

19. The closing with respect to the Real Property (or all of the Assets, if the Real Property Successful Bidder purchases the Personal Property) shall take place at the offices of Shafferman & Feldman, LLP, 137 Fifth Avenue, 9th Floor, New York, NY, 10010 (the **%Closing+**), or such other location as the Plan Proponent may direct.

20. The Real Property Successful Bidder[s] 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, or other real property transfer, deed or documentary tax, or other taxes imposed upon the sale due in connection with the transfer of the Assets from at Closing. The Real Property Successful Bidder acknowledges that it will be responsible for the completion of any ACRIS forms, if required. The Plan Proponent shall not be required to execute any form of title affidavit (but may in their 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 Real Property Successful Bidder acknowledges it will be responsible for the preparation of all Closing documents required including, but not limited to, transfer tax forms, if required. In connection with the Closing and Closing date, the Real Property Successful Bidder is hereby given notice that **TIME IS OF THE ESSENCE against the Real Property Successful Bidder may be, and the failure of the Real Property Successful Bidder 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, Buyer's Premium, and any Additional Deposit, and the termination of the Real Property Successful Bidder's right to acquire the Assets under these Terms and Conditions of Sale and the Memorandum of Sale.** The Real Property Successful Bidder shall be obligated to close title to the Assets and, except as expressly set forth herein, there is no contingency of any kind or nature that will permit the Real Property Successful Bidder to cancel or avoid its obligation under these Terms of and Conditions of Sale and the Memorandum of Sale other than the Plan Proponent's inability to deliver insurable title to the Assets. Further, the Real Property Successful Bidder shall have demonstrated, to the satisfaction of the Plan Proponent, evidence of its ability to conclude the transaction upon these Terms and Conditions of Sale and the Memorandum of Sale, without delay. The Plan Proponent reserves the right to reject any Bidder who the Plan Proponent believes, in his sole discretion is not financially capable of consummating the purchase of the Real Properties. Expenses incurred by the Real Property Successful Bidder, or any other Bidder, concerning any due diligence shall be the sole responsibility of such Bidder and, under no circumstances shall the Plan Proponent or his professionals be responsible for, or pay, such expenses.

21. The Real Property Successful Bidder or the New Real Property Successful Bidder shall have five (5) days from the Court Approval Date to order a title report, a copy of which shall promptly be provided to the Plan Proponent, otherwise the Real Property Successful Bidder or New Real Property Successful Bidder shall be required to utilize a reputable title insurance company

of the Debtors's selection, licensed in the State of New York, which shall provide the title insurance. The Real Property Successful Bidder or the New Real Property Successful Bidder has twenty (20) days from the Court Approval Date to advise the Debtors (by electronic mail to joel@shafeldlaw.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 Assets, or any portion thereof. Failure of the Real Property Successful Bidder or the New Real Property Successful Bidder to advise the Plan Proponent 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 the Plan Proponent reserving the right to specify a particular title company to insure title, provided said company is licensed in the State of New York.

22. The only commission that will be paid is to the Licensed Real Estate Broker, who registers the Successful Purchaser in accordance with the Broker Participation Agreement and has received confirmation of receipt and acknowledgement of valid registration by Maltz.

Deposit and Sale with Respect to Sale of Lot C and Lot D

23. Within two (2) business days after conclusion of the Public Sale, the Successful Bidders with respect to Lot C and Lot D (the **Lot C and Lot D Successful Bidders**) shall deliver to Shafferman & Feldman LLP, by bank check or bank teller's check made payable to Shafferman & Feldman LLP Attorney Escrow IOLA Account or by wire in immediately available federal funds, the Purchase Price (defined below). Failure of such Lot C and Lot D Successful Bidders to tender the Purchase Price within two (2) business days after conclusion of the Public Sale 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 Lot C and Lot D Successful Bidders 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 Public Sale, the Plan Proponent will return the Qualifying Deposits to all Bidders, except for the Lot C and Lot D Successful Bidders.** Subject to approval of the proposed Bidding Procedures and approval of a separate application by the Plan Proponent for a First and Final Allowance Of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred From July 6, 2016 through November 27, 2017, pursuant to section 503(b) of title 11 of the United States Code (the **Section 503(b) Application**), the Plan Proponent shall be entitled to a credit bid for the sale of the Vandri Business for the amount of any award pursuant to the Section 503(b) Application.

24. As set forth in more detail in the order of the Bankruptcy Court setting the terms of the Sales Agent's retention, the Lot C and Lot D Successful Bidders are solely responsible to pay the Sales Agent six (6%) percent of the Successful Bid as the Buyer's Premium. The Buyer's Premium shall be deemed to have been earned immediately upon the fall of the hammer. The sum of the Successful Bid and related Buyer's Premium is defined herein as the **Purchase Price**. In the event that the sale is not consummated, the Buyer's Premium shall be property of the Debtors' estate.

25. Removal of all personal property with respect to Lot C and Lot D (**Personal Property**) will be conducted immediately after the Public Sale, excluding Saturday and Sunday, and must be completed by no later than seven (7) days following the conclusion of the Public Sale (the **Removal Deadline**).

26. All Personal Property purchased are required to be removed by the Successful Bidder at his/her/its own cost, risk and expense from the Real Property by the Removal Deadline. Neither the Sales Agent nor the Plan Proponent shall have any responsibility for any item left at the

Real Property after the Removal Deadline. Any items left at the Real Property after the Removal Deadline may be deemed abandoned or resold by the Plan Proponent. Any such Successful Bidder will only be authorized to remove any Personal Property purchased once full payment of the Purchase Price is received by the Plan Proponent and/or the Sales Agent.

Free and Clear, No Representations

27. All of the rights, title, and interests of the Debtor in and to the Assets, or any portion thereof, will be sold, conveyed, transferred, and assigned free and clear of all Liens, Claims, Interests, and Encumbrances pursuant to Sections 363 and 365 of the Bankruptcy Code, such Liens, Claims, Interests, and Encumbrances to attach to the gross proceeds of the sale of the Assets, except to the extent otherwise set forth in the Memorandum of Sale.

28. The Sales Agent, the Plan Proponent, and the Plan Proponent's 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 Assets or this Public Sale, which might be pertinent to the purchase of the Assets, or any portion thereof, including, without limitation, (i) the current or future real estate tax liability, assessment or valuation of the Real Properties; (ii) the potential qualification of the Real Properties 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 Real Properties, 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 Real Properties; (iv) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Assets 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 Assets; (vi) the current or future rents, other operating income 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 Real Properties, 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 Real Properties. Each Bidder hereby expressly agrees and acknowledges that no such representations or warranties have been made. The Sales Agent, the Plan Proponent, and the Plan Proponent's professionals shall not be liable or bound in any manner by expressed or implied warranties, guarantees, promises, statements, representations or information pertaining to the Assets, made or furnished by the Sales Agent, the Plan Proponent, or any real estate broker, agent, employee, servant or other person or professional representing or purporting to represent the Sales Agent or the Plan Proponent unless such warranties, guarantees, promises, statements, representations or information are expressly and specifically set forth in writing within these Terms and Conditions of Sale and the Memorandum of Sale.

29. The Assets are 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. The sale of the Assets 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; (e) leases and (f) environmental conditions; provided, however, **the Assets 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 Assets, 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 Assets in making their bids. Neither the Sales Agent, the Plan Proponent, nor any of the Plan Proponent's representatives make any representations or warranties with respect to the permissible uses of the Assets including, but not limited to, the zoning of the Real Properties. All Bidders acknowledge that they have conducted their own due diligence in connection with the Assets and are not relying on any information provided by the Sales Agent, the Plan Proponent, or the Plan Proponent's professionals. The Assets will be sold subject to any and all violations requiring corrective action.

30. The Plan Proponent shall convey the Real Properties by delivery of quitclaim deeds. 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 Real Property Successful Bidder or the New Real Property Successful Bidder, as the case may be, is unable to obtain title insurance, subject to the permissible exceptions contained herein, the Plan Proponent may, at his option, arrange for the issuance of a title insurance policy by such a company at the sole cost and expense of the Real Property Successful Bidder, or the New Real Property Successful Bidder, as the case may be.

Sale Hearing

31. The Public Sale of the Assets is subject to confirmation by the Plan Proponent and pursuant to a further order of the Bankruptcy Court confirming the Public Sale.

32. A hearing to approve the sale of the Assets to the Successful Bidder will be held on February , 2018 at m. before the Bankruptcy Court, located at 271-C Cadman Plaza East, Courtroom 3529, Brooklyn, New York 11201.

33. The Plan Proponent shall notify the Successful Bidder or the New Successful Bidder, as the case may be, whether the Public Sale is confirmed.

34. Neither the Plan Proponent, his counsel, Sales Agent, nor the Debtors' estates are liable or responsible for the payment of fees or any broker that has not previously been approved by Order of the Bankruptcy Court.

35. The Bankruptcy Court shall determine any disputes concerning the Public Sale of the Assets. By participating in the Public Sale, all Bidders consent to the jurisdiction of the Bankruptcy Court to determine such disputes under the Debtors' pending cases.

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

By: _____ Date: _____

Print Name: _____

MEMORANDUM OF SALE – SUCCESSFUL BIDDER

High Bid Realized at Public Sale: _____

Buyer's Premium: _____

Purchase Price: _____

The undersigned has this _____ 2018, agreed to purchase Assets (as defined in the annexed Terms and Conditions of Sale) consisting of _____ and sold by the Plan Proponent pursuant to the Order of the United States Bankruptcy Court for the Eastern District of New York, entered on _____ 2018, authorizing the sale of the Assets, for the sum of \$ _____ DOLLARS and hereby promises and agrees to comply with the annexed Terms and Conditions of Sale of the Assets and this Memorandum of Sale.

SUCCESSFUL BIDDER (Signature)

PRINT NAME

ADDRESS

ADDRESS (City, State, Zip)

TELEPHONE NUMBER

EMAIL ADDRESS

Received from _____ the sum of \$ _____ DOLLARS, as a non-refundable deposit for the purchase of the Assets 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 \$ _____.

[SALES AGENT]

SUCCESSFUL BIDDER ATTORNEY INFORMATION

Name _____

Address _____

Phone _____