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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

ESPRESSO DREAM LLC,

Chapter 11

Case No. 16-12749 (MEW)

Debtor.

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**EMERGENCY MOTION OF THE DEBTOR SEEKING ENTRY OF
(I) SALE PROCEDURES ORDER: (A) APPROVING BIDDING
PROCEDURES, (B) APPROVING THE FORM AND MANNER OF
NOTICE, (C) SCHEDULING AN AUCTION AND SALE HEARING, AND
(D) ESTABLISHING EXECUTORY CONTRACT CURE AMOUNTS AND
DEADLINES; (II) SALE APPROVAL ORDER: (A) AUTHORIZING THE
SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS FREE
AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND
ENCUMBRANCES, (B) AUTHORIZING THE ASSUMPTION AND
ASSIGNMENT AND, REJECTION, AS APPLICABLE, OF CERTAIN
EXECUTORY CONTRACTS AND LEASES IN CONNECTION
THEREWITH, (C) GRANTING THE SUCCESSFUL BIDDER GOOD
FAITH STATUS, (D) APPROVING A BREAK-UP FEE AND EXPENSE
REIMBURSEMENT, AND (E) GRANTING RELATED RELIEF; AND
(III) ORDER SCHEDULING HEARING ON SHORTENED NOTICE**

**TO: THE HONORABLE MICHAEL E. WILES,
UNITED STATES BANKRUPTCY JUDGE:**

Espresso Dream LLC, the above captioned debtor and debtor-in-possession (the
“Debtor”), by its attorneys, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, files this
emergency motion (the “Motion”) pursuant to sections 105(a), 363(b), (f) and (m), 365, 503, 507,

1146(a) of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq., (the “Bankruptcy Code”), Rules 2002(a)(2), 6004(a), (b), (c), (e), (f) and (g), 6006(a) and 9c), 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules 2014-1, 6004-1 and 6006-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”) and Administrative Guideline Order GM-331 for the United States Bankruptcy Court for the Southern District of New York, for entry of three (3) Orders:

- **Sale Procedures Order** (substantially in the form annexed hereto as **Exhibit C**):
(i) approving bidding procedures; (ii) approving the form and manner of notice of the Sale, the Bidding Procedures, the Auction and the Sale Hearing; (iii) scheduling an auction to sell the Assets, subject to higher and better bids (the “**Auction**”); (iv) Establishing Executory Contract Cure Amounts and Deadlines; and (v) scheduling a hearing to approve a Break-Up Fee and Expense Reimbursement, if applicable, and approval of the Sale of the Assets in accordance with the Auction (the “**Sale Hearing**”); and
- **Sale Approval Order**: (i) authorizing and approving the Sale of the Debtor’s Assets in accordance with the results of the Auction to the highest bidder (the “**Successful Bidder**”), (ii) authorizing the assumption and assignment and rejection, as applicable, of certain executory contracts and leases in connection with the Sale; (iii) granting the Successful Bidder good faith status; (iv) approving a break-up fee and expense reimbursement, if applicable, and (v) waiving the fourteen day stay of the Order;
- **Order Scheduling Hearing on Shortened Notice** (substantially in the form annexed here to as **Exhibit B**) granting the Debtor’s request for a hearing to consider entry of the Sale Procedures Order on shortened notice pursuant to Bankruptcy Rule 9066(c).

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. This proceeding has been initiated pursuant to Bankruptcy Code §§ 105(a), 363(b), (f) and (m), 365, 503, 507, 1146(a), Bankruptcy Rules 2002(a)(2), 6004(a), (b), (c), (e), (f) and (g), 6006(a) and 9c), 9007 and 9014, and Local Rules 2014-1, 6004-1 and 6006-1.

BACKGROUND

4. On September 30, 2016 (the “Filing Date”), the Debtor filed a voluntary petition for reorganization pursuant to Chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”). Thereafter the Debtor’s proceeding was referred to Your Honor for administration under the Bankruptcy Code.

5. The Debtor owns and operated five (5) coffee shops located throughout New York City. The Debtor was formed for the initial purpose of obtaining non-residential real property leases that could be used for food services operations. The Debtor obtained leases for five (5) locations (collectively, the “Store Locations”):

- 1 Broadway, New York, New York 10004 (“1 Broadway”);
- 201 West 21st Street, New York, New York 10011 (“Chelsea”);
- 42 East 46th Street, New York, New York 10017 (“Roosevelt Hotel”);
- 8 West 46th Street, New York, New York 10017 (“West 46th Street”); and
- 2541 Broadway, New York, New York 10025 (“Upper West Side”).

6. In or about 2013, the Debtor allowed one of its former, non-member managers, Shlomo Levi, to sublet informally (i.e., no written sublease) the Debtor’s leaseholds so that he could operate them as *Filicori* branded coffee shops, independently of the Debtor.

7. Mr. Levi, through his own entities, entered into separate agreements with Gruppo

Industriale Filicori-Zecchini S.P.A. and Filicori Zecchini USA Corp. (“Filicori”) to operate *Filicori* branded coffee shops at the locations informally sublet to him by the Debtor.¹

8. The Debtor was never a party to any franchise agreement or any other contract with Filicori, and the Debtor was therefore not bound by any provisions of any franchise agreement, including non-compete provisions discussed below.

9. The Debtor’s arrangement with the Filicori Operator seemed to work well for a while but, in or about early 2016, the Debtor learned that Mr. Levi and Filicori had a falling out. The Debtor also had a dispute of its own with Mr. Levi and thereafter terminated him as a manager of the Debtor, terminated the informal sublease arrangements with Mr. Levi’s entities (in one case going so far as to file a landlord-tenant proceeding to obtain warrant of eviction), and severed all ties with Mr. Levi.

10. Upon information and belief based on court filings, in or about April 2016, Filicori held the Filicori Operator in default of the franchise agreements between those parties, and obtained an Arbitration Award terminating the franchise agreement and enforcing the non-compete provisions contained in the franchise and area distribution agreements. Thereafter, Filicori sought to confirm the Arbitration Award in the New York Supreme Court against certain of the Filicori Operator entities (the “State Court Action”).

11. On July 11, 2016, the State Court granted a preliminary injunction in aid of arbitration against the Filicori Operator that enjoined the Filicori Operator:

¹ Ultimately, and upon information and belief based on court filings, Mr. Levi’s entities, namely, (i) Espresso Management Holding, Inc., (ii) Espresso Stores Inc., (iii) AF-1, LLC, (iv) AF-22, LLC, and (v) F-6 Chelsea, Inc. entered into franchise agreements with Filicori under which the Filicori Operator operated Filicori- branded coffee shops in New York City, New York at the Store Locations, and Mr. Levi’s entity, Espresso Dream MNGT, LLC entered into an area development agreement with Filicori. Mr. Levi’s entities, of which, upon information and belief, he is the 100% shareholder, are collectively referred to herein as the “Filicori Operator.” See, SDNY Case No. 16-12413, Docket Nos. 24, 26, 28, 30, and 32 - Statement of Financial Affairs, Question #28

and all those in active concert with them, or any of them, from either directly or indirectly; for themselves, or on behalf of or in conjunction with any other person, persons, partnership or corporation, owning, maintaining, engaging in or participating in the operation of a business similar . . . within 30 miles of [Filicori's] franchise cafes located at 2541 Broadway, One Broadway, and 201 W. 21st Street, Manhattan, New York

and ordered that the Filicori Operator,

and all those in active concert with them, or any of them, shall either directly or indirectly, for themselves, or on behalf of or in conjunction with any other person, persons, partnership or corporation, in the locations of the former franchise cafes located at 2541 Broadway, One Broadway, and 201 W. 21st Street, Manhattan, New York, cease operations and remain closed.

On July 15, 2016, the state court entered a judgment against the Filicori Operator based on the preliminary injunction order.

12. At some point thereafter, the Debtor resumed operations at the Store Locations, with a business plan to operate the Store Locations as a health conscious, price conscious small restaurant/café. The concept was to sell all items for \$2 (or less), with the sales being focused on small sandwiches, soups, salads, juices, waters, pastries, and other beverages ancillary to its operation, including coffee and tea. As the Debtor has been finalizing the design and menu for its concept, in or to preserve cash flow, good will, and the jobs of the employees, in the interim it had admittedly resumed operations of the Store Locations as coffee shops, in some instance under the name *Espresso Matto* and others as *Filicori Zecchini*.

13. Since the state court injunction did not bar the Debtor (which in any event was not subject to any non-compete or any agreement of any kind from Filicori) from going back into the food service business, including operating cafés, at the Store Locations under a different name with no connection to Filicori, the Debtor started doing so under the name *Espresso Matto*.

14. On August 15, 2016, Filicori obtained from the state court an Order/Warrant for Closing to Enforce Judgment dated August 15, 2016 (the “Warrant”).

15. The enforcement of the Warrant was initially stayed based upon a chapter 11 bankruptcy filing by the Filicori Operator, but on September 28, 2016, the Bankruptcy Court granted partial relief from the automatic stay imposed by the Filicori Operator’s bankruptcy filing to permit the state court action to proceed with enforcement of the state court orders.

16. That afternoon, the Sheriff of the City of New York (the “Sheriff”) executed upon the Warrant against the businesses that the Debtor was then operating at the Store Locations, which were abruptly closed by the Sheriff. The Sheriff also closed the Debtor’s corporate office where all of its books and records are located. The Sheriff further locked the Debtor out of its storage facility located at 45 East 45th Street, New York, New York.

17. The closure of the Debtor’s Store Locations by the Sheriff prompted the Debtor to file this Chapter 11 Case and seek bankruptcy relief and protections to protect its valuable assets.

18. From the outset of this Chapter 11 Case, the Debtor was at a cross-road: either it would return to State Court and seek permission to continue operations under the name *Espresso Matto* with its new concept, or immediately seek to sell its leasehold interests in the Store Locations. Given that the Debtor had no operations, and therefore no cash flow to fund litigation in the State Court, the Debtor made the business decision to proceed to market and sell its leasehold interests in the Store Locations, together with the furniture and equipment located at each respective location so that the Store Locations may be sold as a “turnkey” operation.

19. Since the closure of the Store Locations, the Debtor’s manager, Moshe Maman, was contacted by numerous parties interested in acquiring the leasehold interests in several of the Store Locations. The Debtor pursued these leads and procured offers on four (4) of the leases and

related assets (the “Sale Assets”), which will provide value to the Debtor’s estate.² The offers are summarized below:

Location	Arrears Through 11/30/16	Offer	Net Benefit to Debtor’s Estate
1 Broadway	\$12,830.00	\$35,000.00	\$22,170.00
Chelsea	\$51,500.00	\$60,000.00	\$8,500.00
Roosevelt Hotel	\$28,691.25	\$65,000.00	\$36,308.75
Upper West Side	\$65,000.00	\$100,000.00	\$35,000.00

20. The Debtor is seeking to further maximize the value of the Sale Assets by seeking to retain Auction Advisors LLC (“Auctioneer”) to, *inter alia*, market the Assets and conduct an auction sale.

21. Auctioneer will conduct an accelerated marketing campaign and implement an auction sale of the Assets on November 29, 2016 (the “Auction”).

The Terms of the Sales

22. The Debtor has received term sheets from the proposed purchasers on the Sale Assets, a copy of which is annexed hereto as **Exhibit A**.

23. The Debtor is currently circulating a form of Asset Purchase Agreement (the “APA”) which it is finalizing with each respective purchaser. Prior to the Auction, the Debtor will file the executed the APA with each purchaser. Subject to this Court’s approval of higher and/or better offers through an auction process, the Debtor seeks approval to sell the Sale Assets on the following terms and conditions:

A. 1 Broadway

Seller Espresso Dreams LLC

Purchaser Michael Ezekial, or his designee

² The Debtor owes \$160,000 in pre-petition rent arrears on the West 46th Street lease and has negotiated a surrender of the lease in exchange of any and all claims against the Debtor.

Purchase Price	\$35,000.00
Deposit	\$3,500.00, payable upon execution of the APA
Property	(i) The Debtor's leasehold interest in the nonresidential real property lease for the retail space located at 1 Broadway, New York, York; (ii) Equipment, furniture, and fixtures located at the premises; (iii) Non-perishable inventory; and (iv) Security Deposit in the amount of \$30,954.00.
Excluded Property	(i) cash; (ii) accounts receivable generated prior to the Closing Date; (iii) any corporate minute books, stock ledgers and other corporate books and records of Seller; (iv) all federal, state and local income tax refunds due to Seller; (v) existing claims under policies of insurance maintained by Seller; (vi) "Estate Causes of Action" as defined in Chapter 5 of Title 11, United States Code; (vii) Seller's books and records, computers, files and data; (viii) claims under the APA; and (ix) the Purchase Price.
Representations and Warranties; Covenants	The representations and warranties and covenants are customary for a transaction of this type, including, without limitation, representations and warranties regarding the authority to enter into the sale transaction and the agreement to abide by all laws with respect to the sale, litigation, material contracts, permits, environmental matter, ownership of Property, taxes and condition of the Property, the best efforts of the parties, notices and consents, access to information and the risk of loss.
Contingencies	None.
Closing Date	The closing of the transactions contemplated by this Agreement (the "Closing") shall take place no later than three (3) business days following Court approval of the APA at the offices of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, or such other place as the parties shall mutually agree.

B. Chelsea

Seller	Espresso Dreams LLC
Purchaser	Nathan Iluz, Simul LLC, or their designee
Purchase Price	\$60,000.00
Deposit	\$6,000.00, payable upon execution of the APA

Property	(i) The Debtor's leasehold interest in the nonresidential real property lease for the retail space located at 201 West 21 st Street, New York, York; (ii) Equipment, furniture, and fixtures located at the premises; (iii) Non-perishable inventory; and (iv) Security Deposit in the amount of \$35,000.
Excluded Property	(i) cash; (ii) accounts receivable generated prior to the Closing Date; (iii) any corporate minute books, stock ledgers and other corporate books and records of Seller; (iv) all federal, state and local income tax refunds due to Seller; (v) existing claims under policies of insurance maintained by Seller; (vi) "Estate Causes of Action" as defined in Chapter 5 of Title 11, United States Code; (vii) Seller's books and records, computers, files and data; (viii) claims under the APA; and (ix) the Purchase Price.
Representations and Warranties; Covenants	The representations and warranties and covenants are customary for a transaction of this type, including, without limitation, representations and warranties regarding the authority to enter into the sale transaction and the agreement to abide by all laws with respect to the sale, litigation, material contracts, permits, environmental matter, ownership of Property, taxes and condition of the Property, the best efforts of the parties, notices and consents, access to information and the risk of loss.
Contingencies	None.
Closing Date	The closing of the transactions contemplated by this Agreement (the "Closing") shall take place no later than three (3) business days following Court approval of the APA at the offices of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, or such other place as the parties shall mutually agree.

C. Roosevelt Hotel

Seller	Espresso Dreams LLC
Purchaser	Nathan Iluz, Simul LLC, or their designee
Purchase Price	\$65,000.00
Deposit	\$6,500.00, payable upon execution of the APA
Property	(i) The Debtor's leasehold interest in the nonresidential real property lease for the retail space located at 42 East 46 th Street, New York, York;

- (ii) Equipment, furniture, and fixtures located at the premises;
- (iii) Non-perishable inventory; and
- (iv) Security Deposit in the amount of \$60,000.

Excluded Property (i) cash; (ii) accounts receivable generated prior to the Closing Date; (iii) any corporate minute books, stock ledgers and other corporate books and records of Seller; (iv) all federal, state and local income tax refunds due to Seller; (v) existing claims under policies of insurance maintained by Seller; (vi) "Estate Causes of Action" as defined in Chapter 5 of Title 11, United States Code; (vii) Seller's books and records, computers, files and data; (viii) claims under the APA; and (ix) the Purchase Price.

Representations and Warranties; Covenants The representations and warranties and covenants are customary for a transaction of this type, including, without limitation, representations and warranties regarding the authority to enter into the sale transaction and the agreement to abide by all laws with respect to the sale, litigation, material contracts, permits, environmental matter, ownership of Property, taxes and condition of the Property, the best efforts of the parties, notices and consents, access to information and the risk of loss.

Contingencies None.

Closing Date The closing of the transactions contemplated by this Agreement (the "Closing") shall take place no later than three (3) business days following Court approval of the APA at the offices of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, or such other place as the parties shall mutually agree.

D. Upper West Side

Seller Espresso Dreams LLC

Purchaser Michael Ezekial, or his designee

Purchase Price \$100,000.00

Deposit \$10,000.00, payable upon execution of the APA

Property (i) The Debtor's leasehold interest in the nonresidential real property lease for the retail space located at 2541 Broadway, New York, York;
(ii) Equipment, furniture, and fixtures located at the premises;
(iii) Non-perishable inventory; and
(iv) Security Deposit in the amount of \$90,000.

Excluded Property	(i) cash; (ii) accounts receivable generated prior to the Closing Date; (iii) any corporate minute books, stock ledgers and other corporate books and records of Seller; (iv) all federal, state and local income tax refunds due to Seller; (v) existing claims under policies of insurance maintained by Seller; (vi) "Estate Causes of Action" as defined in Chapter 5 of Title 11, United States Code; (vii) Seller's books and records, computers, files and data; (viii) claims under the APA; and (ix) the Purchase Price.
Representations and Warranties; Covenants	The representations and warranties and covenants are customary for a transaction of this type, including, without limitation, representations and warranties regarding the authority to enter into the sale transaction and the agreement to abide by all laws with respect to the sale, litigation, material contracts, permits, environmental matter, ownership of Property, taxes and condition of the Property, the best efforts of the parties, notices and consents, access to information and the risk of loss.
Contingencies	None.
Closing Date	The closing of the transactions contemplated by this Agreement (the "Closing") shall take place no later than three (3) business days following Court approval of the APA at the offices of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, or such other place as the parties shall mutually agree.

RELIEF REQUESTED

24. By this Motion, the Debtor is seeking entry of three orders: (i) Sale Procedures Order, (ii) Sale Approval Order, and (iii) Order Scheduling Emergency Hearing.

BASIS FOR RELIEF

I. The Sale Procedures Order

A. The Proposed Bidding Procedures

25. The Debtor is seeking to sell the Sale Assets subject to higher and/or better offers. In order to ensure that the highest and best offer is received for the Sale Assets, the Debtor has established the proposed Bidding Procedures to govern the submission of competing bids at an auction.

26. In summary, the Bidding Procedures provide that the auction will be an ascending, “live/open outcry” auction to be conducted on or about at **12:00 p.m. (EST) on Tuesday, November 29, 2016** (the “Auction”). The Auction will be held at the offices of Auction Advisors in midtown Manhattan, 1350 Avenue of the Americas, 2nd Floor, New York, New York. Bidders will be given the opportunity to bid on any one property, or all four (4) together. Bidders would need to prequalify financially and in order to participate at the Auction, must be prepared to post a hard deposit of \$10,000 per property in the form of a bank check. Such initial deposit must be increased to 25% of bid amount by 10:00 a.m. on Wednesday, November 30, 2016. Auctioneer shall have the discretion to adjust bidding increments at the Auction, based up on the bidding activity.

27. Copies of all bids shall be provided to Jil Mazer-Marino, as Chapter 7 Trustee for the estates of Shlomo Levi, and his entities, (i) Espresso Management Holding, Inc., (ii) Espresso Stores Inc., (iii) AF-1, LLC, (iv) AF-22, LLC, and (v) F-6 Chelsea, Inc.

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

29. The Debtor believes that this aforementioned proposed Bidding Procedures are fair and reasonable and will permit all parties truly interested in acquiring the Sale Assets an opportunity to submit a bid that can be weighed or compared against the “stalking horse” offers.

30. In determining whether bidding procedures governing the sale of a debtor’s assets are adequate, Court have consistently deferred to the debtor’s business judgment for their specific

industry. *See, In re Integrated Resources, Inc.*, 147 B.R. 650, 656-57 (Bankr. S.D.N.Y. 1992)(holding that where overbid procedures are negotiated by the chapter 11 debtor, the business judgment rule applies and said procedures are “presumptively valid”).

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

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

33. The Debtor believes that the Bidding Procedures proposed will additionally procure serious parties interested in acquiring the Sale Assets and will result in realizing the full value of the Sale Assets. Certain of the Debtor's creditors, and other interested parties in this Chapter 11 Case have already been in contact with the Debtor's respective landlords and upon information and belief, have been trying to negotiate a new deal and new lease for the space occupied by the Debtor. The Debtor believes that proceeding with this auction process will prevent these parties from attempting to acquire the Debtor's lease without any consideration, and instead, require these parties to participate in an auction and pay fair market value for each of the leases.

34. The Debtor's Bidding Procedures are designed to facilitate a competitive bidding process in an expeditious manner, especially in light of the fact that the Debtor has significant

time constraints to sell and close.

35. The Bidding Procedures will allow the Debtor to conduct the Auction in an open fashion that will encourage participation from those bidders that demonstrate they are financially capable to consummate the transaction.

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

B. The Form and Manner of Notice of the Action is Proper

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

38. To notice the Sale and Auction, the Auctioneer will prepare and install custom signs at each location to be sold (1 Broadway, Chelsea, Roosevelt Hotel, Upper West Side). Auctioneer will also post notice of the Auction on open as well as subscriber-based websites, including Premium postings on Costar, Loopnet/Restaurants, Biz, Buy Sell, City Feet, and many others. Auctioneer will create a custom webpage and marketing materials, and use social media, including FaceBook, LinkedIn & Google Adwords to market the Auction. Lastly, Auctioneer will implement a direct marketing campaign by reaching out to its industry contacts, investors and others potential buyers still be to be resourced.

39. Additionally, the Debtor will serve via first class mail within one (1) days of entry of the Sale Procedures Order copies of: (a) Sale Procedures Order; (c) Bidding Procedures; and (c) this Motion upon: (i) the Office of the U.S. Trustee; (ii) all taxing authorities; (iii) counsel to the Purchaser; (iv) all known creditors, whether disputed, unliquidated or contingent, of the Debtor;

(v) all entities known or reasonably believed to have asserted a lien, claim, interest, or encumbrance in any of the Sale Assets, and (vi) all parties that have requested notice pursuant to Bankruptcy Rule 2002.

40. The Debtor submits that the foregoing notice fully complies with the requirements set forth in Bankruptcy Rule 2002 and 6004. Based upon the foregoing, the Debtor respectfully requests that this Court approve the form and manner of the notice proposed above.

C. The Auction

41. If the Seller receives one or more Qualified Competing Bids, the Seller will conduct the Auction to select the highest or best bid for the Sale Assets (the “Successful Bid”). The Auction, which shall be transcribed or recorded to the extent required under New York local practice, shall be held at **10:00 a.m. (EST) on November 29, 2016,** at the offices of Auction Advisors in midtown Manhattan, 1350 Avenue of the Americas, 2nd Floor, New York, New York, or such other location as shall be agreed by the Debtor and the Auctioneer and timely communicated to all parties interested in attending the Auction.

42. The Auctioneer will conduct the Auction in any manner will in its business judgment it believes will achieve the maximum value for the Sale Assets. Such terms and conditions may include, by way of example, one or more rounds of sealed or open bids from bidders.

43. At the conclusion of the Auction, the Debtor shall submit the Successful Bid to the Court at the Sale Hearing, for entry of a Sale Approval Order. Any Bid that fails to comply with the Bidding Procedures or any other procedures established at the Auction will be refused.

44. If no Qualified Competing Bids are received, the Debtor and intends to seek immediate Court approval of the current offers as outlined above and to be memorialized by an asset purchase agreement to be filed with the Court prior to the Auction.

45. Prior to the conclusion of the Auction, the Debtor will (a) review and evaluate all bids, (b) identify the highest or otherwise best offer for the Sale Assets received at the Auction (such bid, the “Successful Bid” and the bidder making such bid, the “Successful Bidder”) and (c) communicate the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Purchaser shall be final, subject to approval by the Court.

46. The Debtor will sell the Sale Assets to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Court at the Sale Hearing.

47. If, following the entry of the Sale Approval Order, the Successful Bidder fails to consummate the Sale because of a breach or failure to perform on the part of the Successful Bidder, the highest or otherwise best bid (“Back-Up Bid”) will be deemed the new Successful Bid, and the Debtor will be authorized, but not required, to consummate the Sale with the bidder who submitted the Back-Up Bid without further order of the Court. In such case, the good faith deposit of the Successful Bidder shall be forfeited to the Debtor and the Debtor shall have the right to seek any and all other remedies and damages from the defaulting Successful Bidder to the extent permissible under the applicable purchase agreement and applicable law. Notwithstanding the foregoing, the Purchaser shall not be obligated to consummate the Sale if it is not the Successful Bidder, and its bid shall not be considered a Back-Up Bid, unless it otherwise consents in writing.

D. Notice of Cure Amounts and Related Deadlines

48. In connection with the contemplated Sale, the Debtor is seeking to assume and assign its interest in nonresidential real property leases for the four (4) store locations at 1 Broadway, Chelsea, Roosevelt Hotel, and Upper West Side.

49. In order for the Debtor to assume these leases, the Debtor is required to cure all monetary defaults under the lease. Below is a chart of what the Debtor asserts is the monetary cure amounts for each location:

Location	Cure Amount Through November 30, 2016
1 Broadway	\$12,830.00
Chelsea	\$51,500.00
Roosevelt Hotel	\$28,691.25
Upper West Side	\$65,000.00

50. As part of the Sale and Auction process, the Debtor shall provide each counter-party to the leases an opportunity to object to the Debtor's stated cure amount, and file a Notice of Counter-Cure Amount.

51. The Debtor submits that the deadline for the counter-parties to file a Notice of Counter-Cure Amount should be **November 25, 2016 at 4:00 p.m. (EST)**, which Notice shall be deemed filed when filed on the docket for this Chapter 11 Case.

II. The Sale Approval Order

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

52. As set forth above, the Debtor received offers and term sheets for four (4) of the Store Locations and anticipates entering into asset purchase agreements for each location, with each offer subject to higher and/or better offers at the Auction.

53. Following the Auction, the Debtor will seek this Court's approval of the sale of

the Debtor's Sale Assets free and clear of all liens, claims, interests and encumbrances to the Successful Bidder.

54. All of the sale proceeds will be held in escrow by Debtor's counsel, with all liens, claims, interests and encumbrances, if any, to attach to the proceeds in accordance with Section 363(f) of the Bankruptcy Code, pending further Order of the Court.

55. As outlined hereinabove, the "stalking horse" offers received by the Debtor is in an amount sufficient to pay the outstanding rent arrears owed to each respective landlord and "cure" the monetary defaults under the respective leases, and still provide additional monies into the Debtor's estate, in an estimated amount of \$100,000.00, which will result in a distribution to the unsecured creditors of the estate.

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

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if--

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

57. The conditions set forth in 11 U.S.C. §363(f) are in the disjunctive, which means that only one of the tests must be met. The Debtor believes that the sale of the Sale Assets in this manner is in the best interests of the estates and their creditors, for a variety of reasons, including the following: (i) the Debtor believes that an immediate sale of the Sale Assets is in the best interests of creditors and the estate at large; (ii) the auction process will hopefully incentivize other bidders to come forward; and (iii) the sale proceeds will be used to fund a liquidating plan and distribution to creditors.

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

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

60. The Debtor seeks authority to conduct the Auction free and clear of all liens with the liens to attach to the proceeds of sale (i.e., gross proceeds, less expenses) pursuant to 11 U.S.C. §363(f). Since the Auction contemplated hereby is not in the ordinary course, its authorization requires notice and a hearing pursuant to Section 363(b) of the Code. Auction sales are specifically authorized under the Bankruptcy Code and F.R.B.P. Rule 6004(f) provides that, “All sales not in ordinary course of business may be by private sale or public auction.”

61. It is within the discretion of the Court to determine whether to approve or disapprove of a method for the disposition of property. *In re Alves*, 52 B.R. 353 (Bankr. D.R.I. 1985); *See, generally, In re Stogsdill*, 102 B.R. 587 (Bankr. W.D. Tex. 1989). As stated above, the Restaurant constitutes substantially all of the Debtor's assets.

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

B. Assumption and Assignment of the Assumed Leases to the Successful Bidder is Proper

63. In connection with the sale of Assets, the Debtor seeks authority to assume and assign the Debtor's interest in the nonresidential real property leases for 1 Broadway, Chelsea, Roosevelt Hotel, and Upper West Side (the "Assumed Agreements"), to the Successful Bidder pursuant to §365 of the Bankruptcy Code. To enable the Debtor to sell all of the Sale Assets, the Debtor requests authority to assume and assign the Assumed Agreements to the Successful Bidder following the Auction.

64. A debtor's decision to assume or reject an executory contract or unexpired lease must only satisfy the "business judgment rule" and will not be subject to review unless such decision is clearly an unreasonable exercise of such judgment. *Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Ry. Co.*, 318 U.S. 523 (1943) (applying Bankr. Act section 77 subsection (b), the predecessor to Bankruptcy Code section 365) (rejecting the test of whether the executory contract was burdensome in favor of whether rejection is within the

debtor's business judgment); *Lubrizol Enter., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1046-47 (4th Cir. 1985).

65. Section 365(b)(1) of the Bankruptcy Code authorizes a debtor-in-possession to assume, assume and assign, or reject executory contracts and unexpired leases subject to the approval of the Bankruptcy Court, on the condition, *inter alia*, that the Debtor cures any default under the executory contract or unexpired lease and provides adequate assurance of future performance under such contract or lease.

66. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." *See Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr.D.N.1. 1989). Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *In re Bygaph, Inc.*, 56 B.R. 596, 605-6 (Bankr. S.D.N.Y. 1986) (finding adequate assurance of future performance present when the prospective assignee of a lease from the debtors has the financial resources and has expressed a willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding; "chief determinant of adequate assurance of future performance is whether rent will be paid").

67. In connection with the Bidding Procedures, bidders will be required to submit, among other things, written evidence of their ability to provide adequate assurance of future performance under the applicable leases, such as current financial statements or current bank account statements. In order to facilitate the Auction, and to not cause any potentially chilling effect, the Debtor believes that any objection relating to a prospective assignee's ability to

provide adequate assurance of future performance under §365 of the Bankruptcy Code should be heard and adjudicated at the Sale Hearing.

68. Any assumption and assignment of the Assumed Agreements will be subject to all of the provisions of such lease, to the extent required by applicable law, and will be subject to all of the applicable provisions of the Bankruptcy Code. The proposed terms and conditions of the Auction are designed to ensure that any assignees are financially healthy and prepared to undertake the obligations for which they are bidding.

69. Accordingly, the Debtor submits that it will have established, or will establish, adequate assurance of future performance pursuant to section 365 of the Bankruptcy Code with respect to prospective assignment of the Assumed Agreements.

C. Protections as a Good Faith Purchaser

70. Section 363(m) of the Bankruptcy Code protects a good-faith purchaser's interest in property purchased from a debtor notwithstanding that the sale conducted under Section 363(b) is later reversed or modified on appeal. *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 of an unstayed order, whether or not the transferee knew of the pendency of the appeal").

71. The selection of the Successful Bidder will be the product of an arm's-length, good-faith negotiation in a competitive purchasing process. Based on the record to be made at the Sale Hearing, the Debtor will request a finding that the Successful Bidder is a good-faith purchaser entitled to the protections of Section 363(m) of the Bankruptcy Code.

D. Determination of a Break-Up Fee and Expense Reimbursement

72. To the extent the Stalking Horse bidders seek break-up fees, or expenses reimbursements, such request will be made by supplemental pleadings to be filed and determined at the Sale Approval Hearing to be scheduled by this Court.

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

73. The Debtor is not operating and has no ability to generate a cash flow to pay any of its post-petition administrative expenses, including rent to its landlords. Section 365(d)(3) of the Bankruptcy Code provides a sixty (60) day reprieve to the Debtor from paying post-petition rent to its landlords, for cause. However, this reprieve expires on November 30, 2016, at which point, without any payments being made to the landlords, sufficient cause may exist to grant relief from the automatic stay to the landlords. Thus, the Debtor requires and necessitates an expedited sale process by which the Sale Procedures Order is approved and entered the week of November 21, 2016, and a hearing on Sale Approval no later than November 30, 2016. Accordingly, the Debtor is seeking consideration of the Sale Procedures Order, and thereafter Sale Approval Order, on shortened notice.

74. Therefore, the Debtor hereby requests that the Court enter order shortening time pursuant to Rule 9006(c) of the Federal Rules of Bankruptcy Procedure so that the hearing to consider entry of (a) the Bidding Procedures Order may be heard on November 22, 2016, and (b) the Sale Approval Order may be heard on November 30, 2016.

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

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

(c) *Reduction.*

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

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

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

78. The Debtor respectfully submits that sufficient cause exists for scheduling a hearing on shortened notice to consider the Motion and refers the Court to the Affidavit of Julie Cvek Curley pursuant to Local Bankruptcy Rules 1007-2 and 9077-1 in support of a hearing on shortened notice on the Motion ("9077-1 Affidavit") filed contemporaneously herewith.

79. In light of the substantial marketing efforts of the Debtor and its advisors to date, the Debtor submits that the above timeline is sufficient to further and finally market the Debtor's assets and provides adequate time for any potential purchasers to conduct any further inquiries into the Debtor's assets.

NOTICE

80. Notice of this Motion has been provided to (i) the Office of the U.S. Trustee; (ii) the Debtor's secured creditors and their respective counsel; (iii) all taxing authorities; (iv) counsel to the Purchaser, (v) all counterparties to each of the Debtor's executory contracts and/or leases; (vi) all creditors; and (viii) all parties having filed a notice of appearance. The Debtor submits that said notice is adequate and proper.

CONCLUSION

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

82. For all of the foregoing reasons, the Debtor respectfully requests entry of (i) the Sale Procedures Order, and (ii) after the Auction and a Sale Hearing, entry of the Sale Approval Order.

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

Dated: White Plains, New York
November 18, 2016

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

By: /s/ Julie Cvek Curley
Julie Cvek Curley

Exhibit “A”



November 17, 2016

Re: 42 E 46th Street, NY, NY 10017 Retail

Dear Julie,

We have been authorized to submit the following proposal on behalf of Nathan Iluz, **Simul LLC**.

To purchase the coffee shop Sixty thousand (\$60,000), Payment will be made:

Six thousand (\$6,000) immediate.

Fifty four thousand (\$54,000) at closing.

Conditions:

- 1) They are not taking any liability form the previous owner/LLC.
- 2) They will deal direct with the landlord direct no sublease
- 3) Subject to higher and better offers in an auction
- 4) Closing in 30 days

Sincerely,
Rachel Ben-or
BSD Equities I 174 Fifth Avenue, I 200 New York, NY 10010
O: 212-367-7200 I C: 917-567-1393

BSD Realty Worldwide, Inc I 174 Fifth Ave, Suite 200 New York, NY 10010 | 212-367-7200

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November 17, 2016

Re: 201 West 21th Street, NY, NY 10011 Retail

Dear Julie,

We have been authorized to submit the following proposal on behalf of Nathan Iluz, **Simul LLC**.

To purchase the coffee shop Sixty five thousand (\$65,000) Payment will be made:

Six thousand five hundred (\$6,500) immediate.

Fifty eight thousand five hundred (\$58,500) at closing.

Conditions:

- 1) They are not taking any liability form the previous owner/LLC.
- 2) They will deal direct with the landlord direct no sublease
- 3) Subject to higher and better offers in an auction
- 4) Closing in 30 days

Sincerely,

Rachel Ben-or

BSD Equities I 174 Fifth Avenue, I 200 New York, NY 10010 O: 212-367-7200 I C: 917-567-1393

BSD Realty Worldwide, Inc I 174 Fifth Ave, Suite 200 New York, NY 10010 | 212-367-7200

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441 Park Avenue South
New York, NY 10016
Spreadsny.com
212-758-5555

November 16, 2016

Re: Coffee Shop 2541 Broadway, NY, NY 10025

Dear Jonathan,

I'm submitting the following proposals to purchase the coffee shop one hundred thousand dollars (\$100,000) payable ten thousand dollars (\$10,000) immediately as a down payment and the balance of ninety thousand dollars (\$90,000) at closing.

Conditions:

I'm not taking any liability from the previous owners/LLC.

I will deal directly with the landlord (no sublease).

Subject to higher and better offer at an auction.

Closing in 30 days.

Kindest regards,

Michael Ezekiel



441 Park Avenue South
New York, NY 10016
Spreadsny.com
212-758-5555

November 16, 2016

Re: Coffee Shop One Broadway, NY, NY 10004

Dear Jonathan,

I'm submitting the following proposals to purchase the coffee shop thirty five hundred thousand dollars (\$35,000) payable three thousand five hundred dollars (\$3,500) immediately as a down payment and the balance of thirty one thousand five hundred dollars (\$31,500) at closing.

Conditions:

I'm not taking any liability from the previous owners/LLC.

I will deal directly with the landlord (no sublease).

Subject to higher and better offer at an auction.

Closing in 30 days.

Kindest regards,


Michael Ezekiel