

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 11
Case No. 14-42315 (NHL)

GOLDEN LAND LLC,

Debtor.
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**ORDER CONFIRMING THE CHAPTER 11 TRUSTEE AND 37 ARA'S AMENDED
JOINT PLAN OF REORGANIZATION AND CONFIRMING THE SALE OF THE
DEBTOR'S PROPERTY**

UPON the filing of an Amended Joint Plan of Reorganization dated March 16, 2015 [Dkt. No. 71-1] (the “**Joint Plan**”), by Gregory Messer, Esq., as the Chapter 11 Trustee (the “**Trustee**”) of the bankruptcy estate of Golden Land, LLC (the “**Debtor**”), by his attorneys, LaMonica Herbst & Maniscalco, LLP and 37 Avenue Realty Associates, LLC (“**37 ARA**”), by its attorneys, Klestadt Winters Jureller Southard & Stevens, LLP; and the Court having approved the Trustee’s Amended Disclosure Statement dated February 4, 2015 (the “**Amended Disclosure Statement**”) by Order dated April 2, 2015 [Dkt. No. 75]; and upon bidding for the Debtor’s real property located at 142-21/27 37th Avenue, Queens, New York 11354, consisting of four (4) commercial condominium units, eleven (11) residential condominium units and twenty-nine (29) parking spaces, and as more specifically described in the annexed Exhibit “A” (the “**Property**”), having taken place at a public auction sale conducted on April 30, 2015 (the “**Auction**”) and held in accordance with the Joint Plan an Order approving the Amended Disclosure Statement; and Winnie Lam and Brian Lam, their designees or assignees (the “**Purchasers**”) having bid the sum of \$11,750,000.00 (the “**Purchase Price**”) for the Property, which was the highest bid at the Auction; and the Purchasers having provided the Trustee with a deposit in the amount of Five Hundred Thousand Dollars (\$500,000.00) (the “**Deposit**”); and 37 ARA having agreed to accept

a sum less than the amount of its secured claim and the Joint Plan proponents having agreed to accept a sum less than the minimum credit bid set forth in the Amended Plan; and the Court having held a hearing on May 19, 2015 to consider the approval of the sale of the Property and the confirmation of the Joint Plan (the “**Confirmation Hearing**”); and no objections to the Joint Plan or the approval of the sale of the Property having been filed; and it having been determined at the Confirmation Hearing, the transcript of which is incorporated by reference herein, that the requirements for confirmation of the Joint Plan as set forth in Section 1129 of the Bankruptcy Code having been satisfied and that the Trustee has advanced sound business justification for seeking to sell the Property to the Purchasers:

THE COURT FINDS AND DETERMINES THAT:

- a. Proper, timely, adequate and sufficient notice of the Auction for the Property was provided in accordance with 11 U.S.C. §§ 363(b) and (f) and Rules 2002, 4001 and 6004 of the Federal Rules of Bankruptcy Procedure, the Joint Plan and the Order approving the Amended Disclosure Statement, which notice adequately described the nature of the Auction.
- b. A reasonable opportunity to object or be heard regarding the sale of the Property was afforded to all interested persons and entities.
- c. The Order approving the Amended Disclosure Statement set forth the date and time of the Auction was duly and properly served on all required persons and entities.
- d. The offer from the Purchasers to purchase the Property for the Purchase Price is the highest and best offer received by the Trustee after a period of notice during which third-parties had an opportunity to seek information and enter into discussions or negotiations with the Trustee concerning the Auction of the Property.
- e. The sale to the Purchasers is an arms’ length transaction and is being entered into in good faith by the parties.
- f. The Trustee has advanced sound business justification for seeking to sell the Property to the Purchasers, and such sale is a reasonable exercise of the Trustee’s

business judgment to sell the Property to the Purchasers and to perform his obligations.

- g. In the absence of a stay pending appeal, the Purchasers will be acting in good faith pursuant to 11 U.S.C. § 363(m) in closing on the sale of the Property after the entry of this Order.
- h. A valid business purpose exists for the approval of the sale to the Purchasers pursuant to Sections 363(b), (f), and (m) of the Bankruptcy Code.
- i. The Property has been marketed, and the Auction has been conducted, in accordance with the Joint Plan.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Joint Plan, a copy of which is annexed hereto as Exhibit “B”, as modified herein and at the Confirmation Hearing, is confirmed.

2. This Court shall retain jurisdiction over this case as provided for by the terms of the Joint Plan.

3. Pursuant to the Joint Plan, and in furtherance of the Auction, the Trustee is authorized and allowed to sell, assign, transfer, convey all right, title and interest in the Property to the Purchasers in exchange for the Purchase Price.

4. Pursuant to 11 U.S.C. §§ 105(a), and 363(b), (f), and (m), and the terms of the Joint Plan, the Trustee is authorized and empowered to sell the Property to the Purchasers or their designee, free and clear of all liens, claims and encumbrances (the “**Liens**”) with any such Liens to attach to the proceeds of sale to the same extent and with the same priority as they existed on the date on which the Debtor filed the instant bankruptcy case.

5. The sale, assignment and transfer to the Purchasers are an arms-length transaction. As permitted by the Sections 1123(a)(5) and 1123(b)(4) of the Bankruptcy Code, confirmation of the Joint Plan by the Court shall constitute approval of the sale of the Property to

the Purchasers for the Purchase Price, and the authorization for the Trustee to consummate the transaction set forth therein.

6. In the absence of a stay pending appeal, if the Purchasers or their designee, closes on the sale of the Property at any time on or after the entry of this Order, then the parties shall be entitled to the protection of 11 U.S.C. § 363(m), or any authorization contained herein in its entirety on appeal; provided further that the purchase of the Property by the Purchasers or their designee constitutes a good faith purchase for fair value within the meaning of 11 U.S.C. § 363(m).

7. In the event that the Purchasers or their designee fail to close on the sale of the Property in accordance with the Joint Plan and the terms of this Order, then the Trustee is entitled to retain the Purchasers' Deposit and to close on the sale of the Property with the second highest bidder without further order of the Court.

8. In the event that Al Yueh Chang, Yu Ying Chen, Mei Di Kui and/or AC Tower Condominium, Inc., collectively or jointly, fail to vacate the Property and surrender physical possession to the Trustee within three (3) calendar days of the entry of the instant Order, the United States Marshals for the Eastern District of New York and/or the Sheriff of Queens County are authorized and directed to assist the Trustee, 37 ARA or the Purchasers, if necessary, to evict Al Yueh Chang, Yu Ying Chen, Mei Di Kui and/or AC Tower Condominium, Inc. from the Property.

9. That the Trustee, 37 ARA or the Purchasers, as applicable, are authorized under the supervision and with the assistance of the U.S. Marshal and/or the Sheriff of Queens County to take all necessary steps to take possession of the Property, including, breaking open and

entering the Property and evicting Al Yueh Chang, Yu Ying Chen, Mei Di Kui and/or AC Tower Condominium, Inc. from the Property.

10. That anyone interfering with the execution of this Order is subject to arrest by the U.S. Marshal and/or the Sheriff of Queens County.

11. That the Trustee, 37 ARA or the Purchasers, as applicable, on whose behalf the Court issues this Order, will account completely for all property seized pursuant to this Order and shall compile a written inventory of all such property and shall provide a copy to the U.S. Marshal, and/or the Sheriff of Queens County who shall include a copy with his return to the Court.

12. That the Trustee, 37 ARA or the Purchasers, as applicable, on whose behalf the Court issues this Order, will act as substitute custodian of any and all property seized pursuant to this Order and shall hold harmless the U.S. Marshals Service and/or the Sheriff of Queens County and their employees from any and all claims, asserted in any court of tribunal, arising from any acts, incidents, or occurrences in connection with the seizure and possession of the Property, including any third-party claims.

13. The fourteen-day stay provided for in Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure shall not be in effect and, pursuant to Rule 7062 of the Federal Rules of Bankruptcy Procedure, this Order shall be effective and enforceable immediately upon entry.

14. Each and every federal, state and local government agency or department is hereby directed to accept any and all documents necessary and appropriate to consummate the sale of the Property outlined herein and a copy of this Order may be filed in any place where state, federal or local law permits filing or recording.

15. Pursuant to Section 1146(a) of the Bankruptcy Code, the sale of the Property to the Purchasers in accordance with the Joint Plan, and the transactions contemplated in connection therewith shall not be subject to any transfer tax, stamp tax, real estate transfer tax, mortgage tax, recording tax, filing fee, sale or use tax or similar tax. The Office of the City Register of the City of New York shall record any documents effectuating such transfer without the payment of a transfer tax.

16. This Order shall modify Articles 3.1 b and 4.3.1.1 of the Joint Plan for the sole and exclusive purpose of providing that 37 ARA shall be responsible to pay, at a closing on the Property, the one percent (1%) buyer's premium (\$117,500.00) and shall satisfy all claims arising from outstanding administrative claims of the City of New York for, *inter alia*, water and sewer assessments, real estate taxes, violation and ECB judgments in connection with the Property.

17. This Order shall modify Articles 3.1 b and 11.3 of the Joint Plan for the sole and exclusive purpose of providing that the Trustee shall file an application for the approval of commissions and expenses.

18. The Class 2 Claim of AC Tower Condominium shall (a) not be paid under the Joint Plan or at the closing on the sale of the Property since the sale of the Property is for an amount less than the secured claim of 37 ARA and (b) have no claim to any common charges as against the Purchasers for any and all common charges up through the date of the closing on the sale of the Property.

19. Except as specifically provided in the Joint Plan or this Order, the Trustee is authorized and empowered to do all things, expend such funds and take all actions reasonably necessary to effectuate the consummation and implementation of the Joint Plan, including, but

not limited to, executing all documents, filing all requisite documents with appropriate state and local authorities, establishing all accounts, making all distributions and paying all costs in connection with consummating the Joint Plan.

20. The Trustee shall make such disbursements to the entities entitled thereto as required under the Joint Plan.

21. The Trustee shall continue to pay all statutory fees due the Office of the United States Trustee, pursuant to 28 U.S.C. § 1930(a)(6) until entry of a final decree in this case.

22. Within ninety (90) days of the date of entry of this Order, or at such other time as is appropriate, the Trustee's attorney shall file an Application for a Final Decree, showing compliance herein, with the Clerk of the Court.