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Objection Deadline: September 7, 2016 at 4:00 PM

Hearing Date: September 14, 2012 at 3:00 PM

Counsel for the Debtor

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

In re:

Hernan Mendieta,
DBA Attraction Jewelry of NY Inc.,

Debtor.

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) Chapter 11
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) Case No. 16-40832
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TO: THE HONORABLE NANCY HERSHEY LORD,
UNITED STATES BANKRUPTCY JUDGE

**NOTICE OF HEARING ON DEBTOR'S MOTION FOR ENTRY OF AN
ORDER (I) AUTHORIZING DEBTOR TO CONDUCT BANKRUPTCY
SALES OF REAL PROPERTY, AND (II) APPROVING BIDDING
PROCEDURES FOR BANKRUPTCY SALE**

PLEASE TAKE NOTICE that a hearing on the annexed *DEBTOR'S MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING DEBTOR TO CONDUCT BANKRUPTCY SALES OF REAL PROPERTY, AND (II) APPROVING BIDDING PROCEDURES FOR BANKRUPTCY SALE* (the "Motion") will be conducted by the Honorable Nancy Hersey Lord, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Eastern District of New York, Conrad B. Duberstein U.S. Courthouse, 271 Cadman Plaza East, Brooklyn, NY 11201 (the "Bankruptcy Court") on **September 14, 2016 at 3:00 PM** (the "Presentment Date").

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Motion must be made in writing, filed with the Bankruptcy Court on the Court's

Electronic Case Filing System, at www.ecf.nyeb.uscourts.gov (login and password required), with a copy delivered directly to Chambers and served upon counsel the Debtor, The Law Offices of Jeremy S. Sussman, 225 Broadway, Suite 3800, New York, NY 10007, so as to be received no later than **September 7, 2016 at 4:00 PM** (the “Objection Deadline”).

PLEASE TAKE FURTHER NOTICE that, in the event no objection is filed prior to the Objection Deadline, the Court may enter an order approving the Motion without a hearing.

Dated: New York, New York

August 22, 2016

THE LAW OFFICES OF JEREMY S. SUSSMAN

/s/ Jeremy S. Sussman
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Counsel for the Debtor

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**DEBTOR’S MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING DEBTOR TO
CONDUCT BANKRUPTCY SALES OF REAL PROPERTY, AND (II) APPROVING
BIDDING PROCEDURES FOR BANKRUPTCY SALE**

Hernan Mendieta (the “Debtor”), debtor and debtor-in-possession in the above-captioned chapter 11 cases (“the “Bankruptcy Case”), by and through his undersigned counsel, hereby moves (this “Motion”) for entry of an order (i) authorizing the Debtor to conduct bankruptcy sales (“Bankruptcy Sales”) of the real property located at 31 Remsen Street, Elmont NY 11003 and 111-81 43rd Street, Corona, NY 11368, and (ii) approving proposed bidding procedures (attached hereto as Exhibit 1, the “Bidding Procedures”) for the Bankruptcy Sales, and in support thereof, respectfully state as follows:

JURISDICTION, VENUE, STATUTORY BASES

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This proceeding constitutes a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper pursuant to 28 U.S.C. § 1409.

2. The statutory bases for the relief requested herein are sections 363, 506 and 105(a) of title 11 of the United States Code (as amended, the “Bankruptcy Code”), Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 6004-1 of the Local Bankruptcy Rules for the Eastern District of New York (the “Local Rules”).

PRELIMINARY STATEMENT

3. The Debtor owns two parcels of real property: (i) his primary residence located at 111-81 43rd Street, Corona, NY 11368 (the “Queens Property”); and (ii) an investment property located at 31 Remsen Street, Elmont NY 11003 (the “Elmont Property” and together with the Queens Property, the “Properties”).

4. The Debtor commenced this Bankruptcy Case for the purpose of saving his primary residence, the Queens Property, and maximizing the sale proceeds of the Elmont Property for the benefit of his estate and creditors. If the Debtor is unable to save his primary residence, he intends to also maximize the sale proceeds of the Queens property for the benefit of his estate and creditors.

5. The Debtor has de minimis unsecured creditors, and believes that, if properly marketed, he has equity in both Properties. The Debtor’s plans for successfully reorganizing include: (i) selling the Elmont Property, (ii) using the net proceeds of the Elmont Property (after paying secured creditors and his de minimis unsecured creditors in full) to pay down the principal balance due on the Queens Property, and (iii) obtaining a loan modification that

will enable him to save the Queens Property under a plan of reorganization. To that end, the Debtor has already commenced loss mitigation with respect to the Queens Property.

6. By this Motion, the Debtor seeks authority to conduct staggered sales of the Properties. Subject to Court approval, he will market both properties concurrently, but will schedule the bankruptcy auction of the Elmont Property first, and will conduct a sale of the Queens Property only if he determines he will be unable to save that property through sale of the Elmont Property and/or loss mitigation.

7. If the proceeds of the Elmont Property prove sufficient to pay down a portion of the mortgage on the Queens Property, or it otherwise looks like loss mitigation will be successful, the Debtor intends to cancel the sale of Queens Property, and move forward with a plan of reorganization.

8. If, however the Elmont Property fails to generate excess sale proceeds for the Debtor's estate, and/or it appears that loss mitigation will be unsuccessful, the Debtor intends to go forward with a bankruptcy sale of the Queens Property, for the purpose of maximizing the recovery on that property for the benefit of his estate and creditors, and will move forward with a plan of liquidation.

9. Contemporaneously with this Motion, the Debtor will file a motion for an order authorizing the Debtor to retain a real estate broker to market and conduct Bankruptcy Sales of the Properties.

BACKGROUND

10. The Debtor commenced this Bankruptcy Case on March 1, 2016 (the "Petition Date").

11. The case was converted from a chapter 7 case to a chapter 11 case on July 6, 2016.

12. The Debtor currently manages his estate as a debtor-in-possession. No trustee or creditors committee has been appointed.

RELIEF REQUESTED

13. Section 363(b) of the Bankruptcy Code provides, in relevant part, that: “The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code provides in relevant part that: “The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

14. Pursuant to section 506(c) of the Bankruptcy Code, a chapter 11 debtor-in-possession “may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim.” 11 U.S.C. § 506(c).

15. It is well established that, pursuant to section 363(b) of the Bankruptcy Code, a debtor-in-possession should be authorized to sell property of its estate out of the ordinary course of business and prior to obtaining confirmation of a plan of reorganization where the debtor demonstrates a sound business reason for such sale. Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983). Factors courts considered in determining whether a proposed sale reflects sound business judgment include, among others: the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property, and whether the asset is increasing or decreasing in value. Id.

16. The Debtor respectfully submits that the proposed Bankruptcy Sales reflect a sound exercise of the Debtor’ business judgment. The Bankruptcy Sales will pave the way for a plan of reorganization under which the Debtor intends to pay his unsecured creditors in

full, and retain his primary residence under a loan modification agreement with his mortgage lenders.

17. The Debtor respectfully request authority to sell the Properties at auction, following a marketing campaign conducted by a real estate broker engaged by the Debtor, to the party that submits the highest and best bid (or the second highest and best bid, if the highest bidder fails to close) at such auction. Accordingly, the Properties will be sold at true market value.

18. Absent the Bankruptcy Sales, the Debtor's lenders may foreclose on the Properties and sell them at a state court foreclosure auction. That event would likely result in significantly reduced sale proceeds, and make it impossible for the Debtor to propose a plan of reorganization. The Debtor respectfully submits that, under these circumstances, the proposed Bankruptcy Sales represent a sound exercise of his business judgment.

19. The Debtor further respectfully requests that the annexed Bidding Procedures be approved for the Bankruptcy Sales. The Debtor submits that the proposed Bidding Procedures will result in the Debtor obtaining the highest and best offer for the Properties. The following list summarizes key provisions of the Settlement Agreement and Bidding Procedures, but is qualified in its entirety to Exhibit 1 hereto:

- a. The Bankruptcy Sales shall be conducted by a real estate broker retained by the Debtor. The broker shall launch a marketing campaign aimed at identifying qualified bidders interested in purchasing the Property.
- b. The Debtor will schedule a bankruptcy auction of the Elmont Property within three (3) months of the date this Court enters an order approving this Motion,

and a bankruptcy auction of the Queens Property within four (4) months (the “Auction Dates”).

- c. To participate at the Auction, prospective bidders must submit a “Qualifying Bid” to the broker prior to the commencement of the respective auction, which shall include (1) a binding offer to purchase the Property at a specified price, and (2) a 10% deposit.
- d. Only “Qualified Bidders” may participate at the auction, provided that the broker may also permit certain parties who have not submitted Qualifying Bids to participate in the Auction, if it determines that allowing such parties to bid is in the best interests of the Debtor’s estates. Any person who wishes to bid at the Auction without submitting a Qualifying Bid must bring a \$50,000 deposit check to the auction. The broker will hold all deposits in escrow until the conclusion of the auction.
- e. The Debtor’s first-lien mortgage lenders will be deemed a Qualified Bidders, and permitted to credit bid at the applicable auction in the amounts allowed by the Court for the purposed of credit bidding, as determined at the hearing on this Motio.
- f. At the auctions, bidding shall commence at the amount of the highest and best Qualified Bid submitted prior to the Auction, or such other amount as is determined by the broker in consultation with the Debtor. Successive bids must be made in increments of \$10,000.00 or such lower amount as is determined by the broker.

- g. Each Qualified Bidder will be informed of the previous bid and provided an opportunity to make a higher bid. The Auctions shall continue until the broker determines that it has received the highest and best bid in accordance with these auction procedures and that no higher or better bids are forthcoming, *provided that*, in any event, the Auctions shall close on the Auction Dates. The highest and best bid submitted at (or prior to) the Auctions shall be the “Successful Bid” and the party who submits such bid shall be the “Successful Bidder.” The second highest and best bid submitted (at or prior) to the Auctions shall be the “Second Highest Bid” and the party who submitted such bid shall be the “Second Highest Bidder.”
- h. At the close of each Auction, the broker shall announce the Successful Bid and the Second Highest Bid and identify the Successful Bidder and the Second Highest Bidder, and the Successful Bidder and Second Highest Bidder shall each execute an Offer reflecting their bid amounts.
- i. The Bidding Procedures provide that, absent material irregularities in the conduct of the Auction, the Court will not consider bids made after the close of the Auction.
- j. Immediately following each Auction, the Debtor will request that the Court approve the sale of the Property to the Successful Bidder or the Second Highest Bidder, as the case may be.
- k. The Successful Bidder must close within seven business days, or a later date agreed to by the Debtor. If the Successful Bidder fails to close, the Property

will be sold to the Second Highest Bidder. If the Successful Bidder and/or the Second Highest Bidder fail to close, their deposits will be forfeited.

- l. The purchaser of the Property will be responsible for paying any applicable transfer taxes. The Property will be sold “as is” and “where is” and subject to all tenancies.
- m. If the proceeds are sufficient to pay all secured creditors in full, then the excess proceeds shall be distributed to the Debtor for the benefit of his estate an unsecured creditors.
- n. Forfeited deposits, if any, shall be deemed proceeds of the Property, subject to all liens on the Property, and distributed in accordance with the waterfall outlined above.
- o. Following the sale of the Elmont Property, the Debtor shall make a determination with respect to the sale of the Queens Property, and will have the right to go forward with, adjourn, or cancel the sale of the Queens Property.

20. The Debtor further respectfully requests, pursuant to section 506(c) of the Bankruptcy Code, that order approving this Motion provide that the Debtor’s costs and expenses of the sale, including the fees of the Broker, and the reasonable fees of his bankruptcy counsel related to the sale, be paid from the sale proceeds, provided that the Debtor’s attorney has agrees its fees charged against the sale proceeds shall not exceed \$15,000 with respect to the Elmont Property, and \$20,000 with respect to the Queens Property.

21. The Debtor further respectfully requests that the Court approve the following waterfall for distribution of the sale proceeds: the sale proceeds (to the extent available) with respect to each Property will be applied, to pay in full, in the following order: (i) any tax liens, (ii) the sale costs and expenses, which shall include the broker's fees and the Debtor's attorneys' fees in connection with the Bankruptcy Sale; (iii) the first lien mortgage on the Property, and (iv) any junior liens on the Property, in order of priority. If the proceeds are sufficient to pay the sale costs and all secured creditors in full, the excess proceeds shall be distributed to the Debtor for the benefit of his estate an unsecured creditors; and it is further

NOTICE

22. The Debtor will provide notice of this Motion to the Office of the United States Trustee, all scheduled creditors, and all entities who have filed a notice of appearance in this case. The Debtor submits that such notice is appropriate under the circumstances, and in accordance with 11 U.S.C. Sections 102 and Federal Rule of Bankruptcy Procedure 2002.

NO PRIOR REQUEST

23. No prior motion seeking the relief requested herein has been made by the Debtor to this or any other Court.

WHEREFORE, the Debtor respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit 2, (i) authorizing the Debtor to conduct a Bankruptcy Sale of the Property, (iii) approving Bidding Procedures for the Bankruptcy Sale, and (iii) granting the Debtor such other relief as is just and proper.

Dated: New York, New York

August 22, 2016

THE LAW OFFICES OF JEREMY S. SUSSMAN

/s/ Jeremy S. Sussman

Jeremy S. Sussman, Esq.

225 Broadway, Suite 3800

New York, NY 10007

Telephone: (646) 322-8373

Counsel for the Debtor

Exhibit 1

Proposed Bidding Procedures

**BIDDING PROCEDURES AND TERMS & CONDITIONS FOR
AUCTION OF THE REAL PROPERTY LOCATED AT _____**

The United States Bankruptcy Court for the Eastern District of New York (the “Bankruptcy Court”) has approved the following bidding procedures and terms & conditions (collectively, the “Bidding Procedures”) for a public auction sale (the “Auction”) of the real property located at _____ (the “Property”) to the highest and best bidder, subject to Bankruptcy Court approval, to be conducted by chapter 11 debtor-in-possession Hernan Mendieta (the “Debtor”). The Property shall be sold “as is” and “where is” without any representation or warranty of any type whatsoever, and subject to all tenancies. Pursuant to section 363(f) of the Bankruptcy Code, the Property shall be sold free and clear of any liens, claims or encumbrances. Each person or entity that submits a Qualifying Bid and/or participates at the Auction shall be subject to and bound by these Bidding Procedures, whether or not such person or entity has signed a copy of these Bidding Procedures.

BIDDING PROCEDURES

1) **Auction Date.** The Auction will take place on _____ (the “Action Date”) at the courtroom of the Honorable Nancy Hersey Lord, United States Bankruptcy Court for the Eastern District of Eastern District of New York, Conrad B. Duberstein U.S. Bankruptcy Courthouse, 271-C Cadman Plaza East, Brooklyn, New York, 11201, or such later date and time as may be selected by the Debtor approved by the Bankruptcy Court.

2) **Auctioneer.** The Auction will be conducted by _____ (the “Auctioneer”). Information regarding the Property and the Auction can be obtained from the Auctioneer by contacting:_____.

3) **Qualifying Bids.** To participate at the Auction, prospective bidders must submit a “Qualifying Bid” to the Auctioneer prior to the commencement of the Auction, which shall

constitute a binding offer to purchase the Property, and must include:

- i) A signed copy of these Bidding Procedures;
- ii) A completed and signed copy of the *Memorandum of Sale* annexed to these Bidding Procedures, which must specify the price at which the bidder offers to purchase the Property (the “Qualifying Bid Amount”);
- iii) Evidence that the bidder has readily available financial resources sufficient to purchase the Property within fourteen (14) business days after the Auction; and
- iv) A certified or bank check made payable to “_____, as Escrow Agent” (the “Deposit”) an amount equal to ten percent (10%) of the Qualifying Bid Amount.

4) **Qualified Bidders.** Any party who submits a Qualifying Bid to the Auctioneer prior to the commencement of the Auction shall be deemed a “Qualified Bidder” and permitted to participate at the Auction. _____ (the “Bank”) shall be deemed a Qualified Bidders and permitted to credit bid at the Auction. The Auctioneer, in its discretion, deem certain other parties who have not submitted Qualifying Bids to nonetheless be Qualified Bidders and participate in the Auction, if it determines that allowing such parties to bid is in the best interests of the Debtor’s estate. Any person who wishes to bid at the Auction without submitting a Qualifying Bid must bring a \$50,000 Deposit check to the auction (in the form of a certified or bank check payable to “_____, as Escrow Agent”). The Auctioneer will hold all Deposits in escrow until the conclusion of the Auction.

5) **Auction Procedures.** The Auction shall be conducted in accordance with and governed by the following procedures:

- i) Only Qualified Bidders shall be permitted to bid at the Auction. The Auction Date shall not be delayed or adjourned pending disputes regarding the qualification of

bids or bidders. Would-be bidders who fail to resolve such disputes in their favor prior to the Auction Date shall not be permitted to bid at the Auction;

- ii) Qualified Bidders (or their duly authorized representatives with authority to bind such Qualified Bidders) must participate at the Auction in person;
- iii) Bidding shall commence at the amount of the highest and best Qualified Bid submitted prior to the Auction, or such other amount as is determined by the Auctioneer in consultation with the Debtor;
- iv) Successive bids must be made in increments of \$10,000.00 or such lower amount as is determined by the Auctioneer, and each Qualified Bidder will be informed of the previous bid and provided an opportunity to make a higher bid;
- v) The Auction shall continue until the Auctioneer determines that it has received the highest and best bid in accordance with the Auction Procedures and that no higher or better bids are forthcoming, *provided that*, in any event, the Auction shall close on the Auction Date;
- vi) The highest and best bid submitted at (or prior to) the Auction shall be the “Successful Bid” and the party who submits such bid shall be the “Successful Bidder”;
- vii) The second highest and best bid submitted (at or prior) to the Auction shall be the “Backup Bid” and the party who submitted such bid shall be the “Backup Bidder”;
- viii) At the close of the Auction, the Auctioneer shall announce the Successful Bid and the Backup Bid and identify the Successful Bidder and the Backup Bidder;
- ix) Absent material irregularities in the conduct of the Auction, the Court will not consider bids made after the close of the Auction.

6) **Return of Deposits.** At the conclusion of the Auction, the Auctioneer will return the Deposits to all Bidders, except for the Successful Bidder and the Backup Bidder. The Backup Bidder's Deposit shall be returned within two (2) business days following the closing on the sale of the Property to the Successful Bidder.

7) **Sale Hearing.** Immediately following the Auction or as soon thereafter as counsel to the Debtor may be heard, the Court will conduct a hearing on approval of the sale of the property to the Successful Bidder or the Backup Bidder, as the case may be (the "Sale Hearing"). The Sale Hearing may be adjourned from time to time without further notice to bidders or parties-in-interest other than by announcement of the adjournment in open court. These Bidding Procedures are subject in all respect to the Bankruptcy Court entering an order (the "Sale Order") authorizing the Debtor to sell the Property to the Successful Bidder or the Backup Bidder, as the case may be.

8) **Right to Withdraw.** The Debtor reserve the right, in his sole discretion, to withdraw the Property from sale at any time prior to entry of the Sale Order.

TERMS & CONDITIONS

9) **Additional Deposit.** Within 48 hours after the Bankruptcy Court enters the Sale Order, the Successful Bidder and the Backup Bidder shall deliver to the Auctioneer additional Deposit checks in amounts equal to: ten percent (10%) of the amounts of their bids minus the amounts of their pre-Auction Deposits.

10) **Sale to Successful Bidder.** The Successful Bidder must close title to the Property not more than seven (7) business days after the Bankruptcy Court enters the Sale Order, or such later date as agreed to by the Debtor in his discretion. Should the Successful Bidder fail to close on the sale of the Property, the Successful Bidder shall forfeit its Deposit.

11) **Sale to Backup Bidder.** The Backup Bid shall remain open and irrevocable until

consummation of the Successful Bid, but in no event shall the Backup Bidder be required to keep its Backup Bid open for more than thirty (60) business days following entry of the Sale Order. If the Successful Bidder fails to consummate the purchase of the Property, the Broker shall notify the Backup Bidder of such failure, and the Backup Bidder shall be deemed to have submitted the highest and best bid at the Auction. The Backup Bidder must close title to the Property within seven (7) business days following of date on which the Backup Bidder is notified that the Successful Bidder has failed to close, or such later date as agreed to by the Debtor in their sole discretion. The Backup Bidder shall not receive a credit for any funds retained by the Debtor as liquidated damages based upon the default of the Successful Bidder. If the Backup Bidder fails to timely close on the sale of the Property, it shall forfeit its Deposit.

12) **Transfer Taxes.** THE SUCCESSFUL BIDDER (OR THE BACKUP BIDDER, AS THE CASE MAY BE) WILL BE RESPONSIBLE FOR THE PAYMENT OF ANY TRANSFER TAXES REQUIRED. THE AMOUNT OF ANY SUCH TAXES SHALL BE ADDED TO THE BALANCE OF THE PURCHASE PRICE.

13) **No Closing Contingencies.** By submitting a Qualifying Bid and/or participating in the auction, the Successful Bidder and the Backup Bidder each agree that they are obligated to close title to the Property and that there are no contingencies of any kind or nature that will permit the Successful Bidder or the Backup Bidder, as the case may be, to cancel or avoid his, her or its obligation to purchase the Property for the amount of its Successful Bid or Backup Bid.

14) **Sale As Is, Where Is.** The Property is being sold and delivered “**AS IS**” and “**WHERE IS**”, “**WITH ALL FAULTS**”, subject to all tenancies, without any representations, covenants, guarantees or warranties of any kind or nature whatsoever, and, pursuant to section 363(f) of the Bankruptcy Code, free and clear of all liens, claims and interests of entities other than the estate of whatever kind or nature, with such liens, claims, interests and encumbrances, if any, to

attach to the proceeds of the Auction Sale in such order and priority as they existed immediately prior to the date of the Auction, and subject to, among other things: (a) any state of facts that an accurate survey would 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 violations or other applicable municipal regulations and violations thereof; (e) any purported and/or actual residential leases, tenancies and/or occupancies; (f) environmental conditions; (g) any damage or destruction between the date of the Auction and the date of the Closing; and (h) all deed restrictions.

15) **No Representations.** By delivering their Qualifying Bids or attending and bidding at the Auction without having submitted a Qualify Bid, all bidders acknowledge that they have had the opportunity to review and/or inspect the Property, the state of title thereof, and laws, rules and regulations applicable thereto, and will rely solely thereon and on their own independent investigations and inspections of the Property in making their bids. All bidders acknowledge that they have conducted their own due diligence in connection with the Property, and are not relying on any information provided by the Debtor, the Broker/Auctioneer, and/or the Debtor's retained professionals, and that the Debtor, the Broker/Auctioneer, and the Debtor's retained professionals have not made and do not make any representations or warranties with respect to the permissible uses of the Property, the physical condition, rents, leases, expenses, operations, value of the land or improvements thereon, use or any other matter or thing affecting or related to the Property or the Auction, that might be pertinent to the purchase of the Property, including, without limitation:

- i) the current or future real estate tax liability, assessment or valuation of the Property; (b) the potential qualification of the Property for any and all benefits conferred by or available under federal, state or municipal laws, whether for subsidies, special real estate tax treatment, insurance, mortgages, or any other

benefits, whether similar or dissimilar to those enumerated;

- ii) the compliance or noncompliance of the Property, in its current or any future state, with applicable current or future zoning ordinances or other land use law or regulation, or the ability of the owner of the Property to obtain a change in the zoning or use, or a variance in respect to the Property; (d) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Property from any source, including, but not limited to, any state, city, local government or federal government or institutional lender; (e) the current or future use of the Property;
- iii) the present and future condition and operating state of any and all machinery or equipment in the Property and the present or future structural and physical condition of any improvements thereon or its suitability for rehabilitation or renovation; (g) the ownership or state of title of any personal property in the Property; (h) the presence or absence of any laws, ordinances, rules or regulations issued by any governmental authority, agency or board and any violations thereof;
- iv) any present or future issues concerning subdivision or non-subdivision of the Property; or
- v) the compliance or non-compliance of the Property with environmental laws and the presence or absence of underground fuel storage tanks, any asbestos or other hazardous materials anywhere in or on the Property.

The Debtor, the Broker/Auctioneer, and the Debtor's retained professionals are not liable or bound in any manner by express or implied warranties, guaranties, promises, statements, representations or information pertaining to the Property.

- 16) **Quitclaim Deed.** The Debtor shall convey the Property by quitclaim deed, and

subject to the exceptions set forth in ¶¶ 14 (a)-(h) herein. The purchaser's ability to obtain title insurance from a reputable title insurance company doing business in the State of New York shall NOT be a condition to closing.

17) **Jurisdiction of Bankruptcy Court.** Nothing contained in these Terms and Conditions shall supersede or alter any provisions of the Bankruptcy Code or of the Federal Rules of Bankruptcy Procedure or otherwise interfere with the jurisdiction of the Court. To the extent of any conflict between the Bankruptcy Code and/or the Bankruptcy Rules and these Terms and Conditions, the Bankruptcy Code and/or the Bankruptcy Rules shall govern. All of the terms and conditions set forth in these Terms and Conditions are subject to modification as may be directed by the Debtor or by the Court. The Debtor reserves the right to modify these Terms and Conditions at the Auction or thereafter to maintain consistency with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and/or prior orders of the Court.

I have read these Bidding Procedures and agree to be bound by them.

Date: _____, 2016

By: _____
Print Name:

IRREVOCABLE OFFER TO PURCHASE PROPERTY

The undersigned Bidder (the "Bidder") hereby offers and agrees, as of this _____ day of _____, 2016, to purchase the real property located at _____ (the "Property") for the sum of \$_____ (the "Offer"), subject to and in accordance with the preceding Bidding Procedures.

The Bidder hereby represents and agrees that:

- a. The Offer cannot be revoked by the Bidder prior close of the sale of the Property;
- b. The Offer is an "all cash" offer that does not contain any financing contingencies;
- c. The Offer is not subject to the Bidder being able to obtain title insurance;
- d. The Offer does not contain any due diligence contingencies;
- e. The Offer does not request and the Bidder shall not be entitled to an transaction fee, break-up fee, expense reimbursement, or other similar form of payment;
- f. The Bidder shall fully disclose to the Auctioneer the identity of each entity that will be bidding for the Property or participating in connection with this Offer; and
- g. The Bidder is financially capable of consummating the transaction contemplated by the bid.

BIDDER

_____ (sign)

Name:

Address:

Phone:

Email:

BIDDER'S ATTORNEY INFORMATION

Name:

Address:

Phone:

Email:

Exhibit 2

Proposed Order

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

In re:

Hernan Mendieta,
DBA Attraction Jewelry of NY Inc.,

Debtor.

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) Chapter 11
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) Case No. 16-40832
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**ORDER AUTHORIZING DEBTOR TO CONDUCT BANKRUPTCY SALES OF
REAL PROPERTY, AND APPROVING BIDDING PROCEDURES WITH
RESPECT TO BANKRUPTCY SALE**

Upon the Motion dated August 22, 2016 (the “Motion”) of Hernan Mendieta (the “Debtor”), debtor and debtor-in-possession in the above-captioned chapter 11 cases (“the “Bankruptcy Case”) for entry of an order(i) authorizing the Debtor to conduct bankruptcy sales (“Bankruptcy Sales”) of the real property located at 31 Remsen Street, Elmont NY 11003 (the “Elmont Property” and 111-81 43rd Street, Corona, NY 11368 (the “Queens Property” and together with the Elmont Property, the “Properties”, and (ii) approving proposed bidding procedures annexed to the Motion (the “Bidding Procedures”); and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and reasonable notice of the motion having been provided and no further notice being required under the circumstances; and opposition to the Motion, if any, having been overruled or withdrawn; and the relief requested in the Motion being in the best interests of the Debtor’s estates and creditors; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED, that the Motion is granted to the extent provided herein; and it is further

ORDERED, that the Bidding Procedures are approved; and it is further

ORDERED, that the Debtor is authorized to conduct sales of the Properties in accordance with the Bidding Procedures; and it is further

ORDERED, that the claim of _____ is temporarily allowed as a secured claim in the amount of \$_____ for purposes of credit bidding at the Bankruptcy Sale of the Elmont Property; and it is further

ORDERED, that the claim of _____ is temporarily allowed as a secured claim in the amount of \$_____ for purposes of credit bidding at the Bankruptcy Sale of the Queens Property; and it is further

ORDERED, that the broker retained by the Debtor shall schedule an auction with respect to the Elmont Property within three (3) months of the date of entry of this Order, and shall conduct such action in accordance with the Bidding Procedures, subject to the Debtor's right, in its sole discretion, to cancel or adjourn such auction, and it is further

ORDERED, that the broker retained by the Debtor shall schedule an auction with respect to the Queens Property within four (4) months of the date of entry of this Order, and shall conduct such action in accordance with the Bidding Procedures, subject to the Debtor's right, in its sole discretion, to cancel or adjourn such auction, and it is further

ORDERED, that immediately following each auction or as soon thereafter as counsel to the Debtor may be heard, the Court shall conduct a hearing on approval of the sale of the Properties to the highest and best bidder identified by the Debtor at the close of each auctions (or second highest and best bidder, as the case may be); and it is further

ORDERED, that the sale proceeds with respect to each Property will be applied, to pay in

full, in the following order: (i) any tax liens, (ii) the sale costs and expenses, which shall include the broker's fees and the Debtor's attorneys' fees in connection with the Bankruptcy Sale (provided that the attorneys' fee charged against the sale proceeds shall not exceed \$15,000 with respect to the Elmont Property, and \$20,000 with respect to the Queens Property); (iii) the first lien mortgage on the Property, and (iv) any junior liens on the Property, in order of priority. If the proceeds are sufficient to pay the sale costs and all secured creditors in full, the excess proceeds shall be distributed to the Debtor for the benefit of his estate an unsecured creditors; and it is further

ORDERED, that the Court shall retain exclusive jurisdiction over any matter or dispute relating to the Bidding Procedures or the Bankruptcy Sale.