

M. David Graubard, Esq.  
Attorney for Debtor  
71-18 Main Street  
Flushing, NY 11367  
(212) 681-1600

Return Date: July 18, 2017 at 10:00 a.m.

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re

Chapter 11  
Case No. 17-41936

HILLSIDE LOFTS LLC

Debtor.

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NOTICE OF DEBTOR'S MOTION FOR AN ORDER  
APPROVING SALE PROCEDURES  
CONCERNING DEBTOR'S SALE OF REAL PROPERTY  
LOCATED AT 134-15 HILLSIDE AVENUE, RICHMOND, NEW YORK 11418

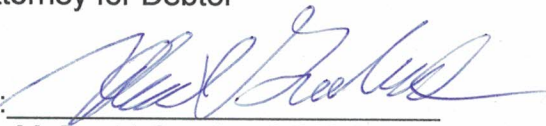
PLEASE TAKE NOTICE that the Debtor Hillside Lofts LLC, by its attorney filed a Motion for an Order Approving Sales Procedures for the Sale of Real Property Located at 134-15 Hillside Avenue, Richmond Hill, NY 11418. The Motion is returnable before the Honorable Elizabeth S. Stong, United States Bankruptcy Judge, in the United States Bankruptcy Court, 271-C Cadman Plaza East, Courtroom 3585, Brooklyn, New York, NY 11201 on July 18, 2017 at 10:00 a.m. The Debtor's request is for the entry of an order to approve the bidding procedures in connection with the proposed auction sale.

PLEASE TAKE FURTHER NOTICE that responses, if any, to the Motion shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, shall set forth the name of the respondent, the nature of the objection and the specific grounds therefore, and state with particularity the grounds for such response and be filed with the Clerk of the Court, United States Bankruptcy Court for

the Eastern District of New York, 271-C Cadman Plaza East, Brooklyn, New York 11201, (a)(i) through the Bankruptcy Court's electronic filing system; or (b) if a party is unable to file electronically, such party shall submit the objection in PDF format on a diskette in an envelope with the case name, case number, type and title of document, document number of the document to which the objection refers, and the file name on the outside of the envelope. An objection filed by a party with no legal representation shall comply with section (b) as set forth in this paragraph. A hard copy of the objection, whether filed pursuant to section (a) or (b), as set forth in this paragraph, shall be hand delivered directly to the Chambers of the Honorable Elizabeth S. Stong, and served upon: (i) M. David Graubard, Esq., 71-18 Main Street, Flushing, NY 11367; (ii) the Office of the U.S. Trustee for the Eastern District of New York, Attn: Nazar Khodorovsky, Esq., 201 Varick Street, Suite 1006, New York, NY 10004; (iii) any party that has filed a notice of appearance or proof of claim in the Debtor's case or who are otherwise entitled to receive notice so as to be received in hand no later than July 12, 2017 at 4:30 p.m.

Dated: Flushing, New York  
July 3, 2017

M. DAVID GRAUBARD, ESQ.  
Attorney for Debtor

By:   
M. David Graubard (MDG 5442)  
71-18 Main Street  
Flushing, NY 11367  
(212) 681-1600

M. David Graubard, Esq.  
Attorney for Debtor  
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Flushing, NY 11367  
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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re

Chapter 11  
Case No. 17-41936

HILLSIDE LOFTS LLC,

Debtor.

-----X

MOTION FOR AN ORDER APPROVING PROCEDURES CONCERNING  
SALE OF REAL PROPERTY LOCATED AT  
134-15 HILLSIDE AVENUE, RICHMOND HILL, NY

TO: HONORABLE ELIZABETH S. STONG, U.S. BANKRUPTCY JUDGE

The Debtor Hillside Lofts LLC, (“Debtor”) by its attorney, makes this motion for an order, substantially in the form annexed hereto as Exhibit A, approving the bidding procedures, the form and manner of notice of sale in connection with the sale of the commercial property located at 134-15 Hillside Avenue, Richmond Hill, New York 11418, on an auction basis.

1. On April 20, 2017, the Debtor filed a voluntary Chapter 11 petition with this Court and was duly authorized to remain as debtor in possession.
2. This Motion is a core proceeding and the venue of this Motion is proper, based upon the filing of the Chapter 11 petition and the location of the Debtor’s property.
3. This Motion is made pursuant to Section 363 of the United States

Bankruptcy Code (“Code”); Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure; and Local Bankruptcy Rules 6004-1 and 9006-1.

4. The Debtor is the owner of premises 134-15 Hillside Avenue, Richmond Hill, New York (“Property”), which the Debtor acquired with the hopes of developing the Property as a residence for American Veterans. Unfortunately, the Debtor was unable to find any economic partners to develop the Property.

5. The present holder of the mortgage on the Property is Joseph Zelik who holds the mortgage on the Property and obtained a Judgment of Foreclosure on February 21, 2017.

6. The other secured creditors are two tax liens that have filed claims in the Chapter 11 proceeding.

7. At the present time, the Property is a vacant piece of land that had been partially constructed at the foundation level. Plans had been developed to use the site as veterans housing, but the Debtor was unable to proceed with that renovation project.

8. The secured creditors claims are as follows:

(a) Joseph Zelik has a Judgment of Foreclosure in the sum of approximately \$3,700,000.

(b) NYCTL 2015-A Trust MTAG has filed a claim in the sum of \$112,700.46.

(c) NYCTL 2016-A Trust MTAG has filed a claim in the sum of \$119,385.77.

9. An order for the last day to file claims was made by this Court on May 8, 2017 setting July 19, 2017 as the last day for filing proofs of claim.

PRE-PETITION SALE EFFORTS

10. Prior to the filing of the Chapter 11 petition, the Debtor had circulated a proposed Contract of Sale for the sum of \$4,200,000. However, that contract was never consummated, so there was no application made to this Court for approval of that particular contract.

11. While there has been interest evidenced by various parties to the Debtor with respect to the Property, none of those inquiries have led to a formal contract.

SALES PROCEDURES

12. The Debtor proposes to offer the Property to the public at an auction sale to be held in the Bankruptcy Court ("Auction"). A copy of the proposed Sales Procedure Order is annexed hereto as Exhibit B.

13. A copy of the proposed bidding procedures and conditions of sale ("Bidding Procedures") is annexed hereto as Exhibit C and include:

(a) The Property will be sold (i) "as is" and "whereas" with no representations, legal or equitable, of any kind and (ii) with all liens, claims, and encumbrances, and other interests to attach to the proceeds of the sale.

(b) At the Auction, any person or entity, intending to bid for the Property ("Offeror") is required to submit a certified check equal to ten percent (10%) of the offer ("Deposit") which is non-refundable should the Offeror become the successful bidder and then fail to close for any reason, with the Debtor reserving all other rights and remedies.

(c) The balance of the purchase price of the Property shall be paid by the successful Offeror ("Purchaser") by a certified or bank check payable to "M. David

Graubard, as attorney” at the closing.

(d) All offers made at the sale shall remain open and irrevocable until thirty days after entry of an order approving the sale. In the event the order approving the sale is subject to a stay of the Court, the offer shall remain open until such time as either the stay is vacated or the order becomes a final order, whichever is earlier.

(e) A hearing to approve the sale will be held at a date to be determined by the Court after the sale is held.

(f) All bidders, who must pay no less than ten percent (10%) of the final offer at the Auction, must include evidence satisfactory to the Debtor of such bidder’s financial ability to close a purchase of the Property unless the Debtor directs otherwise. If a bid is made more than two business days prior to the Auction, the Debtor will notify the bidder within two business days of receipt whether the bid, including the ten percent (10%) deposit and evidence of the bidder’s financial ability to close, is a qualifying bid, or whether additional evidence is required.

14. Only those parties submitting a bid that conform to the Bidding Procedures (“Qualifying Bid”) will be deemed a qualified bidder (“Qualifying Bidder”).

Notice of Sale

15. Within five business days of the entry of the Sales Procedure Order, counsel for the Debtor will serve by first class mail, a notice of sale substantially in the form annexed hereto as Exhibit D (“Notice of Sale”) upon (i) Office of U.S. Trustee, Attn: Nazar Khodorovsky, Esq., 201 Varick Street, Suite 1006, New York, NY 10014; (ii) any party that has filed a notice of appearance or proof of claim in the Debtor’s case; (iii) any party who has previously expressed interest or is reasonably believed to have interest in

purchasing the Property; and (iv) any parties reasonably known to have an alleged lien, claim or encumbrance against the Property.

16. In addition, as soon as is practicable, the Trustee will cause a separate notice of sale, substantially in the form annexed hereto as Exhibit E, to be published in the New York Times.

17. The Debtor expects that there will be interest in the Property because it is in an ideal location for developing housing for American Veterans, which will allow for government assistance in connection with the development of the Property. There are architectural plans for such housing already in existence, which would be available to any purchaser.

#### STANDARD FOR SALE UNDER SECTION 363(B)(1)

#### The Proposed Sale is Justified by Sound Business Reasons and is in the Best Interest Of the Debtor's Estate and Creditors

18. Bankruptcy Code section 363(b)(1) provides 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 ..." A sale conducted pursuant to section 363(b)(1) will only be approved upon the trustee's demonstration of a good business reason for that sale. In re Chateaugay Corp., 973 F.2d 141 (2d Cir. 1991); Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 772 F.2d 1063, 1071 (2d Cir. 1983). As a general rule, courts will afford for consideration to a trustee's [debtor's] business judgment, but not give it absolute deference. In re Bakalis, 220 B.R. 525, 532 (Bankr. E.D.N.Y. 1998).

19. The Debtor has exercised its business judgment to sell the Property because it does not have the wherewithal to develop the Property itself. In the rising real estate market now found around the development of the old Concord Hotel as a gambling facility, has generated interest in the Property. All present indications are that a price could be obtained that will pay all the secured creditors, priority creditors and unsecured creditors of the Debtor, and leave a significant recovery for the equity holders.

Sale of the Assets Free and Clear is Authorized under Section 363(f) of the Bankruptcy Code

20. Bankruptcy Code section (363(f)(3) provides in pertinent part:

(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 ...

(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.

21. Based upon the foregoing, the Debtor verily believes that the eventual sales price will produce a price that is more than all the potential liens against the Property.

NOTICE OF THE PROPOSED SALE PROCEDURES ORDER

22. The Debtor has served this Motion and Notice of Motion upon (i) counsel for Acquisition; (ii) the Office of the U.S. Trustee for the Eastern District of New York; (iii) any party that has filed a notice of appearance or proof of claim in the Debtor's case; (iv) any party who has previously expressed interest or is reasonably believed to have interest in purchasing the Property; and (v) any parties reasonably known to have an



alleged lien, claim or encumbrance against the Property.

WHEREFORE, the Debtor respectfully requests that the entry of the proposed Sales Procedure Order attached hereto as Exhibit B, and that following the Sale Hearing, the Court enter an order, substantially in the form annexed hereto as Exhibit F, approving the Proposed Sale.

Dated: Flushing, New York  
July 3, 2017

HILLSIDE LOFTS LLC, Debtor and  
Debtor in Possession

By: M. DAVID GRAUBARD, Its Attorney

By: 

M. David Graubard (MDG 5442)  
71-18 Main Street  
Flushing, NY 11367  
(212) 681-1600

# Exhibit “B”

BID TERMS AND CONDITIONS OF SALE

1. Hillside Lofts LLC will offer for sale real property located at 134-15 Hillside Avenue, Richmond Hill, New York ("Property") at an auction sale to be held at the U.S. Bankruptcy Court, before the Honorable Elizabeth S. Stong, 271-C Cadman Plaza East, Room 3585, Brooklyn, NY 11201 on August , 2017 at 10:00 a.m. (the "Auction"), or such other room in the Courthouse as the Court may designate, at a minimum bid of \$4,200,000 or to any person or entity making a higher and better offer on the terms and conditions hereafter set forth and recited at the Auction. All offers to purchase the Property must comply with these bid terms.

2. The terms and conditions of sale shall include, among other things, the following:

(a) The Property will be sold (i) "as is" and "whereas" with no representations, legal or equitable, of any kind and (ii) with all liens, claims, and encumbrances, and other interests to attach to the proceeds of the sale.

(b) At the Auction, any person or entity, including the original purchaser, intending bid for the Property ("Offeror") is required to submit a certified check equal to ten percent (10%) of the offer ("Deposit") which is non-refundable should the Offeror becomes the successful bidder and then fail to close for any reason, with the Debtor reserving all other rights and remedies.

(c) The balance of the purchase price of the Property shall be paid by the successful Offeror ("Purchaser") by a certified or bank check payable to "M. David Graubard, as attorney," at the closing.

(d) All offers made at the sale shall remain open and irrevocable until

thirty (30) days after entry of an order approving the sale. In the event the order approving the sale is subject to a stay of the Court, the offer shall remain open until such time as either the stay is vacated or the order becomes a final order, whichever is earlier.

(e) The successful Purchaser must execute the Memorandum of Sale consistent with the procedures before the U. S. Bankruptcy Court authorizing an auction sale, and the closing shall take place within thirty days after entry of the order approving the sale to the successful bidder or at such other time as the Debtor and the Purchaser may agree upon. A hearing to approve the sale will be held on August , 2017 at 10:00 a.m. before the Honorable Elizabeth S. Stong, U.S. Bankruptcy Judge.

(f) All bidders, who must pay no less than ten (10%) of the final offer at the Auction, must include evidence satisfactory to the Debtor of such bidder's financial ability to close a purchase of the Property unless the Debtor directs otherwise. If a bid is made more than two business days prior to the Auction, the Debtor will notify the bidder within two business days of receipt whether the bid, including the 10% deposit and evidence of the bidder's financial ability to close, is a qualifying bid, or whether additional evidence is required.

3. All bidders shall provide to Debtor's counsel at or before the Auction the full name and identity of the proposed buyer of the Property.

4. If the transaction contemplated by the first highest and best offer as announced at the Auction is not closed, then the Debtor may accept the next highest and best offer.

5. In the event that the Debtor for any reason does not consummate a sale of

the Property, the sole obligation of the Debtor to the winning Offeror shall be to return the Deposit with interest and such party shall have no further claims, legal or equitable.

6. The Debtor shall accept the highest or best bid offered at the Auction.

However, the sale is subject to the entry by the Bankruptcy Court of an order approving the sale and authorizing the Debtor to consummate the transaction.

7. Each bidder at the Auction is required to confirm that it has not engaged in any collusion with respect to the bidding or the Auction.

8. The actual bidding will be transcribed or videotaped to ensure a record.

9. All Offerors shall be deemed to acknowledge that they have had an opportunity to review the Property and all pertinent documents with respect thereto prior to making offers and to have relied solely on their review and upon their own investigation of the Property in making their offers.

10. The successful bidder shall enter into the Memorandum of Sale which incorporates the Bid Procedures and the Rules of the U. S. Bankruptcy Court, and provides for closing within thirty (30) days after the of the Order Approving Sale, immediately after the Auction.

# Exhibit "C"

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 11

HILLSIDE LOFTS LLC

Case No. 17-41936

Debtor.

-----X

**BIDDING PROCEDURES FOR THE SALE OF REAL PROPERTY  
LOCATED AT 134-15 HILLSIDE AVENUE, RICHMOND HILL, NEW YORK**

Set forth below are the bidding procedures (the “Bidding Procedures”) to be employed with respect to the sale (the “Sale”) of the commercial property located at 135-15 Hillside Avenue, Richmond Hill, New York (the “Property”) owned by Hillside Lofts LLC (the “Debtor”), the debtor and debtor-in-possession in the above-captioned chapter 11 case pending in the Bankruptcy Court for the Eastern District of New York (the “Bankruptcy Court”) under Case No. 17-41936.

On June [\_\_\_], 2017, the Debtor filed its *Motion for Order: (A) Approving Bid Procedures for the Sale of Real Property; (B) Scheduling an Auction and Hearing to Consider the Sale and Approve the Form and Manner of Notice Related Thereto; (C) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Rights, Encumbrances and Other Interests Pursuant to Bankruptcy Code Sections 105, 363(b), 363(f) and 363(m); and (D) Granting Related Relief* [Docket No. \_\_\_] (the “Sale Motion”). On June [\_\_\_], 2017, the Bankruptcy Court entered an order approving the Bidding Procedures set forth herein (the “Bid Procedures Order”). The Bid Procedures Order also set [\_\_:\_\_\_.m.] (prevailing Eastern Time) on [\_\_\_\_], 2017 as the date the Bankruptcy Court will conduct a sale hearing (the “Sale Hearing”). At the Sale Hearing, the Debtor shall seek entry of an order from the Bankruptcy Court authorizing and approving the sale of the Assets to the Qualified Bidder (as defined below) that the Debtor determines to have made the highest or best offer for the Property (the “Successful Bidder”).

**The Bidding Process**

The Debtor and its advisors shall in accordance with the provisions of these Bidding Procedures and the Bid Procedures Order (i) determine whether any person is a Qualified Bidder (as defined below) in accordance with the criteria set forth herein, (ii) coordinate the efforts of Qualified Bidders in conducting their due diligence investigations as set forth herein, (iii) receive offers from Qualified Bidders, and (iv) negotiate any offers made to purchase the Property (collectively, the “Bidding Process”).

EXHIBIT C

### **Participation Requirements**

In order to be a Qualified Bidder, any party that may be interested in the Property (a “Potential Bidder”) must deliver the following to the Debtor (with a copy to the Stalking Horse Bidder), at the addresses specified below (unless a particular document has been previously delivered to the Debtor) not later than five (5) days before the Bid Deadline (defined below) (the “Participation Requirements”):

- i. A statement of Potential Bidder identifying the Potential Bidder, its principals, and the representatives thereof who are authorized to appear and act on its behalf for all purposes regarding the contemplated transaction;
- ii. Written disclosure of any connections or agreements with the Debtor, any other known Potential Bidder or Qualified Bidder, and/or any officer, director, manager or direct or indirect equity security holder of the Debtor; and
- iii. Information sufficient to allow the Debtor to determine that the Potential Bidder is reasonably likely to close on the Sale in a timely manner if selected as the Successful Bidder (as defined below).

A “Qualified Bidder” is a Potential Bidder who meets the Participation Requirements and submits a Qualified Bid (defined below) by the Bid Deadline; provided, that the Stalking Horse Bidder shall be deemed a Qualified Bidder.

### **Due Diligence**

Only Potential Bidders that meet the Participation Requirements are eligible to receive due diligence access. If the Debtor determines that a Potential Bidder no longer meets the Participation Requirements, then such Potential Bidder’s access to due diligence shall be terminated. Except as set forth in any definitive purchase agreement (including the Stalking Horse Agreement), the Debtor is not responsible for, and will bear no liability with respect to, any information obtained by Potential Bidders or Qualified Bidders in connection with the sale of the Property.

The Debtor will afford any Potential Bidder that meets the Participation Requirements the time and opportunity to conduct reasonable due diligence; provided, however, that the Debtor shall not be obligated to furnish any due diligence information after the Bid Deadline. The Debtor will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from Qualified Bidders.

### **Bid Deadline**

A Potential Bidder that meets the Participation Requirements and desires to make a bid shall deliver written copies of its bid and the Required Bid Materials (defined below) via email to (i) Debtor’s counsel, M. David Graubard, 71-18 Main Street, Flushing, New York 11367, dgraubard@keragraubard.com. not later than 4:00 p.m. (prevailing Eastern Time) on [\_\_\_\_], 2017 (the “Bid Deadline”).



## **Bid Requirements**

A Qualified Bid shall be in writing, include the information and documents set forth below (the “Required Bid Materials”), and meet the following conditions:

- i. State that that the Potential Bidder is prepared to enter into a legally binding Memorandum of Sale.
- ii. Include a letter stating and agreeing that the offer is irrevocable until the earlier of (i) the second business day after the Property has been sold or (ii) up to and including the close of business on the date that is three (3) Business Days after the Termination Date of the Memorandum of Sale.
- iii. Be accompanied by a cash deposit in the amount of ten percent (10%) of the purchase price provided in the bid, in the form of a wire transfer, certified check or such other form acceptable to the Debtor (the “Bid Deposit”), which shall be placed in an escrow account or other segregated account identified by the Debtor (the “Escrow Account”).
- iv. Include a representation of the Potential Bidder and written evidence acceptable to the Debtor that the Potential Bidder has the financial wherewithal to consummate the proposed transaction, provided that if a bid is based partly or completely on financing, (provided such financing shall not be a condition to Closing) written evidence of the commitment for financing and the appropriate contact information for such financing source must be provided.
- v. The bid shall not request or entitle the Potential Bidder to any transaction or break-up fee, expense reimbursement, termination or similar type of fee or payment, and shall include an acknowledgement and representation of the Potential Bidder that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Property, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or the Memorandum of Sale.
- vi. The bid shall not contain any due diligence, financing, or regulatory contingencies of any kind, though the bid may be subject to the satisfaction of specific conditions in all material respects at Closing.
- vii. The bid shall fully disclose the identity of each entity that will be bidding for the Property or otherwise participating in connection with such bid, and the complete terms of any such participation.
- viii. The bid shall state that the offering party consents to the core jurisdiction of the Bankruptcy Court and waives any right to a jury trial in connection with any

disputes relating to the Auction and the construction and enforcement of the Potential Bidder's contemplated transaction documents.

- ix. The bid shall provide that the Potential Bidder shall be bound as a "Backup Bidder" as provided below.
- x. The bid shall include evidence of authorization and approval from the Potential Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the submitted purchase agreement of the bidder.
- xi. Include a written acknowledgment that such Potential Bidder agrees to the terms of the Bidding Procedures.
- xii. Provide for a closing date which shall be no later than that set forth in the Stalking Horse Agreement.

A bid received from a Potential Bidder that met the Participation Requirements, includes all of the Required Bid Materials and otherwise meets the conditions set forth above to the satisfaction of the Debtor in its discretion, and is received by the Bid Deadline is a "Qualified Bid." A Potential Bidder submitting a Qualified Bid shall be a "Qualified Bidder". The Debtor reserves the right to determine the value of any Qualified Bid, and which Qualified Bid constitutes the highest or best offer (subject to Bankruptcy Court approval).

### **Backup Bidder**

Upon a determination by the Debtor that Successful Bidder either fails to consummate the purchase of the Property pursuant to its Memorandum of Sale on or before the [\_\_\_\_], breaches its Memorandum of Sale or otherwise fails to perform, the Debtor may, without further order of the Court, deem such Successful Bidder a "Defaulting Purchaser". In such event, the Debtor will be authorized, but not required, to consummate a sale transaction with the party (the "Backup Bidder") submitting the next highest and best Qualified Bid (the "Backup Bid") on the terms and conditions set forth in the Backup Bid without further order of the Court (the "Backup Purchase"). On an as-needed basis, the Debtor will determine an alternative closing deadline for the consummation of the Backup Purchase; provided, that such alternative closing deadline shall be no later than [\_\_\_\_], 2017.

The Debtor shall be entitled to retain the Deposit of the Defaulting Purchaser as its damages resulting from the breach or failure to perform by the Defaulting Purchaser.

### **The Auction**

If a Qualified Bid has been received by the Debtor by the Bid Deadline, the Debtor may conduct an auction (the "Auction") of the Property. The Auction shall be conducted at the U.S. Bankruptcy Court before the Honorable Elizabeth S. Stong, 271-C Cadman Plaza East, Room 3585, Brooklyn, NY 11201 (the "Auction Site") at 10:00 a.m. (prevailing Eastern Time) on \_\_\_\_\_, 2017 (the "Auction Date"), at such other place and time as the Debtor

shall notify all Qualified Bidders who have submitted Qualified Bids and expressed their intent to participate in the Auction as set forth above.

The auction shall be governed by the following procedures:

- i. All Qualified Bids made at the Auction shall be made and received on an open basis, and all material terms of each subsequent bid shall be fully disclosed to all other Qualified Bidders. The Debtor shall maintain a transcript of all bids made and announced at the Auction, including the opening bid, all subsequent bids, and the Successful Bid.
- ii. Except with respect to subsections (v) and (vi) below, the Debtor may conduct the Auction in the manner that it determines, in its business judgment and may adopt rules for the Auction at the Auction that, in the Debtor's business judgment will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bid Procedures Order. All such rules will provide that: (i) the Auction procedures must be fair and open, and not intended to cause any participating Qualified Bidder to be disadvantaged in any material way as compared to any other participating Qualified Bidder, and (ii) all participating Qualified Bidders shall be entitled to be present for all bidding with the understanding that the true identity of each bidder (i.e., the principals submitting each bid) shall be fully disclosed to all other participating Qualified Bidders and that all material terms of each Qualified Bid will be fully disclosed to all other bidders throughout the entire Auction. Each bid by a Qualified Bidder at the Auction, if not inconsistent with the provisions of these Bid Procedures, shall be deemed to constitute a Qualified Bid.
- iii. The Debtor will arrange for the actual bidding at the Auction to be transcribed.
- iv. Each Qualified Bidder participating in the Auction will be expected to confirm at the Auction that it has not engaged in any collusion regarding these Bidding Procedures with any other Qualified Bidder, the Auction or any proposed transaction relating to the Property.
- v. At the Auction, the first bid for the Property shall be considered only if exceeds the minimum sale price of \$4,500,000. Subsequent bidding will continue in minimum increments of at least \$50,000, with the specific increments for each round of bidding to be announced on the record at the Auction.
- vi. All Qualified Bidders shall have the right to, at any time, request that the Debtor announce, subject to any potential new bids, the then current highest or best bid and, to the extent requested by any Qualified Bidder, use reasonable efforts to clarify any and all questions such Qualified Bidder may have regarding the Debtor's announcement of the then current highest or best bid.
- vii. Upon conclusion of the bidding, the Auction shall be closed.

- viii. Representatives of the Debtor and other Qualified Bidders, shall be entitled to be present at the Auction. Creditors wishing to attend the Auction should provide written notice of intent to attend to the Debtor no later than 12:00 p.m. on the day preceding the Auction.
- ix. Only Qualified Bidders shall be entitled to make any subsequent bids at the Auction. Each Qualified Bidder participating at the auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale.
- x. The Auction shall continue until the Debtor determines, and subject to Bankruptcy Court approval, that the Debtor has received (a) the highest or otherwise best Qualified Bid or Bids for the Property (as determined by the Debtor) from among the Qualified Bidders submitted at the Auction (the "Successful Bid"), and (b) the Backup Bid.

The Debtor may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction; provided that such rules are not inconsistent with these Bidding Procedures, the Bankruptcy Code, or any order of the Bankruptcy Court entered in connection herewith. After closing of the Auction, but prior to the Sale Hearing, the Successful Bidder shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made. Bids made after the close of the Auction shall not be considered by the Debtor. At the Sale Hearing, the Debtor shall present the Successful Bid and Backup Bid to the Bankruptcy Court for approval.

#### **Acceptance of Qualified Bids**

The Debtor shall sell the Property to the Successful Bidder (or the party who submitted the Backup Bid ("Backup Bidder") should such bidder become the Successful Bidder) only upon the approval of such bidder's bid by the Bankruptcy Court after the Sale Hearing. The Debtor will be deemed to have accepted a Qualified Bid only when the Qualified Bid has been approved by the Bankruptcy Court at the Sale Hearing.

#### **Sale Hearing**

A Sale Hearing is scheduled for \_\_:\_\_.m. (prevailing Eastern Time) on \_\_\_\_\_, 2017, in the Bankruptcy Court. Objections to the Sale must be filed on or before \_\_\_\_\_, 2017 at 4:00 p.m. (prevailing Eastern Time). Following the approval of the sale of the Property to any Successful Bidder at the Sale Hearing, if the Successful Bidder fails to consummate an approved sale within the time period set forth in the applicable asset purchase agreement, the Debtor shall be authorized, but not required, to deem the Backup Bid, as identified at the Sale Hearing, the Successful Bid, and the Debtor shall be authorized to consummate the sale with the Backup Bidder submitting such bid without further order of the Bankruptcy Court. The Backup Bid shall remain open until three (3) business days after the date on which the Successful Bidder's agreement is terminated.

### **Return of Bid Deposits**

The Bid Deposits shall not be subject to the claims, liens, security interests, or encumbrances of Debtor's creditors. The Bid Deposits of Qualified Bidders shall be disbursed from the Escrow Account only as follows: (i) if the Qualified Bidder becomes the Successful Bidder, its Bid Deposit will be released to the Debtor or applied as provided under any asset purchase agreement between the Debtor and such Successful Bidder, and (ii) if such Qualified Bidder is not the Successful Bidder at the Auction, then its Bid Deposit shall be treated as set forth below.

Other than the Bid Deposits of the Successful Bidder and the Backup Bidder(s), Bid Deposits of all other Qualified Bidders shall be returned as soon as practicable after entry of the order approving the sale of the Property. In addition to any other remedies available to the Debtor, the Debtor may retain the Bid Deposit of any Qualified Bidder who breaches or fails to perform any of its obligations pursuant to these Bidding Procedures or its Qualified Bid.

### **"As Is, Where Is"**

The sale of the Property shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtor, its agents or its estate.

### **Free and Clear of Liens**

Pursuant to the order entered by the Bankruptcy Court approving the sale, all of the Debtor's right, title and interest in and to the Property subject thereto shall be sold free and clear of liens, claims and encumbrances in accordance with Bankruptcy Code § 363(f), with such liens, claims and encumbrances to attach to the net proceeds of the sale of the Property.

### **Modifications**

Notwithstanding anything to the contrary provided herein, the Debtor shall have the right to amend the rules set forth herein for the bidding/auction process or impose such other terms and conditions for the bidding/auction process which the Debtor determines, in its business judgment, will better promote the goals of the bidding/auction process and the discharge of the Debtor's fiduciary duties and which are not inconsistent with any Bankruptcy Court order, including the Bid Procedures Order; provided, however, that nothing in these Bidding Procedures should be construed to permit the Debtor to accept any Qualified Bid that does not, subject to the terms hereof, equal or exceed the Minimum Overbid Amount.

### **Miscellaneous**

The Auction and Bidding Procedures are solely for the benefit of the Debtor's estate and nothing contained in the Bid Procedures Order or Bidding Procedures shall create any rights in any other person or bidder (including, without limitation, rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Bid Procedures Order.

Except as provided in the Bid Procedures Order and Bidding Procedures, the Bankruptcy Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Bid Procedures Order.

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