

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**In re**

**MONSERRATE HERNANDEZ,**

**Debtor.**

**Chapter 11**

**Case No. 16-15759**

**Honorable Timothy Barnes**

**Hearing Date: June 21, 2016**

**Hearing Time: 10:30 a.m.**

**ORDER (A) ESTABLISHING BID PROCEDURES IN CONNECTION  
WITH SALE OF CERTAIN PROPERTIES OF THE DEBTOR,  
(B) APPROVING THE FORM AND MANNER OF NOTICES,  
(C) SETTING A FINAL HEARING AND (D) GRANTING RELATED  
RELIEF**

Upon the motion (the "Motion") of MONSERRATE HERNANDEZ, as debtor and debtor-in-possession ("Debtor" or "Borrower"), for the entry of an order (this "Order"), pursuant to sections 105 and 363 of title 11 of the United States Code (the "Bankruptcy Code") and Federal Rules of Bankruptcy Procedure 2002, 6004, 9007, and 9014, (a) establishing bid procedures (the "Bid Procedures") in connection with the auction and sale (the "Sale") of the properties listed on **Schedule 1** hereto (each a "Property" and collectively "Properties"); (b) approving the form and manner of the notices of the Sale; (c) setting a date for the auction (the "Auction") of the Properties and a hearing date to consider the approval of the sales (the "Final Hearing"); and (d) granting related relief; and no other or further notice hereof being necessary or required; and upon the proceedings held before this Court on June 21, 2016, including the representations of the counsel for Debtor, and it appearing to the Court that based upon the representation contained in the Motion, the issuance of this Order is in the best interest of

Debtor, his estate and his creditors, and after due deliberation and good and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. The Motion is granted.
2. The Bid Procedures, attached as **Exhibit A** hereto, for conducting a sale by auction of the Properties are hereby authorized, approved and made part of this Order, as if fully set forth herein, subject to the modifications contained in this Order.
3. Debtor is authorized and empowered to take such steps, expend such sums of money, and do such other things as may be necessary to implement and effect the terms and requirements established by this Order.
4. Subject to the final determination of the Court, Debtor, in consultation with IBT Special Asset Fund I LLC, an Illinois limited liability company ("IBT"), TCF Bank (as to 1809 W. Augusta, Chicago, Illinois), and Pan American Bank ("PanAm"), is authorized to (a) determine in his discretion which of the Qualified Bid(s) submitted for the Auction is the highest or otherwise best offer for each Property; and (b) properly reject any and all bids that, in Debtor's discretion, are (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, or the terms and conditions of the Sale; and/or (iii) contrary to the best interests of the Debtor, his estate and creditors.
5. Nothing in the Order shall prejudice the Debtor's right to file a subsequent motion to designate a Stalking Horse Bidder.
6. The Auction and Sale Notice, in substantially the same form as annexed to the Motion as **Exhibit B**, is sufficient to provide effective notice of the Bid Procedures, the Auction, and the Sale to all interested parties, pursuant to Bankruptcy Rules 2002(a)(2) and 6004(a), and is hereby approved.

7. If there is a closing of a Sale to a Successful Bidder (other than a credit bid by IBT or PanAm in regard to the property on which they hold first mortgages) under a Successful Bid (as the foregoing capitalized terms are defined in the Bid Procedures) approved by a Sale Order, then the first mortgage holder shall be paid in cash from the proceeds received at such closing. Notwithstanding the foregoing, with respect to the Property commonly known 1809 W. Augusta, Chicago, Illinois (the "Augusta Property"), Debtor acknowledges that both IBT and TCF Bank hold secured mortgages against such property, and that the priority of such mortgages is subject to controversy between IBT, TCF Bank, and Debtor. ~~Consequently, with respect to the Augusta Property, no party shall be entitled to credit bid.~~ Any proceeds of the sale of the Augusta Property shall be held in escrow and shall only be distributed upon: (i) the resolution by the Court (or any other court) as to the priority of the mortgages and claims against the Augusta Property; or (ii) a settlement between and among IBT, TCF Bank, and Debtor.

8. Debtor shall, on or before June 24, 2016, serve by United States mail, first class postage prepaid, the Auction and Sale Notice and a notice of the Final Hearing (the "Final Hearing Notice") to be held on August 3, 2016 at 10:30 a.m. to consider entry of the proposed Final Order on: (a) all of the Debtor's known creditors; (b) the Office of the United States Trustee; (c) counsel to Lender; (d) parties who have timely filed requests for notice under Bankruptcy Rule 2002; (e) all taxing authorities or recording offices which have a reasonably known interest in the relief requested; and (f) all federal, state and local regulatory authorities with jurisdiction over the Debtor. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the United States Bankruptcy Court Clerk for the Northern District of Illinois no later than 4 p.m. on July

27, 2016, which objections shall be served so that the same are received on or before such date by:

(a) Jeffrey Strange (jstrangelaw@aol.com), Jeffrey Strange & Associates, 717 Ridge Road, Wilmette, Illinois 60091, Counsel to Debtor;

(b) Jason J. DeJonker, Bryan Cave LLP (jason.dejonker@bryancave.com), 161 North Clark Street, Suite 4300, Chicago, IL 60601-3315, Counsel to IBT;

(c) Matteo Crawford (mcrawford@davidtcohenlaw.com), David T. Cohen & Associates, 10729 West 159th Street, Orland Park, IL 60467, counsel for TCF Bank; and

(d) the Office of the United States Trustee, 227 West Monroe Street, Suite 3350, Chicago, IL 60606.

9. This Court shall retain jurisdiction to hear any and all issues or disputes relating to or arising under the Motion or this Order.

Dated: June 21, 2016

ENTERED:



UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>In re</b>  <b>MONSERRATE HERNANDEZ,</b>  <b>Debtor.</b>	<b>Chapter 11</b>  <b>Case No. 16-15759</b>  <b>Honorable Timothy A. Barnes</b>
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**BID PROCEDURES**

Pursuant to the Order (A) Establishing Bid Procedures in Connection With Sale of Certain Real Property of Debtor, (B) Approving the Form And Manner Of Notices, (C) Setting a Final Hearing, and (D) Granting Related Relief, dated June 21, 2016 [Docket No. \_\_\_], the following bid procedures (the “*Bid Procedures*”) shall govern the sale of the properties of Monserrate Hernandez, debtor and debtor in possession (the “*Debtor*”):

1. **Assets to be Sold.** These Bid Procedures set forth the process by which Debtor will be selling the following properties of Debtor set forth on **Exhibit 1** hereto (each a “*Property*” and collectively the “*Properties*”). The Properties will be offered for sale (collectively, the “*Property Categories*”) individually, in one or more combinations, and as a whole (a “*Joint Bid*”). Debtor may consider Bids (as defined herein) for all of the Properties in a single Bid, from a single Bidder (as defined herein) or multiple Bids from multiple Bidders for the Properties

2. **Timing and Location of Auction.** The Auction shall be conducted on **July 29, 2016** (the “*Auction Date*”) at 10:00 a.m. The Auction will be held at the offices of Jeffrey Strange and Associates at 717 Ridge Road in Wilmette, Illinois. In the event of a change in time or place of the Auction (which Debtor shall have discretion to delay in their reasonable business judgment but only if any such delay is no more than ten business days, or by express consent of Senior Secured Creditor (as defined below), Debtor shall use their reasonable best efforts to notify all Qualified Bidders (as defined below) who have timely submitted Qualified Bids (as defined below) on or before **July 22, 2015 at 4:00 p.m. CST** (the “*Bid Deadline*”).

3. **Amount of Initial Bid.** Any bid must comply with the Minimum Bid (as defined below) requirements. Moreover, prior to the Bid Deadline, Debtor shall have the discretion, after consultation with the Senior Secured Creditor, to designate any Bid as the Stalking Horse Bid (as defined below) with respect to any or all Property Categories (in which case Debtor shall file with the Court revised bid procedures and serve such procedures on all secured creditors, the top twenty unsecured creditors of each Debtor (as identified in such Debtor’s petition), all parties who have expressed interest in the Properties, and the United States Trustee, and may grant such stalking horse bidder some

or all of the protections discussed below. If a Stalking Horse Bidder (as defined below) is selected, this may increase the Minimum Bid Amount.

4. **Required Submissions for Bid.** In order to participate in the bidding process, each person (each a "*Potential Bidder*") must deliver to Debtor' counsel (via overnight mail to Jeffrey Strange & Associates, 717 Ridge Road, Wilmette, Illinois 60091 via electronic mail to [jstrangelaw@aol.com](mailto:jstrangelaw@aol.com), with copies to be provided to IBT Special Asset Fund I LLC ("*IBT*") and Pan American Bank ("*PanAm*," with IBT, each a "Senior Secured Creditor") the following, on or before the Bid Deadline:

- a. an executed purchase agreement (a "Purchase Agreement") for the Property Category or Categories being bid upon substantially in the form attached hereto as **Exhibit B** and offering more than the applicable Minimum Bid Amount. In the case of a non-Joint Bid, the Purchase Agreement may be modified for the particular Property Category or Property Categories that such Potential Bidder is bidding on;
- b. a deposit of five percent (5%) of the Bid amount (the "Deposit") in the form of a certified check, cash, or otherwise immediately available funds payable to the applicable Debtor(s), to be submitted along with the bid. Each Senior Secured Creditor may bid in any amount up to the amount of its allowed secured claim;
- c. an executed nondisclosure agreement in a form to be provided by counsel to Debtor unless previously provided;
- d. written evidence satisfactory to Debtor of the Potential Bidder's chief executive officer or other appropriate senior executive's approval of the contemplated transaction;
- e. financial statements showing that the Potential Bidder has ample and present ability to close on the Property or Properties that such Potential Bidder is bidding on, by the Closing Date (as defined below);
- f. a signed statement acknowledging the prohibition against collusive bidding in a form to be provided by counsel to Debtor; and
- g. in the case of a joint Bid, a statement detailing the bid amount allocated towards each Property Category for which such Potential Bidder has submitted a Bid. Such statement may be made and detailed in the marked-up Purchase Agreement.

5. **Impact of Bid Submission.** A "Bid" is a Purchase Agreement from a Potential Bidder stating that:

- a. the Potential Bidder offers to purchase the desired Property upon the same or better terms and conditions than those set forth in the Purchase Agreement submitted by the Stalking Horse Bidder, if any, with the

Potential Bidder's Purchase Agreement marked to show any and all amendments and modifications from the Purchase Agreement submitted by the Stalking Horse Bidder, if any, including, but not limited to, purchase price and contact information of the purchaser;

- b. the Potential Bidder is willing to purchase the desired Property or Properties for a price greater than the applicable Minimum Bid;
- c. the Potential Bidder is prepared to enter into and consummate the transaction by the Closing Date;
- d. the Potential Bidder is not entitled to a break up fee or expense reimbursement; and
- e. the offer is irrevocable until the Auction has taken place and the Potential Bidder is not approved as the Successful Bidder (as defined below) or Backup Bidder (as defined below); whether due to the Potential Bidder being not selected by Debtor, the Potential Bidder not being approved by the Court, or for any other reason whatsoever; in which case the Deposit will be refunded unless forfeited as a result of a breach.

6. **Deadline for Bid Submissions.** Bids shall be due on or before **July 22, 2016 at 4:00 p.m. CST.** In the event that Debtor has chosen a Stalking Horse Bidder, if Debtor does not receive any Qualified Bids other than such Stalking Horse Bid by the Bid Deadline, Debtor will report the same to the Court, through the filing of a notice, and the party submitting such Stalking Horse Bid shall be deemed the Successful Bidder without holding the Auction.

7. **Determination of Qualified Bids.** For a Bid to be deemed a "Qualified Bid," it must comply with the requirements of and be accompanied by the additional information set forth herein, as determined in the discretion of Debtor with consultation with the each Senior Secured Creditor and @properties ("Broker"). A "Qualified Bidder" is a Potential Bidder that submits a Qualified Bid and, in Debtor's reasonable discretion, is determined to demonstrate the financial capability to consummate the purchase of the Property that is the subject of its Qualified Bid.

8. **Impact of Bid Rejection.** If either Debtor determines that a Potential Bidder is not a Qualified Bidder, Debtor shall return the Deposit to the Potential Bidder promptly upon such determination. At the Auction, only Qualified Bidders who have submitted Qualified Bids for at least one Property Category shall be ensured of being able to bid on the Property, or Properties for which they have submitted Bids.

9. **Credit Bid.**

- a. *Property Category 1.* Notwithstanding any other provisions of these Bid Procedures, IBT, as the predecessor-in-interest to Inland Bank and Trust, shall be deemed to be a Qualified Bidder (without having to comply with the foregoing requirements) and shall have the right, but not the

obligation, to credit bid under section 363(k) of the Bankruptcy Code in an amount up to \$7,553,416.77 (the "IBT Secured Claim"). If Debtor has not chosen a Stalking Horse Bidder and Debtor does not receive any Qualified Bids by the Bid Deadline for Property Category 1, IBT's credit bid in the amount of the IBT Secured Claim shall be deemed the Successful Bid for such Property Categories and Debtor will report the same to the Court, through the filing of a notice, and IBT shall be deemed the Successful Bidder without holding the Auction.

- b. *Property Category 2.* Notwithstanding any other provisions of these Bid Procedures, PanAm shall be deemed to be a Qualified Bidder (without having to comply with the foregoing requirements) and shall have the right, but not the obligation, to credit bid under Bankruptcy Code section 363(k) in an amount up to \$954,926.81 (the "*PanAm Claim Amount*"). If Debtor has not chosen a Stalking Horse Bidder and Debtor does not receive any Qualified Bids by the Bid Deadline for Property Category 2, PanAm's credit bid of the PanAm Claim Amount shall be deemed the Successful Bid for such Property Categories and Debtor will report the same to the Court, through the filing of a notice, and PanAm shall be deemed the Successful Bidder without holding the Auction.
- c. *Augusta Property.* With respect to the Property commonly known 1809 W. Augusta, Chicago, Illinois (the "Augusta Property"), Debtor acknowledges that both IBT and TCF Bank hold secured mortgages against such property, and that the priority of such mortgages is subject to controversy between IBT, TCF Bank, and Debtor. ~~Consequently, with respect to the Augusta Property, no party shall be entitled to credit bid.~~ Any proceeds of the sale of the Augusta Property shall be held in escrow and shall only be distributed upon: (i) the resolution by the Court (or any other court) as to the priority of the mortgages and claims against the Augusta Property; or (ii) a settlement between and among IBT, TCF Bank, and Debtor.
- d. Notwithstanding any other provisions of these Bid Procedures, each Senior Secured Creditor shall be deemed to be Qualified Bidders (without having to comply with the foregoing requirements) and shall have the right, but not the obligation, to credit bid under Bankruptcy Code section 363(k) in an amount up to the allowed amount of their respective secured claims in regard to only the properties on which they hold first mortgages. If, at the time of the Auction, either of their claims are disputed, upon reasonable notice to Debtor, either Senior Secured Creditor may ask the Court to estimate the amount of these claims for purposes of the Auction, and may credit bid the amount so estimated.

10. **Procedures for the Auction.** The Auction shall be conducted in accordance with commercially reasonable procedures to be established by counsel.



11. **Right to Select Back-Up Bidder(s).** At the conclusion of the Auction, Debtor (in consultation with Senior Secured Creditor as to the relevant property category) may designate a “Back-Up Bidder” or multiple Back-Up Bidders if necessary, provided that the Back-Up Bidder(s) is/are willing to purchase the Property Category or Categories at issue for at least the minimum bid established for such Property Category that the Back-Up Bidder has submitted a Bid. If, for any reason, the party that submits a Successful Bid fails to consummate the purchase of any applicable Property Category:

- a. the Back-Up Bidder(s) shall be deemed to have submitted the highest and best bid for such Property Category, and shall be deemed the Successful Bid, and any party submitting such bid, the Successful Bidder; and
- b. Debtor shall be authorized to effectuate the sale of such Property Category to the Back-Up Bidder(s) as soon as is commercially reasonable without further order of the Bankruptcy Court. The Back-Up Bidder(s)’s deposit shall be held in escrow until the closing of the transaction with the Successful Bidder.

12. **Determination of Successful Bid.** Upon completion of the Auction, Debtor, in its/their sole discretion, shall select the Bid(s) that will maximize the value of the Properties and is in the best interest of Debtor, their bankruptcy estates, and their creditors (the “Successful Bid(s)”) provided that the Successful Bid(s) conform to these Bid Procedures and the terms of the Settlement Agreement. A hearing to approve the Successful Bids shall be held by the Court on August 3, 2016, at 10:00 a.m. Upon entry of an order(s) by the Court approving the sale(s) (the “*Final Sale Order*”), Debtor shall be authorized, without further order of the Court, to take all steps needed to close the transaction and effectuate a sale(s) to the party or parties submitted the Successful Bid (or to a Back-Up Bidder or Bidders if necessary) in conformity with these Bid Procedures and the terms of the Settlement Agreement. The Final Sale Order will also provide that any sale contemplated herein shall be free and clear of liens, claims, and encumbrances pursuant to Bankruptcy Code sections 363(f), 363 (k) and/or 1123. The Deposit for the Qualified Bidder that submitted the Successful Bid shall be non-refundable until such Successful Bidder closes on the applicable Property Category. If any party submitting a Successful Bid fails to close the sale, such party’s Deposit shall be retained by the applicable Debtor on account of damages suffered by them as a result of such failure to close, without prejudice to such Debtor’s ability to seek additional damages from such party.

13. **Stalking Horse Bid Protections.** In the event that a Stalking Horse Bidder is chosen, Debtor, in their reasonable business judgment in consultation with each Senior Secured Creditor, shall have the right to grant to the party submitting the Stalking Horse Bid (the “Stalking Horse Bidder,” and the bid submitted by such party, the “Stalking Horse Bid”) the following protections:

- a. The right to match any other Bid without reference to the minimum bid increments, and if the Stalking Horse Bidder matches such Bid its bid

shall be deemed to be the highest Bid submitted until a Qualified Bidder submits a higher Bid;

- b. The right to receive a break-up fee in an amount no higher than 3% of the Stalking Horse Bid (the "Break-Up Fee") in the event that (a) the Stalking Horse Bidder is not selected by Debtor as the Successful Bidder and (b) the Sale of the Properties to the Successful Bidder closes. The Break-Up Fee will be payable to the Stalking Horse Bidder at Closing. Except for the foregoing, no event or occurrence shall entitle the Stalking Horse Bidder to the Break-Up Fee.
- c. For the avoidance of doubt, if the Break-Up Fee becomes due pursuant to the terms of this Order, such fees and expenses shall be paid only once. Further for the avoidance of doubt, notwithstanding anything to the contrary herein, the Break-Up Fee shall not become due, nor shall it be payable by Debtor or any other party, unless the payment of the Break-Up Fee is expressly required hereunder.
- d. To the extent a Break-Up Fee becomes due, the Break-Up Fee shall be entitled to administrative expense treatment in the Chapter 11 Case. Upon receipt of the Break-Up Fee, the Stalking Horse Bidder shall make no other claims for expense reimbursement from Debtor. The Break-Up Fee and other protections described hereunder and in the Bid Procedures shall be referred to herein as the "Bid Protections."

14. **Closing of Sale.** Closing of the sale of the Property(ies) to the Successful Bidder(s) shall occur no later than August 31, 2016 (the "Closing Date"). The Closing Date may be extended by either written agreement of Debtor and each specific Senior Secured Creditor or order of the Court upon cause shown.