

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division
www.flsb.uscourts.gov

In re:

NASSAU DEVELOPMENT OF
VILLAGE WEST CORP.,
a Florida Corporation

Case No. 15-27691-AJC
Chapter 11

Debtor.

**CHAPTER 11 TRUSTEE’S MOTION FOR ENTRY OF ORDER (I) APPROVING
COMPETITIVE BIDDING AND SALE PROCEDURES; (II) APPROVING
FORM AND MANNER OF NOTICES; (III) APPROVING PURCHASE AND SALE
AGREEMENT WITH STALKING HORSE BIDDER; (IV) SCHEDULING DATES TO
CONDUCT AUCTION AND HEARING TO CONSIDER FINAL APPROVAL OF SALE,
INCLUDING TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED
LEASES; (V) AUTHORIZING SALE OF SUBSTANTIALLY ALL
THE DEBTOR’S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES AND INTERESTS; AND (VI) GRANTING RELATED RELIEF**

Drew M. Dillworth, in his capacity as Chapter 11 Trustee (“*Trustee*”) of Nassau Development of Village West Corp., (the “*Debtor*” and/or “*Nassau Debtor*”), by and through undersigned counsel, moves this Court pursuant to 11 U.S.C. §§ 105, 363 and 365 and Fed. R. Bankr. P. 2002, 6004 and 9014, and Local Rules 2002-1(C)(2) and 6004-1, for entry of an order (I) Approving Competitive Bidding and Sale Procedures; (II) Approving Form and Manner of Notices; (III) Approving Purchase and Sale Agreement with Stalking Horse Bidder; (IV) Scheduling Dates to Conduct Auction and Hearing to Consider Final Approval of Sale, Including Treatment of Executory Contracts and Unexpired Leases; (V) Authorizing Sale of Substantially All the Debtor’s Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; and (VI) Granting Related Relief (the “*Sale Procedures Motion*”). In support of the Sale Procedures Motion, the Trustee states as follows:

LOCAL BANKRUPTCY RULE 6004-1 CONCISE STATEMENT

In accordance with Local Bankruptcy Rule 6004-1, below is a summary of the nature of the Trustee's request:

- Identity of the Purchaser. Because the sale is subject to higher and better offers, the identity of the purchaser is currently unknown. However, the Proposed Purchaser (defined below) is GV Nassau, LLC ("**GV**" or the "***Proposed Purchaser***") who has executed an Asset Purchase Agreement (as defined below) with the Trustee for the purchase of the substantially all of the Debtor's assets. GV is not an insider of the Debtor.
- The Sale Terms
 - The Sale Price: \$2,160,000.00.
 - Deposit: \$100,000.
 - Warranties: The sale is "AS IS, WHERE IS - WITH ALL FAULTS."
 - Closing Date: Within five business days following entry of the Sale Order (as defined below).
 - Closing Conditions: Entry of the Sale Order in form and substance acceptable to the Proposed Purchaser, which Sale Order shall contain a waiver of any stay pending appeal.
 - Trustee can terminate the Asset Purchase Agreement prior to the conclusion of the Auction (as defined below) if the Trustee receives a bona fide offer to purchase the Assemblage (as defined below) acceptable to the Trustee at any time prior to the conclusion of the Auction (at which point Trustee can cancel the Auction).
- The Auction Terms
 - Higher and Better Offers: The sale is subject to higher and better offers.
 - Proposed Auction Date: Fifty (50) days following entry of the Bidding Procedures Order (as defined below)
 - Proposed Bid Deadline: Three business days before the Auction.
 - Minimum Incremental Bid: \$10,000.00, unless the Trustee decides a higher/lower amount during the Auction.
 - Initial Overbid Amount: \$55,000.00 (\$50,000.00 Breakup Fee plus \$5,000.00).
- Requirements of Competing Bidders
 - Minimum Deposit: \$100,000.00.
 - Documentation Requirements: Financial ability to consummate transaction in sole and absolute discretion of the Trustee, executed Asset Purchase Agreement (in clean and redline) in substantially similar form as Asset Purchase Agreement approved by the Court, and compliance with the Bidding Procedures (as defined below).

- Purchaser Protections Not Otherwise Described
 - Proposed Break-up Fee: \$50,000.00
 - There are no matching rights.
- Identity of All Known Lienholders. Wilmington Savings Fund Society, d/b/a Christian Trust, not individually but as Trustee for Pretium Mortgage Acquisition Trust (as to the 3412 Property, defined below), BankUnited, FSB (as to the 3400 Property, defined below), DD&C Financial Investments Corporation (as to the 3441 Property, as defined below)(disputed), Alicia Diaz (as to the 3441 Property and 3461 Property, as defined below), Orlando Benitez, Jr. (as to the 3412 Property, 3400 Property, 3441 Property, and 3461 Property)(disputed), and Sheila Fair (as to the 3412 Property, 3400 Property, 3441 Property, and 3461 Property).
- Statement Requesting Dates for Hearings and Auction. The Trustee is not seeking expedited relief in connection with the Sale. The Trustee proposes an Auction on or about fifty (50) days after the Court enters the Bidding Procedures Order (as defined herein), and a Sale Hearing the following day.

I. JURISDICTION

1. This Court has jurisdiction over the Sale Procedures Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of the Sale Procedures Motion is proper under 28 U.S.C. § 1408 and 1409.

2. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 105, 363, and 365 of 11 U.S.C. § 101 *et seq.* (the "**Bankruptcy Code**"), Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Local Rules 2002-1(C)(2) and 6004-1.

II. BACKGROUND

3. On October 2, 2015 (the "**Petition Date**"), the Debtor filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code (the "**Nassau Bankruptcy Case**").

4. The main cause for the Debtor's filing of its Chapter 11 petition was the ongoing litigation with Orlando Benitez, Jr. ("**Benitez**"), an alleged secured creditor and equity member of the Debtor and other non-debtor Affiliates (as defined below).

5. On June 2, 2016, the Court entered its Order Directing Appointment of Chapter 11 Trustee [ECF No. 67].

6. On June 3, 2016, the Office of the United States Trustee filed its Appointment of Chapter 11 Trustee and Setting of Bond [ECF No. 68].

7. On June 3, 2016, the Acting United States Trustee for Region 21 filed its Application for Approval of Selection of Appointment of Chapter 11 Trustee [ECF No. 69], seeking approval of Drew M. Dillworth, as Chapter 11 Trustee in the above-captioned case. The same day, this Court entered its Order Approving Appointment of Chapter 11 Trustee (the “*Appointment Order*”)[ECF No. 70].

8. The Trustee continues in possession of the Debtor’s property and is operating and managing its businesses as a Trustee-In-Possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

9. Over a several year period, the Debtor and other non-Debtor affiliates under common ownership (the “*Affiliates*”) acquired an informal assemblage of real property in the Grand Avenue corridor of Coconut Grove, Florida (the “*Assemblage*”).

10. The Debtor owns the following four lots that are considered part of the Assemblage:

- i) 3412 Florida Avenue, Miami, Florida 33123 (the “*3412 Property*”) Folio no. 01-4121-007-3480;
- ii) 3441 Grand Avenue, Miami, Florida 33133 (the “*3441 Property*”) Folio no. 01-4121-007-3630;
- iii) 3400 Florida Avenue, Miami, Florida 33133 (the “*3400 Property*”) Folio no. 01-4121-007-3470; and

iv) 3461 Grand Avenue, Miami, Florida 33133 (the “**3461 Property**”)

Folio no. 01-4121-007-3610.

Collectively, the 3412 Property, 3441 Property, 3400 Property, and 3461 Property shall be referred to as the “**Nassau Property**” and/or the “**Nassau Properties.**”

11. One of the Debtor’s Affiliates is Grand Abbaco Development of Village West Corporation (“**Grand Abbaco Debtor**”), which owns two parcels of real property in its name (the “**Grand Abbaco Property**”) and is also a Chapter 11 debtor before this Court in a separate Chapter 11 case styled *In re Grand Abbaco Development of Village West Corporation*, Case No. 16-14286-AJC (the “**Grand Abbaco Bankruptcy Case**”). The Trustee is also the Chapter 11 trustee of Grand Abbaco. Simultaneously with the filing of this Sale Motion, the Trustee is filing a Section 363 sale motion in the Grand Abbaco Bankruptcy Case (the “**Grand Abbaco Motion**”). The instant Motion is substantially similar to the Grand Abbaco Motion, and involves the same Agreement.

III. ASSETS TO BE SOLD

12. The Trustee, as seller, and GV, as the Proposed Purchaser, have entered into that certain Asset Purchase Agreement, dated as of June 30, 2017, in connection with the sale (the “**Sale**”) of the Nassau Property (the “**Agreement**”). A true and correct copy of the Agreement is attached hereto as **Exhibit A**.

13. The Agreement seeks to sell the Nassau Property and all personal property owned by the Trustee and used in operation of the Nassau Property (the “**Assets**”) to the Proposed Purchaser free and clear of all liens, claims and encumbrances pursuant to Section 363 of the Bankruptcy Code.

IV. LIENHOLDERS

A. Summary of Lien Claims

14. The Nassau Properties are comprised of four (4) separate properties - the 3412 Property, 3441 Property, 3400 Property, and the 3461 Property. The following are all known lienholders on each property, in order of priority:

3412 Property (Parcel 1)

Miami-Dade County Tax Collector owed current year taxes

1st Position Lienholder Wilmington Savings Fund Society, d/b/a Christian Trust, not individually but as Trustee for Pretium Mortgage Acquisition Trust (mortgage holder) (the “*Wilmington Lien*”)

2nd Position Lienholder (disputed) Orlando Benitez, Jr. (mortgage holder - same mortgage on each of the four Nassau Properties) (the “*Benitez Lien*”)

3rd Position Lienholder Sheila Fair (judgment lien holder – same judgment lien on each of the four Nassau Properties) (the “*Fair Lien*”)

3400 Property (Parcel 2)

Miami-Dade County Tax Collector owed current year taxes

1st Position Lienholder BankUnited, FSP (mortgage holder) (the “*BU Lien*”)

2nd Position Lienholder (disputed) Orlando Benitez, Jr. (mortgage holder - same mortgage on each of the four Nassau Properties)

3rd Position Lienholder Sheila Fair (judgment lien holder – same judgment lien on each of the four Nassau Properties)

3441 Property (Parcel 5)

Miami-Dade County Tax Collector owed current year taxes, in addition past year taxes in the approximate amount of \$18,226.00

1st Position Lienholder (disputed) DD&C Financial Investments Corporation (the “*DD&C Lien*”)

2 nd Position Lienholder	Alicia Diaz (mortgage holder – same mortgage on Parcel 6) (the “ <i>Diaz Lien</i> ”)
3 rd Position Lienholder (disputed)	Orlando Benitez, Jr. (mortgage holder - same mortgage on each of the four Nassau Properties)
4th Position Lienholder	Sheila Fair (judgment lien holder)

3461 Property (Parcel 6)

Miami Dade County Tax Collector	owed current year taxes, in addition past year taxes in the approximate amount of \$12,209.00
1 st Position Lienholder	Alicia Diaz (mortgage holder – same mortgage on Parcel 5)
2 nd Position Lienholder (disputed)	Orlando Benitez, Jr. (mortgage holder - same mortgage on each of the four Nassau Properties)
3 rd Position Lienholder	Sheila Fair (judgment lien holder)

B. The Liens

i. Benitez Lien (all Nassau Properties) - Disputed

15. On February 16, 2016, Benitez filed an amended proof of claim in this case setting forth the amount of alleged indebtedness owing on his secured claim in the amount of \$6,898,543.66. *See* Proof of Claim 4-2 (the “***Benitez Claim***”). Specifically, and as set forth in the Benitez Claim, Benitez has two claims against the Debtor that are secured in one blanket mortgage (which amounts, per Benitez, include interest through October 2, 2015, and advances for real property taxes from 2009 -2014 for three of the Nassau Properties):

- a) A blanket mortgage securing indebtedness in the approximate amount of \$6,788,554.33 (“***Note 1***”) and
- b) A blanket mortgage securing indebtedness in the approximate amount of \$109,989.33 (“***Note 2***”).

16. On October 14, 2016, Benitez provided the Trustee with an updated payoff statement for the Nassau Properties on his Benitez Claim, which payoff stated the amount due on the Benitez Claim was \$9,201,575.37 (for Note 1) and \$123,696.13 (for Note 2) through November 2016. Thereafter, on June 29, 2017, Benitez provided the Trustee with yet another payoff for the Benitez Claim, this time stating a payoff of in the amount of \$12,188,154.82 (for Note 1) and \$565,458.66 (for Note 2). In the span of approximately eight months, the payoff on Note 1 increased approximately \$3,000,000 and the payoff on Note 2 increased approximately \$441,762. Upon information and belief, the Benitez Claim is significantly overstated and is therefore disputed by the Trustee. Moreover, the Trustee anticipates filing an objection to the Benitez Claim shortly.

17. The security interest collateralizing the Benitez Claim, however, is subject to a release price of \$1 million as set forth in that certain Partial Releases of Mortgages dated March 20, 2010, among Benitez, the Debtor, the Debtor's Affiliates and others ("***Release Agreement***").

18. Per the Release Agreement, upon receipt of \$1,000,000.00, Benitez is required to release his Benitez Lien on the Nassau Properties.

19. As stated above, the Benitez Claim is disputed. In addition, there is currently pending an adversary proceeding styled *Nassau Development of Village West Corporation v. Orlando Benitez, Jr., et al.*, adversary case no. 16-01241 (the "***Benitez Adversary***"), wherein the Trustee (who stepped in the shoes of the Debtor upon entry of the Appointment Order) is prosecuting claims against Benitez for breach of fiduciary duty and equitable subordination of the Benitez Claim. In addition, the Trustee disputes the payoff amounts claimed by Benitez.

ii. DD&C Lien (3441 Property only) - Disputed

20. In addition, a company owned by Benitez, DD&C Financial Investments Corporation ("***DD&C***"), allegedly owns a mortgage encumbering the 3441 Property. DD&C is

owned by Benitez. On February 16, 2016, DD&C filed an amended proof of claim in this case setting forth the amount of alleged indebtedness owing on its secured claim in the amount of \$701,023. *See* Proof of Claim 3-2 (the “**DD&C Claim**”). Thereafter, on October 14, 2016, Benitez, on behalf of DD&C, provided the Trustee with an updated payoff statement for the Property in the amount of \$833,750.78. Then, on June 29, 2017, DD&C provided the Trustee with yet another payoff statement, this time providing a payoff through June 30, 2017, in the amount of \$636,600.74 78.

21. The DD&C Claim is disputed because it is overstated. Specifically, DD&C’s promissory note states that it accrues interest at 7.5%, but DD&C is seeking 18% interest (including 18% interest on the real estate taxes it allegedly paid). Moreover, the Trustee anticipates filing an objection to the DD&C Claim shortly.

iii. BankUnited Lien (3400 Property only)

22. On November 29, 2016, BankUnited (“**BU**”) filed a secured proof of claim in the amount of \$129,652.26. *See* Proof of Claim 6-1 (the “**BU Claim**”). On June 16, 2017, BU provided the Trustee with a payoff on the BU Mortgage in the amount of \$137,956.50 (through July 1, 2017, and a per diem thereafter of \$16.43). Upon the sale of the 3400 Property, the Trustee believes there will be sufficient funds to pay the BU Mortgage in full (which remains subject to further review by the Trustee).

iv. Wilmington Lien (3412 Property only)

23. On November 30, 2015, Wilmington Savings Fund Society, FS, d/b/a Christiana Trust, not Individually but as Trustee for Pretium Mortgage Acquisition Trust (“**Wilmington Savings**”), filed a secured claim in the amount of \$251,604.05. *See* Proof of Claim 2-1 (the “**Wilmington Savings Claim**”). On September 21, 2016, Wilmington Savings provided the Trustee

with an estimated payoff in the amount of \$265,398.78 (with a per diem of \$25.68). Upon the sale of the 3412 Property, the Trustee believes there will be sufficient funds to pay the Wilmington Savings Claim in full (which remains subject to further review by the Trustee).

v. Alicia Diaz Lien (3441 Property and 3461 Property only)

24. On March 2, 2016, Alicia Diaz (“*Ms. Diaz*”) filed a secured claim in the amount of \$780,500. *See* Proof of Claim 5-1 (the “*Diaz Claim*”). The Diaz Claim is filed as a secured claim. On August 26, 2016, Ms. Diaz provided the Trustee with a payoff on the Diaz Claim in the amount of \$276,456.68 (through August 30, 2016, and a per diem thereafter of \$205.69). Upon the sale of the 3461 Property, the Trustee believes there will be sufficient funds to pay the Diaz Claim in full (which remains subject to further review by the Trustee).

vi. Shelia Fair Lien (all Nassau Properties)

25. On July 1, 2014, Sheila Fair (“*Ms. Fair*”) obtained a Second Amended Final Judgment against Nassau in the amount of \$318,856.00, accruing interest at 4.75% (the “*Fair Claim*”), which Fair Claim was recorded in the Miami-Dade County Publics Records at OR BK 29218 PG 4381. Upon the sale of the Nassau Properties, the Trustee believes the Fair Claim will not be paid in full.

V. SALE AND MARKETING EFFORTS

26. Prior to the Petition Date, the Debtor and its Affiliates engaged in marketing efforts to sell not just the Nassau Property, but the entire Assemblage of properties owned by the Debtor’s Affiliates (including the Nassau Property), including:

- a) Sending information packages and other relevant documents to over 40 interested parties and commercial realtors;

b) Displaying for sale signs on the Nassau Property and on various properties within the Assemblage;

c) Listing the Nassau Property on several commercial real estate websites such as loopnet.com and costar.com; and

d) Receiving five letters of intent executed by interested parties.

27. The Trustee cannot opine as to the effectiveness of the Debtor's efforts except to say that numerous parties have shown significant interest in purchasing the Assemblage. Unfortunately, the Debtor and its Affiliates have simply been unable or unwilling to pursue a transaction to closing. Given the significant length of time that has transpired, the Trustee is no longer willing to wait for an Assemblage sale. The Trustee has therefore negotiated with no less than three interested parties for the sale of the Nassau Properties, and given the knowledge of the marketplace of the Nassau Property, believes a properly noticed auction will achieve the highest and best price for the Nassau Property sold separately from the Assemblage.

28. The Trustee has not retained any real estate brokers in the instant case, nor did the Debtor seek to employ any real estate broker in the instant case prior to the Appointment Order. The Trustee is aware that prepetition the Debtor's Affiliates were working with a real estate agent named Lorenzo Perez, Jr., of Premier International Properties, Inc., for the sale of the Assemblage. However, Mr. Perez was not employed by the Debtor or the Trustee in the instant case.

VI. THE AGREEMENT AND PROPOSED SALE

29. On June 30, 2017, GV and the Trustee entered into the Agreement for the purchase and sale of the Nassau Property as a whole. See **Exhibit A** attached hereto.

30. The Agreement provides that GV will serve as the stalking horse bidder for the purchase of the Nassau Property in the amount of \$2,160,000.00 (the "***Purchase Price***"). Indeed,

the Trustee believes that a single sale of the Nassau Property as a whole will yield significantly greater value than separate sales of each of the Nassau Properties alone.

31. The Agreement contemplates that GV's offer will be subject to higher and better offers as described therein, and that competitive bidding will be conducted at an auction (the Auction") with an initial overbid requirement of \$55,000.00 of the Purchase Price, and bidding increments thereafter of \$10,000.00 (or as otherwise determined by the Trustee at the Auction).

32. There will be no bidding for the purchase of the individual parcels constituting the Nassau Property.

33. Moreover, the Agreement provides for the payment of a break-up fee (the "***Break-Up Fee***") in the amount of \$50,000.00 (to be paid from the Purchase Price) to GV if it is not the successful bidder at the Auction. This equates to 2.3% or less of the ultimate Purchase Price which the Trustee believes is reasonable.

34. To the extent that any secured creditors of the Debtor possess any allowed and perfected liens upon any of the Nassau Properties, such liens will attach to the proceeds of the Sale, pursuant to 11 U.S.C. §363. Unless otherwise provided by order of the Court, the Trustee reserves the right to object to (a) the validity, priority, and extent of any security interests asserted by any entity on the Nassau Properties, and (b) the alleged amount due and owing to such entities.

VII. ALLOCATION OF THE PURCHASE PRICE

35. Although the Agreement provides for the sale of all the Nassau Properties, the Purchase Price shall be allocated as follows (the "***Allocation***"):

\$252,288.00 for the 3412 Property (Parcel 1);

\$251,424.00 for the 3400 Property (Parcel 2);

\$988,200.00 for the 3441 Property (Parcel 5); and

\$667,872.00 for the 3461 Property (Parcel 6).

36. The Miami-Dade County Tax Collector has assessed the values for each of the Nassau Properties as follows:

\$199,134.00 for the 3412 Property (Parcel 1);

\$198,339.00 for the 3400 Property (Parcel 2);

\$779,891.00 for the 3441 Property (Parcel 5); and

\$527,076.00 for the 3461 Property (Parcel 6).

The total of the assessed values for the Nassau Properties is \$1,704,440.00.

37. The Allocation is arrived at using the Miami-Dade County Tax Collector's assessed value for the individual parcel, then divided by the total amount of the Miami-Dade County Tax Collector's assessed value for all of the Nassau Properties, which amount is then multiplied by the Purchase Price.

38. By way of example, the Allocation value for the 3441 Property is arrived at as follows:

$$\$779,891.00 / \$1,704,440.00 = 45.75\%$$

$$\$2,160,000.00 \times 45.75\% = \$988,200.00$$

VIII. SUMMARY OF RELIEF REQUESTED

39. By this Sale Procedures Motion, the Trustee seeks approval of a sale process through which he proposes to sell all or substantially all of the Nassau Properties free and clear of liens, claims and encumbrances in accordance with section 363 of the Bankruptcy Code. Specifically, the Trustee seeks entry of an order (the "***Bidding Procedures Order***"),¹ following a preliminary hearing (the "***Bid Procedures Hearing***"), (i) approving the Bidding Procedures as set forth herein and as

¹ A copy of the Bidding Procedures Order is attached hereto as **Exhibit B**, and a copy of the Bidding Procedures is attached to the Bidding Procedures Order as **Exhibit 1**.

detailed in the proposed form of notice attached as Exhibit 1 to the Bidding Procedures Order (the “**Bidding Procedures**”) for additional bidding on the Nassau Property, including the Break-up Fee, (ii) approving the form and manner of notice of the Bidding Procedures and the proposed sale, (iii) approving the form of the Agreement to be used in conjunction with the Bidding Procedures, and (iv) scheduling a Sale Hearing (as defined below) to approve the Sale to the Proposed Purchaser or the Prevailing Bidder (as defined in the Bidding Procedures).

40. The Trustee intends to consummate the Sale as promptly as possible, consistent with (i) the due process requirements of sections 363 and 365 of the Bankruptcy Code, and (ii) the sale process under the Bidding Procedures. By this Sale Procedures Motion, the Trustee seeks approval and implementation of a three-step sales process as follows:

a) a “Bid Procedures Hearing” at which the Trustee will seek approval of the Bidding Procedures, as described below;

b) an “Auction” to be conducted in accordance with the Bidding Procedures, following a confirmatory due diligence period for other interested parties, assuming one or more “Qualified Bids” are timely received as provided in the Bidding Procedures. The Trustee proposes to conduct the Auction on or about fifty (50) days after the Court enters the Bidding Procedures Order; and

c) a “Sale Hearing” proposed to be held on the day immediately following the Auction, or the earliest opportunity after the conclusion of the Auction, at which time the Trustee will seek entry of an order (i) authorizing the Sale, (ii) authorizing and approving the Agreement, and (iii) granting related relief (the “**Sale Order**”).

41. The Trustee expects to be able to meet his burden at the Bid Procedures Hearing and the Sale Hearing of demonstrating that the sale efforts to date have been handled with diligence and

substantial effort, resulting in exposing the Debtor's assets to a comprehensive and competitive sale process. As such, the proposed time frame will appropriately balance the Trustee's objective need to conclude the Sale as soon as possible with the need to thoroughly market the Nassau Property and properly negotiate a transaction.

IX. RELIEF REQUESTED

A. The Bidding Procedures

42. In order to ensure that the Trustee is able to derive maximum value from the Nassau Properties, the Agreement is expressly subject to higher and better offers as provided in the Bidding Procedures. The Trustee seeks to adopt procedures that will foster continued competitive bidding among potential buyers without eliminating or discouraging any qualified bids, including the present "stalking horse" bid by GV embodied in the Agreement.

43. The Trustee believes that the proposed Bidding Procedures constitute the best method of maximizing the value of the Nassau Property through the continuation of a competitive sale process that will allow for the solicitation and submission of competitive bids (as set forth in the Bidding Procedures, a competitive bid submitted in accordance with these procedures shall be deemed a "*Qualified Bid*" and such bidder shall constitute a "*Qualified Bidder*"). Accordingly, the Trustee requests that the Court enter the Bidding Procedures Order authorizing the Trustee to implement the Bidding Procedures and schedule the Auction as more fully set forth in the Bidding Procedures.

44. In addition, the Agreement sets forth the terms and conditions under which the Proposed Purchaser will purchase the Nassau Property from the Trustee and also permits the Trustee to solicit higher and better bids for the Nassau Property. As discussed in more detail below, any Qualifying Bidder must submit a written Proposal (as defined in the Bidding Procedures) upon

the terms and conditions substantially set forth in the Agreement and accompanied by mark-ups (clean and redline) of the Agreement. Thus, the Trustee requests that the Court approve, by entering the Bidding Procedures Order, the form of the Agreement.

45. To be considered a Qualified Bid and participate in the Auction, each bid submitted must comply with the following requirements (as set forth in more detail in the Bidding Procedures)(the “*Qualified Bid Packet*”):

a) Provide a written statement identifying whether the Potential Bidder (as defined in the Bidding Procedures) is bidding solely on either the Nassau Real Property or Grand Abbaco Real Property (as defined in the Agreement), or if the Potential Bidder is bidding on both the Nassau Real Property and Grand Abbaco Real Property.

b) Is accompanied by a \$100,000.00 deposit (the “Bidder Deposit”) payable by cashier's check or wire transfer (or other form acceptable to Seller in its sole discretion). The Bidder Deposit shall be deposited with and held in trust by the Escrow Agent identified in the Agreement;

c) An executed asset purchase agreement that substantially conforms to the Agreement that includes a purchase price equal to or greater than \$2,215,000.00 for the Nassau Real Property and/or equal to or greater than \$1,055,000.00 for the Grand Abbaco Real Property, and a clean and redline version showing any changes from the Agreement, which executed asset purchase agreement the Trustee will file with the Bankruptcy Court prior to the Bid Deadline (as defined below);

d) Any bid must not contain any contingencies to the validity, effectiveness, and/or binding nature of the offer, including without limitation, contingencies for financing or due diligence;

e) Financial information sufficient for the Trustee to assess the financial wherewithal of the bidder to close on the sale of the Nassau Property in the event that the bidder is the successful bidder; such information shall include, at a minimum, financial statements, bank account statements, or other documents of such entity (including information on any third-party funding required to consummate and perform under the asset purchase agreement) establishing the ability to timely close the transaction by the Auction;

f) A letter setting forth the identity of the potential bidder, the contact information for such potential bidder, and full disclosure of all parties participating with the potential bidder, as well as full disclosure of any pre-petition and post-petition affiliation that the potential bidder may have with (1) the Nassau Debtor, (2) the Nassau Debtor's members, (3) the Nassau Debtor's Affiliates, (4) major creditors of the Nassau Bankruptcy Case, (5) equity security holders of the Nassau Debtor, and (6) any of the Nassau Debtor's former officers or directors or other insiders; and

g) The Qualified Bid Packet must be delivered with the items described above on or before the Bid Deadline to: Drew M. Dillworth, 2200 Museum Tower, 150 West Flagler Street, Miami, Florida 33130, Telephone: (305) 789-3200, Facsimile: (305) 789-3395, E-mail: DDillworth@stearnsweaver.com with a copy to counsel, Peter Russin, Esq. 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33130, Telephone: (305) 358-6363, Facsimile: (305) 358-1221, Email: prussin@melandrussin.com.

46. The Bidding Procedures also contain the following relevant terms:

a) Subject to extension in the sole discretion of the Trustee, the deadline for submitting bids by a Qualified Bidder shall be the three business days before the Auction

(the "Bid Deadline") or such other date as the Bankruptcy Court determines in the Bidding Procedures Order.

b) Subject to this Court's approval of the Sale Procedures Motion, and if one or more Qualified Bids (other than GV's bid) are received, the Trustee will conduct an auction (the "Auction") with respect to the Nassau Property. The Auction, if required, will commence at 10:00 a.m. Eastern Time approximately one (1) business day before the sale confirmation hearing to be set by the Bankruptcy Court subject to its availability. The Auction will be conducted at the offices of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. 150 West Flagler Street, Suite 2200, Miami, Florida 33130, or at such later time or other place as agreed upon by the parties or ordered by the Bankruptcy Court, and of which the Trustee will notify all Qualified Bidders who have submitted Qualified Bids. The Auction may be adjourned from time to time at the discretion of the Trustee. The Auction is an absolute auction, and the Trustee reserves the right to reject any and all bids, other than the Qualified Bid of GV. Only GV, Seller, and any Qualified Bidders (and such parties' representatives and professionals) will be entitled to attend, participate, and be heard at the Auction.

c) The Trustee and his professionals shall direct and preside over the Auction. At the start of the Auction, the Trustee shall describe the terms of the highest and best Qualified Bid received prior to the Bid Deadline.

d) The Auction shall be conducted as an "open cry" auction.² Bidding will begin at the purchase price stated in the Agreement or if higher, the highest purchase price stated by one or more Qualified Bids for the Nassau Property provided that such highest

² An "open cry" auction is an auction method in which bidders shout out their bids and offers rather than doing so online or using the phone.

purchase price equals the sum of \$2,215,000.00 for the Nassau Real Property - i.e. the purchase price plus the Breakup Fee plus the Overbid Protection (as defined in the Bidding Procedures). Bidding will subsequently continue in additional minimum increments of no less than Ten Thousand and 00/100 Dollars (\$10,000.00) in cash, unless the Trustee decides to lower the amount of the additional minimum increments. GV is not required to participate in the bidding but shall have the right to bid at any time during the Auction.

e) If any Prevailing Bidder fails to consummate the Sale within five (5) business days of the required closing date because of a breach or failure to perform on the part of such Prevailing Bidder, the Prevailing Bidder shall forfeit its Bidder Deposit to the Trustee and the next highest or otherwise best Qualified Bid will be deemed to be the Prevailing Bidder, and the Trustee will be authorized to consummate the sale with the applicable Qualified Bidder submitting such bid without further order of the Bankruptcy Court (the "Back-Up Bidder"). The closing of the Sale to a Backup Bidder shall take place within ten calendar (10) days after such Back-Up Bidder receives notice from the Trustee that the Prevailing Bidder failed to close and that the Trustee has elected to proceed to close with the Back-Up Bidder. If the Back-Up Bidder is unable or unwilling to close the sale in the time permitted, the Back-Up Bidder shall forfeit its Bidder Deposit to the Trustee.

47. Except as otherwise provided in the Agreement or the Bidding Procedures Order, the Trustee reserves the right as he may reasonably determine to be in the best interests of the estate, after consultation with his legal advisors, to: (a) determine which bidders are Qualified Bidders; (b) determine which bids are Qualified Bids; (c) determine which Qualified Bid is the highest and best proposal and which is the next highest and best proposal; (d) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the

requirements of the Bankruptcy Code or (iii) contrary to the best interests of the Debtor and its estate; (e) waive terms and conditions set forth herein with respect to all potential bidders; (f) impose additional terms and conditions with respect to all potential bidders; (g) extend the deadlines set forth herein; (h) continue or cancel the Auction and/or Sale Hearing in open court without further notice; and (i) modify the Bidding Procedures as they may determine to be in the best interests of their estates or to withdraw the Bidding Procedures Motion at any time with or without prejudice.

B. Legal Argument

48. This Court has the statutory authority to authorize the Sale free and clear of liens, claims, and encumbrances. Pursuant to section 363(f) of the Bankruptcy Code, a trustee or debtor in possession may sell all or any part of property of the estate, free and clear of any and all liens, claims, encumbrances or interests if:

(1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

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

(4) such interest is in a bona fide dispute, or

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

11 U.S.C. § 363(f); *see also In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988) (section 363(f) is written in the disjunctive; the court may approve a sale “free and clear” provided at least one of the subsections is met).

49. Property of the estate may be sold outside the ordinary course of business. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he 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). Courts interpreting section 363(b)(1) of the Bankruptcy Code have held that transactions should be approved under section 363(b)(1) when: (a) they are supported by the sound business judgment of the debtor’s management; (b) interested parties are provided with adequate and reasonable notice; (c) the sale price is fair and reasonable; and (d) the purchaser is acting in good faith. *See In re Delaware & Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (D. Del. 1987); *In re Condere Corp.*, 228 B.R. 615 (Bankr. S.D. Miss. 1998); *WBQ P’Ship v. Virginia*, 189 B.R. 97 (Bankr. E.D. Va. 1995). Here, each of those factors is met. Court’s usually defer to the business judgment of a debtor or trustee in deciding whether or not to authorize the sale of the debtor’s property outside the ordinary course of business. *See e.g., In re Continental Airlines, Inc.*, 780 F.2d 1223 (5th Cir. 1986).

50. Subject to the terms and conditions of the Agreement, the Trustee, in the sound exercise of his business judgment, has concluded that consummation of the Sale to the Proposed Purchaser (or to the highest and best bidder) will best maximize the value of the Debtor’s estate for the benefit of the Debtor’s creditors. First, selling the Nassau Property as a whole versus selling the Nassau Properties separately increases the value of each of the Nassau Properties, which in turn provides for additional funds to pay to the junior lienholders. And second, the Debtor’s majority equity holders have been trying for years to sell the Assemblage, which includes the Nassau Property. However, the Debtor’s majority equity holders have been unable or unwilling to pursue such a transaction to closing.

51. In addition, to date, the purchase price offered by GV is the highest and best offer for the Nassau Property. In order to ensure the highest possible recovery for the Debtor’s estate, the Trustee has required that the Agreement be subject to the receipt of higher and better offers through

a competitive Auction for the Nassau Property, as set forth herein. Moreover, all interested parties will be provided with notice of this Sales Procedure Motion and the Auction, and the Proposed Purchaser is acting in good faith. Accordingly, the Trustee respectfully asserts that ample business justification exists for the Sale.

52. Moreover, the Break-Up Fee is designed to lock in the minimum bid price and to compensate GV for costs it has incurred in connection with the Agreement and will incur in connection with the Sale should GV fail to be the winning bidder at the Auction. A break-up fee is appropriate both to attract additional, serious bids and to ensure that the original bidder does not retract its bid. *See In re APP Plus, Inc.*, 223 B.R. 870 (Bkrcty. E.D.N.Y.); *In re S.N.A. Nut Company*, 186 B.R. 98 (Bkrcty. N.D. Ill. 1995). Here, the Break-Up Fee equals approximately 2.3% of the proposed Purchase Price, which is reasonable.

53. As noted above, the Trustee proposes to sell the Nassau Properties free and clear of all liens, claims, and encumbrances pursuant to Section 363(f) of the Bankruptcy Code with all such liens, claims, and encumbrances attaching to the Sale proceeds. In the instant case, the alleged secured claims may not be fully-satisfied by the sale of the Nassau Properties. Accordingly, the Trustee proposes to sell the Nassau Property to the highest and best Qualified Bidder pursuant to either Section 363(f)(4) or (5), which specifically provide:

- (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 –
 - (4) such interest is a bona fide dispute; or
 - (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

54. Pursuant to Section 363(f)(4), a “bona fide dispute exists when there is an objective basis for either factual or legal dispute as to the validity of an interest in property.” *See In re*

Robotics Vision System, Inc., 322 B.R. 502, 506 (Bankr. D.N.H. 2005). In deciding whether a bona fide dispute exists, the court does not need to determine the outcome of such dispute, but only whether one exists. *Id.* In addition, the purpose of Section 363(f)(4) is to permit a bankruptcy estate to sell property “free and clear of interests that are disputed by the representative of the estate so that liquidation of the estate’s assets need not be delayed while such disputes are being litigated.” *See In re Clark*, 266 B.R. 163, 171 (9th Cir. BAP 2001); *see also In re Oneida Lake Development, Inc.*, 114 B.R. 352, 357 (Bankr. N.D.N.Y. 1990)(allegations are sufficient to raise a bona fide dispute over the avoidability of a lien where a sale needed to be concluded before an evidentiary hearing could take place).

55. Regarding Section 363(f)(5), courts have found that “money satisfaction” does not mean “full money satisfaction.” *See In re Levitt and Sons, LLC*, 384 B.R. 630, 648 (Bankr. S.D.Fla. 2008); *see also In re HealthCo International, Inc.*, 174 B.R. 174, 176 (Bankr. D.Mass 1994). Moreover, there is no requirement in Section 363(f)(5) that an actual “legal or equitable proceeding compelling the acceptance of less than full value actually occur prior to a Section 363(f)(5) sale, or if it all.” *See In re Levitt and Sons, LLC*, 384 B.R. at 648; *see also In re HealthCo International*, 174 B.R. at 176 (inferring that Section (f)(5) “requires only that the interest in question be subject to final satisfaction on a hypothetical basis, not that there be an actual payment in satisfaction of the interest from the proceeds of the sale in question”). In *In re Gulf States Steel, Inc. of Alabama*, 285 B.R. 497, 508 (Bankr. N.D.Ala. 2002), the court stated: “Section 363(f)(5) does not require that the sale price for the [p]roperty must exceed the value of the interests, but rather, only that the mechanism exists to address extinguishing the lien or interest without paying such interest in full.” The *Gulf States Steel* court went on to find that there were in fact other mechanisms for the lien creditor in that case to be compelled to accept a money satisfaction, such as through a Chapter 11

cram-down or a “judicial or non-judicial foreclosure of the senior liens” held on the property at issue in that case. *Id.* at 508-509.

56. In the instant case, the first lien holders on each of the Nassau Properties will be satisfied in full from the Sale Proceeds. However, there will be insufficient proceeds from the Sale to fully satisfy the junior lienholders on each of the Nassau Properties. Accordingly, the Trustee proposes to sell the Nassau Properties pursuant to Sections 363(f)(2), (4) and (5) as follows:

i. The 3412 Property

Wilmington Lien (first position)	363(f)(1) or (2) (paid in full or consent)
Benitez Lien (second position)	363(f)(4) and (5) (Benitez Lien is disputed and could be compelled in a legal or equitable proceeding to accept a money satisfaction of his interest)
Fair Lien (third position)	363(f)(5) (could be compelled in a legal or equitable proceeding to accept a money satisfaction of her interest)

ii. The 3400 Property

BankUnited Lien (first position)	363(f)(1) (paid in full)
Benitez Lien (second position)	363(f)(4) and (5) (Benitez Lien is disputed and could be compelled in a legal or equitable proceeding to accept a money satisfaction of his interest)
Fair Lien (third position)	363(f)(5) (could be compelled in a legal or equitable proceeding to accept a money satisfaction of her interest)

iii. The 3441 Property

DD&C Lien (first position)	363(f)(4)(disputed)
Diaz Lien (second position)	363(f)(5) (could be compelled in a legal or equitable proceeding to accept a money satisfaction of her interest)

Fair Lien (third position)	363(f)(5) (could be compelled in a legal or equitable proceeding to accept a money satisfaction of her interest)
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iv. The 3461 Property

Diaz Lien (first position)	363(f)(1) (paid in full)
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Benitez Lien (second position)	363(f)(4) and (5) (Benitez Lien is disputed and could be compelled in a legal or equitable proceeding to accept a money satisfaction of his interest)
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Fair Lien (third position)	363(f)(5) (could be compelled in a legal or equitable proceeding to accept a money satisfaction of her interest)
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57. Finally, the Trustee and GV have negotiated the Agreement in good faith. As such, the Trustee requests that the Sale Order find that GV is a good-faith purchaser entitled to the protections of 11 U.S.C. § 363(m). The Trustee further requests that, after the Sale Hearing and provided that the Trustee does not deem any other Qualified Bids to be higher or better than the Qualified Bid of the Proposed Purchaser, this Court enter the Sale Order authorizing and approving the Trustee to enter into the Agreement.

C. Termination of Leases Prior to Closing

58. All existing leases on the Nassau Property are oral month to month leases.

59. Pursuant to Section 2.9(c) of the Agreement, the Trustee shall prior to closing provide all tenants in the Nassau Property with a fifteen (15) day termination notice pursuant to § 83.57, Florida Statutes (2016) (the “*Termination Notices*”).

60. As discussed in detail in Section 2.9(c) of the Agreement, the Sale shall not be contingent on the Trustee delivering the Nassau Property vacant or the Trustee removing any hold-over tenants from the Nassau Property prior to or after the closing on the Sale, and GV (or the Proposed Purchaser, as the case may be) acknowledges that it shall consummate the Sale

irrespective of whether there exist hold-over tenants in the Nassau Property and that the Trustee shall have no responsibility, obligation, or liability whatsoever to remove such hold over-tenants at, prior to, or following the closing on the Nassau Property, as the case may be.

D. The Sale Hearing and Manner of Notice

61. Subject to Court approval, the Sale Hearing shall be held before the Court the day immediately following the Auction, or as soon thereafter as counsel and interested parties may be heard.

62. Objections, if any, to the Sale, or the relief requested in this Sale Procedures Motion must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) be filed with the clerk of the Bankruptcy Court for the Southern District of Florida, C. Clyde Atkins United States Courthouse, 301 North Miami Avenue, Room 150, Miami, Florida 33128 (or filed electronically via CM/ECF), on or before 4:30 p.m. (prevailing Eastern Time) two (2) business days before the Bid Procedures Hearing (the “*Sale Objection Deadline*”); and (d) be served upon (i) counsel to the Trustee, (ii) counsel to the Debtor, and (iii) the Office of the United States Trustee, in each case, so as to be actually received no later than 4:30 p.m. (prevailing Eastern Time) on the same day.

63. On or before three (3) business days after entry of the Bidding Procedures Order, the Trustee will cause a notice, substantially in the form attached as Exhibit 1 to the Bidding Procedures Order (the “*Auction and Sale Notice*”), to be sent by first-class mail postage prepaid, to all potential bidders previously identified or otherwise known to the Trustee as well as the Debtor’s entire creditor matrix, which includes, but is not limited to, the following: (a) all creditors or their counsel known to the Trustee to assert a lien (including any security interest), claim, right, interest or encumbrance of record against all or any portion of the Nassau Properties; (b) the Office of the

United States Trustee; (c) all applicable federal, state and local taxing and regulatory authorities of the Debtor or recording offices or any other governmental authorities that, as a result of the Sale, may have claims, contingent or otherwise, in connection with the Debtor's ownership of the Nassau Properties or have any known interest in the relief requested by this Motion; (d) the United States Attorney's office; (e) counsel to the Proposed Purchaser; (f) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002; and (f) all other known creditors and interest holders of the Debtor.

X. WAIVER OF STAY

57. At the Sale Hearing, given the Trustee's and the Proposed Purchaser's interest in proceeding expeditiously, the Trustee will request that this Court enter an order waiving the 14-day stay set forth in Rule 6004(h) of the Federal Rules of Bankruptcy Procedure and providing that the Sale Order be immediately enforceable and that the closing under the Agreement may occur within five (5) business of the entry of the Sale Order.

WHEREFORE, the Trustee respectfully request entry of an order, substantially in the form attached hereto and identified as **Exhibit B**, (a) granting the relief requested herein, and (b) granting such other and further relief as is fair and just.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was served on June 30, 2017, via the Court's Notice of Electronic Filing upon the parties listed on the attached **Exhibit 1** and via U.S. Mail upon the parties listed on the Manual Notice List and the attached **Exhibit 2**³.

s/ Peter D. Russin
Peter D. Russin, Esquire
Fla. Bar No. 765902
prussin@melandrussin.com
Daniel N. Gonzalez, Esquire
Fla. Bar No. 592749
dgonzalez@melandrussin.com
MELAND RUSSIN & BUDWICK, P.A.
3200 Southeast Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 358-6363
Facsimile: (305) 358-1221
Attorneys for Trustee

³ "NEF" means that service was made by Notice of Electronic Filing as set forth on Exhibit 1 and is not being additionally served by mail.

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

- Gregg S. Ahrens gahrens@kahaneandassociates.com, bkecf@kahaneandassociates.com;mdixon@kahaneandassociates.com
- Patricia M Arias pma@pariaslaw.com, esq874@aol.com
- Johanna Armengol Johanna.Armengol@usdoj.gov, johanna.armengol@usdoj.gov
- Mark D. Bloom bloomm@gtlaw.com, MiaLitDock@gtlaw.com;miaecfbky@gtlaw.com
- Joseph A Carballo joe@carballolaw.com
- Drew M Dillworth ddillworth@swmwas.com, ddillworth@ecf.epiqsystems.com;marocha@stearnsweaver.com
- Drew M Dillworth ddillworth@swmwas.com, ddillworth@ecf.epiqsystems.com;marocha@stearnsweaver.com
- Daniel N Gonzalez dgonzalez@melandrussin.com, ltannenbaum@melandrussin.com;mrbnefs@yahoo.com;dgonzalez@ecf.courtdrive.com;ltannenbaum@ecf.courtdrive.com;phornia@ecf.courtdrive.com
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- Peter H Levitt plevitt@shutts-law.com
- Michael Marcer Bankruptcy@marrerolawfirm.com, BKCMailECF@gmail.com
- Nicole M Noel bankruptcynotices@kasslaw.com, nmnoel@ecf.courtdrive.com
- Office of the US Trustee USTPRegion21.MM.ECF@usdoj.gov
- Peter D. Russin prussin@melandrussin.com, ltannenbaum@melandrussin.com;mrbnefs@yahoo.com;prussin@ecf.courtdrive.com;ltannenbaum@ecf.courtdrive.com;phornia@ecf.courtdrive.com
- Andrew D. Zaron azaron@leoncosgrove.com, jgomez@leoncosgrove.com

Manual Notice List

The following is the list of **parties** who are **not** on the list to receive email notice/service for this case (who therefore require manual noticing/service).

Soneet Kapila
KapilaMukamal LLP
1000 S Federal Hwy
#200
Fort Lauderdale, FL 33316

Arnaldo Velez
35 Almeria Ave
Coral Gables, FL 33134

Label Matrix for local noticing
113C-1
Case 15-27691-AJC
Southern District of Florida
Miami
Fri Jun 30 15:41:31 EDT 2017

Eddy Leal, P.A. **NEF**
c/o 201 South Biscayne Suite 2650
Miami, FL 33131-4319

Acquisitions, LLC
c/o Manuel L Crespo, Esquire
SMGQ Law
201 Alhambra Circle, Suite 1205
Miami, FL 33134-5150

BankUnited, N.A.
7815 NW 148 Street
Miami Lakes, FL 33016-1554

Internal Revenue Service
Centralized Insolvency Operation
P.O. Box 7346
Philadelphia, PA 19101-7346

Orlando Benitez, Jr. **NEF**
c/o Eddy Leal, Esquire
Eddy Leal, P.A.
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Miami, FL 33131-4319

Wilmington Savings Fund Society, FSB
Rushmore Loan Management Services
P.O. Box 55004
Irvine, CA 92619-5004

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201 South Biscayne Suite 2650
Miami, FL 33131-4319

Bank United, N.A. **NEF**
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Nassau Development of Village West, Corp.
3850 Bird Road
Penthouse 1
Miami, FL 33146-1507

Alicia Diaz
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Coral Gables, FL 33134-6118

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Julio C. Marero
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Miami, FL 33146-1507

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DD&C Financial Investments Corporation **NEF**
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Miami, FL 33131-4319

Wilmington Savings Fund Society, FSB
c/o Nicole Mariani Noel
P.O. Box 800
Tampa, FL 33601-0800

Alicia Diaz, Trustee **NEF**
c/o Joseph Carballo, Esquire
Vasquez & Carballo, PA
200 South Biscayne Blvd, Suite 4310
Miami, FL 33131-2362

DD&C Financial Investment Corporation
c/o Eddy Leal, Esquire **NEF**
Eddy Leal, P.A.
201 South Biscayne Blvd, Suite 2650
Miami, FL 33131-4319

Office of the US Trustee
51 S.W. 1st Ave. **NEF**
Suite 1204
Miami, FL 33130-1614

Sheila Fair
c/o Robert A Young, Esquire
3576 Charles Avenue
Miami, FL 33133-5714

Michael Marcer **NEF**
3850 Bird Road, Penthouse I
Coral Gables, FL 33146-1501

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)GV Grove Investments, LLC

(u)Miami

(u)Alicia Diaz

Orlando Benítez, Jr.
11500 Quail Roost Drive
Miami, Florida 33157

Regla Pena
3441 Grand Avenue
Unit 3441-1
Miami, FL 33133

Rudy McNeil
3441 Grand Avenue
Unit 3441-2
Miami, FL 33133

Unknown Tenant
3441 Grand Avenue
Unit 3441-3
Miami, FL 33133

Unknown Tenant
3441 Grand Avenue
Unit 3441-4
Miami, FL 33133

Unknown Tenant
3441 Grand Avenue
Unit 3441-5
Miami, FL 33133

Unknown Tenant
3441 Grand Avenue
Unit 3441-6
Miami, FL 33133

Unknown Tenant
3441 Grand Avenue
Unit 3441-7
Miami, FL 33133

Latrevia Kamithia Mclean
3441 Grand Avenue
Unit 3441-8
Miami, FL 33133

Doretha Martin
3441 Grand Avenue
Unit 3441-9
Miami, FL 33133

Unknown Tenant
3441 Grand Avenue
Unit 3441-10
Miami, FL 33133

Unknown Tenant
3441 Grand Avenue
Unit 3441-11
Miami, FL 33133

Unknown Tenant
3441 Grand Avenue
Unit 3441-12
Miami, FL 33133

Pedro Ramos
3400 Florida Avenue
Unit 3400-1
Miami, FL 33133

Unknown Tenant
3400 Florida Avenue
Unit 3400-2
Miami, FL 33133

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”) is dated and entered into as of June 30, 2017 (the “**Effective Date**”), by and between DREW M. DILLWORTH (“**Seller**” and/or “**Trustee**”), not individually but as Chapter 11 bankruptcy trustee for (i) NASSAU DEVELOPMENT OF VILLAGE WEST, CORP., a Florida corporation (“**Nassau Debtor**”), and (ii) GRAND ABBACO DEVELOPMENT OF VILLAGE WEST CORPORATION, a Florida corporation (“**Abbaco Debtor**”), and GV NASSAU, LLC, a Florida Limited Liability Company, and/or assigns (“**Purchaser**”).

RECITALS:

- A. On October 2, 2015 (the “**Nassau Petition Date**”), the Nassau Debtor filed a voluntary petition under chapter 11 of the United States Bankruptcy Code, which proceeding is pending under Case No. 15-27691-AJC (the “**Nassau Bankruptcy Case**”) in the United States Bankruptcy Court for the Southern District of Florida, Miami Division (the “**Bankruptcy Court**”).
- B. Drew M. Dillworth was appointed and approved by the Bankruptcy Court as the chapter 11 trustee (the “**Nassau Trustee**”) pursuant to an order [Nassau ECF No. 70] entered by the Bankruptcy Court on June 6, 2016.
- C. On March 27, 2016 (the “**Abbaco Petition Date**”), the Abbaco Debtor filed a voluntary petition under chapter 11 of the United States Bankruptcy Code, which proceeding is pending under Case No. 16-14286-AJC (the “**Abbaco Bankruptcy Case**”) in the Bankruptcy Court.
- D. Drew M. Dillworth was appointed and approved by the Bankruptcy Court as the chapter 11 trustee (the “**Abbaco Trustee**,” and together with the Nassau Trustee, the “**Trustee**”) pursuant to an order [Abbaco ECF No. 129] entered by the Bankruptcy Court on April 19, 2017.
- E. Seller owns the real properties in the name of the Nassau Debtor as more specifically described and identified in the attached Schedule 1.1 (collectively, the “**Nassau Real Property**”).
- F. Seller owns the real properties in the name of the Abbaco Debtor as more specifically described and identified in the attached Schedule 1.2 (collectively, the “**Abbaco Real Property**,” and together with the Nassau Real Property, the “**Real Property**”).
- G. Seller desires to sell and Purchaser desires to purchase the Real Property pursuant to section 363 of the Bankruptcy Code on the terms and subject to the conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the representations, warranties, covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the

receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 *Definitions.* In addition to those capitalized terms that are elsewhere defined in this Agreement, the following terms shall have the corresponding meanings:

"Agreement" has the meaning set forth in the preamble.

"Alternative Offer" has the meaning set forth in Section 5 of the Bid Procedures.

"Assets" has the meaning set forth in Section 2.1.

"Auction" has the meaning set forth in Section 2(b) of the Bid Procedures.

"Back-Up Bidder" has the meaning set forth in Section 4 of the Bid Procedures.

"Bankruptcy Code" means the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*

"Bankruptcy Court" has the meaning set forth in Recital A.

"Bankruptcy Laws" means the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the local rules and orders of the Bankruptcy Court, all as amended from time to time.

"Bidding Procedures" means the bidding procedures in the form attached as Schedule 3.

"Bidding Procedures Order" means an order of the Bankruptcy Court, in form and substance acceptable to Purchaser in its reasonable discretion, that, among other things, approves the Bid Procedures.

"Closing" has the meaning set forth in Section 6.1.

"Closing Agent" has the meaning set forth in Section 6.1.

"Closing Date" has the meaning set forth in Section 6.1.

"Covenants, Restrictions and Easements" means any and all usage and development terms, conditions, guidelines, covenants, restrictions and easements applicable or relating to the Real Property which are recorded on or before the Effective Date in the Public Records of Miami-Dade County, Florida.

"Deposit" has the meaning set forth in Section 2.4.

"Due Diligence Package" has the meaning set forth in Section 2.5(a).

"Effective Date" is the date set forth in the preamble of this Agreement.

"Escrow Agent" means Seller's counsel, Meland, Russin & Budwick, P.A., or such other Person as Purchaser and Seller mutually agree and appoint to hold the Deposit in escrow.

"Governmental Entity" means any foreign or United States federal, state, local or municipal government, court, administrative agency or commission or other governmental or other regulatory authority or agency.

"Permitted Exceptions" means liens for taxes and assessments not yet due or payable; any law, ordinance or government regulations that apply to the Assets; any Covenants, Restrictions and Easements that are of record prior to the Effective Date; any rights of parties to any third party contract that Purchaser shall assume at Closing, to the extent such rights are title encumbrances; any matters of record prior to the Effective Date; any matters of record subsequent to the Effective Date approved in writing by Purchaser; exceptions or conditions to title identified by any title commitment obtained by Purchaser; matters that would be disclosed by a current survey of the real property comprising the Real Property; and municipal or county liens for code violations and open permits; provided however, Permitted Exceptions shall not include any (i) liens intended to secure monetary indebtedness for items such as mortgage liens, tax liens, judgment liens, mechanic's or materialmen liens; or (ii) lis pendens or any other matters relating to lien claims; or (iii) tax sale certificates of record.

"Person" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including without limitation, a Governmental Entity.

"Property Taxes" means ad valorem taxes imposed upon the Assets.

"Proration Items" has the meaning set forth in Section 2.6.

"Purchase Price" has the meaning set forth in Section 2.3.

"Purchaser" has the meaning set forth in the preamble.

"Sale Order" has the meaning set forth in Section 3 of the Bid Procedures.

"Schedules" means the schedules referenced in and attached to this Agreement.

"Seller" has the meaning set forth in the preamble.

"Utility Charges" means water, sewer, electricity, gas and other utility charges, if any, applicable to the facilities owned by Seller at the Real Property.

ARTICLE II

PURCHASE AND SALE OF THE ASSETS AND LIABILITIES

2.1 *Sale and Transfer of the Assets.* At Closing, Seller will sell, assign, transfer and convey to Purchaser all of Seller's right, title and interests in and to the following assets

(collectively, the “**Assets**”), free and clear of all liens to the extent provided in the Sale Order and subject to the Permitted Exceptions:

- (a) The Real Property; and
- (b) All personal property owned by Seller and used in operation of the Real Property.

2.2 *The Excluded Assets.* Seller shall not sell, Purchaser shall not purchase or acquire, and the Assets shall not include the following (collectively, the “**Excluded Assets**”):

(a) Any cash or cash equivalents owned or held by Seller or its bankruptcy estate, except for any tenant security deposits;

(b) Any deposits that Seller has made with the State of Florida, local county or municipal governments, or any of such entities' divisions, agencies or authorities, utility companies, suppliers of materials, contractors or other third party public or private entities;

(c) Any letters of credit made by third parties on behalf or for the benefit of Seller and any proceeds of or interest on the proceeds of any such letters of credit;

(d) Whether or not yet filed, determined or received, any and all tax refunds or other refunds, adjustments, deposits or rebates due Seller from any private or public entity, to the extent related to activities or time periods occurring before the Closing; provided, that if payment or realization of any such refund, adjustment, deposit or rebate occurs after Closing (unless it is ascertainable before Closing, in which event the Purchase Price shall be increased at Closing to reflect such refund, adjustment, deposit or rebate), Purchaser promptly will remit the amount of the same to Seller upon receiving notice of the same of the public or private entity issuing such payment or causing such realization (provided that the foregoing shall not diminish Purchaser's right to receive the Governmental Fees that are included within the Assets);

(e) Whether or not yet filed, any and all insurance claims and refunds to the extent related to the Excluded Assets or activities or time periods occurring before the Closing, except as provided in Section 9.6 of this Agreement;

(f) Whether or not yet filed, any and all causes of action, including, without limitation, causes of action arising under the Bankruptcy Code, including proceeds arising therefrom, in each case, related to activities or time periods occurring before the Closing; and

(g) All property and assets of Seller not listed or described in Section 2.1.

2.3 *Purchase Price and Other Consideration.* In consideration of the sale, transfer, conveyance, assignment and delivery of the Assets, and in reliance upon the representations and warranties made herein by Seller, Purchaser in payment for the Assets shall pay to Seller in cash at Closing the following:

(a) the sum of Two Million One Hundred and Sixty Thousand Dollars (\$2,160,000.00) for the Nassau Real Property (the "**Nassau Purchase Price**"), which Nassau Purchase Price is allocated for each Nassau Property on Schedule 1.1; and

(b) the sum of One Million Dollars (\$1,000,000.00) for the Abbaco Property (the "**Abbaco Purchase Price**," and collectively with the Nassau Purchase Price for a total of \$3,160,000, the "**Purchase Price**"), which Abbaco Purchase Price is allocated for each Abbaco Real Property on Schedule 1.2;

2.4 *Earnest Money Deposit.* Contemporaneously with its execution and delivery of this Agreement to Seller, Purchaser shall pay to Escrow Agent an earnest money deposit in the amount of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) (the "**Deposit**") which shall be allocated as follows: One Hundred Thousand and 00/100 Dollars (\$100,000.00) for the Nassau Purchase Price (the "**Nassau Deposit**"); and, One Hundred Thousand and 00/100 Dollars (\$100,000.00) for the Abbaco Purchase Price (the "**Abbaco Deposit**"). The Deposit shall be held by Escrow Agent in trust and escrow pending the Closing or termination of this Agreement, and the amount of the Deposit shall (i) be applied and credited against the Nassau Purchase Price and Grand Abbaco Purchase Price at Closing, respectively, or (ii) in the event of a termination, refunded to Purchaser or disbursed to Seller in accordance with the terms and provisions of this Agreement. Except as otherwise may be provided herein, the Deposit shall be held by Escrow Agent in a non-interest bearing account to be established by Escrow Agent. Unless otherwise expressly stated herein, Purchaser and Seller agree that the Deposit is fully earned, non-refundable, and at risk as of the Effective Date.

2.5 *Inspection of Assets.*

(a) *List of Tenant and Rent Roll.* Seller shall provide to Purchaser, to the extent same is in Seller's possession, copies of the lists of current tenants and rent rolls relating to the Real Property (the "**Due Diligence Package**") for Purchaser's use in conducting its due diligence with respect to the Assets. Purchaser acknowledges that the Due Diligence Package includes some information that was developed or generated before the Petition Date and that Seller makes no representation or warranty of any kind with respect to the accuracy, adequacy or completeness of the Due Diligence Package. The Due Diligence Package is being provided as an accommodation to Purchaser and without any representation or warranty from Seller.

(b) *Inspection Period.* Purchaser acknowledges and agrees that prior to executing this Agreement, Purchaser has had sufficient time and opportunity to conduct due diligence. Nevertheless, Seller agrees that Purchaser shall have until thirty (30) days after the Bankruptcy Court approval (the "**Final Inspection Deadline**") of this Agreement to conduct any final physical inspections of the Real Property. At Purchaser's option, the Final Inspection Deadline may be extended for a period not to exceed fifteen (15) days. In order to exercise such extension, Purchaser shall deliver written notice to Seller prior to the expiration of the Final Inspection Deadline. Prior to the expiration of the Final Inspection Deadline, Purchaser may terminate this Agreement in writing to Seller for any reason and the Deposits shall be immediately returned to Purchaser. Following the expiration of the Final Inspection Deadline, Purchaser agrees that the Deposit shall be fully earned and non-refundable, except as otherwise provided in this Agreement, and Purchaser shall be deemed to (i) have completed its due

diligence; (ii) have waived any further right to undertake any additional review, due diligence, investigations, and inquiries pertaining to the Assets and the Real Property; (iii) acknowledge that the Assets are suitable for Purchaser's intended uses, meet Purchaser's expectations, and are appropriate or acceptable for purchase by Purchaser, and (iv) be the "stalking horse bidder" that will proceed to Auction under the terms of this Agreement and the Bid Procedures. EXCEPT FOR THE REPRESENTATIONS SET FORTH IN ARTICLE III OF THIS AGREEMENT, PURCHASER WILL BE PURCHASING THE ASSETS PURSUANT TO ITS INDEPENDENT EXAMINATION, STUDY, INSPECTION AND KNOWLEDGE OF THE ASSETS. PURCHASER IS RELYING UPON ITS OWN DETERMINATION OF THE QUALITY, VALUE AND CONDITION OF THE ASSETS, AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER AND/OR SELLER'S AGENTS.

(c) *Access to Assets.* Seller may, upon request of Purchaser, provide Purchaser with reasonable entry and access to the Real Property. Purchaser will coordinate its entry on to the Real Property with Seller so that Seller shall have the option of having one or more of its representatives present at any and all on-site inspections.

(d) *Inspection Costs / Damages.* All inspections, investigations, and examinations of the Assets have been and shall be undertaken at Purchaser's sole cost and expense. Purchaser shall promptly restore and repair any damage caused by Purchaser to substantially the same condition that existed immediately prior to Purchaser's inspection, and Purchaser hereby covenants and agrees to indemnify and hold harmless Seller and any of his employees, agents, representatives, accountants or attorneys, from any and all claims against them or the Assets arising from, or caused by, Purchaser's inspections. The terms and covenants of this subsection shall survive the Closing or termination of this Agreement.

(e) *Confidentiality.* Purchaser hereby covenants and agrees that, except as required by law and except to the extent provided to Purchaser's agents, representatives, potential investors and lenders and for the purpose of conducting its due diligence or pursuing the transaction contemplated by this Agreement, Purchaser and its employees, representatives and agents (i) shall not disclose to any third Person or Governmental Entity non-public information, or other proprietary information, contained in the Seller's books and records, or any other information provided to Purchaser by Seller, and (ii) shall not report or disclose to any third person or Governmental Entity any non-public data, results, tests, or work product obtained in connection with Purchaser's inspection of the Assets, including, but not limited to, any appraisals of the Assets. The terms and covenants of this subsection shall survive the Closing or termination of this Agreement.

(f) *Return of Information.* In the event this Agreement is terminated by Purchaser or Seller for any reason, Purchaser covenants and agrees it shall immediately destroy or return to Seller all of the documents and information provided to Purchaser, including copies thereof, in the control or possession of Purchaser or its representatives and agents. The terms and covenants of this subsection shall survive the termination of this Agreement.

2.6 *Prorations.* Seller shall be responsible for all costs and expenses arising before and including the Closing Date related to the Assets and the Real Property, including, without limitation, all Utility Charges and Property Taxes. Purchaser shall only be responsible for all

such costs and expenses and shall be entitled to all such income related to the Assets for the period after the Closing Date. All Utility Charges and Property Taxes for 2017 to be prorated are herein referred to as the "**Proration Items.**" The Proration Items shall be prorated and apportioned through the Closing Date, with the Proration Items for the Closing Date belonging to Seller in accordance with the foregoing, on the basis of a 365-day year and reflected as an appropriate adjustment to the Purchase Price.

2.7 *Intentionally omitted.*

2.8 *Transaction Costs.* Purchaser shall be responsible for the costs of conducting its due diligence studies, the costs of issuance of any title reports, title commitments, and title policies for the Real Property, the recording fees for the deed of conveyance, documentary and stamp taxes, including, but not limited to any surtax, any financing instruments, and any of Purchaser's attorneys' fees.

2.9 *"As Is, Where Is."*

(a) IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT PURCHASER ACCEPTS THE CONDITION OF THE ASSETS "**AS IS, WHERE IS--WITH ALL FAULTS**" WITHOUT ANY IMPLIED REPRESENTATION, WARRANTY OR GUARANTEE AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE AS TO THE CONDITION, SIZE OR VALUE OF SUCH PROPERTY, EXCEPT ONLY AS MAY BE OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT AND SELLER HEREBY EXPRESSLY DISCLAIMS ANY AND ALL SUCH IMPLIED REPRESENTATIONS, WARRANTIES OR GUARANTEES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY, OR CONDITION OF THE ASSETS BEING SOLD, (B) THE SUITABILITY OF THE ASSETS FOR ANY ACTIVITIES THAT PURCHASER MAY CONDUCT THEREON, (C) THE COMPLIANCE OF THE ASSETS WITH ANY LAWS, ORDINANCES, OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL ENTITY, (D) COMPLIANCE OF THE ASSETS WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION, OR LAND USE LAWS, RULES, REGULATIONS, ORDERS, OR REQUIREMENTS, INCLUDING THE EXISTENCE IN OR ON THE PROPERTY OF HAZARDOUS MATERIALS, (E) THE ZONING, TAX CONSEQUENCES, PHYSICAL CONDITION, UTILITY CAPACITY OR COMMITMENT FOR UTILITY CAPACITY, OPERATING HISTORY OR PROJECTIONS, VALUATIONS, GOVERNMENTAL APPROVALS OR GOVERNMENTAL REGULATIONS WHICH MAY BE APPLICABLE, COMPLIANCE WITH SPECIFICATIONS, LOCATION, EXISTENCE OF, OR COMPLIANCE WITH APPLICABLE LAWS, RULES, REGULATIONS, RESTRICTIVE COVENANTS OR OTHER ENCUMBRANCES OF, TO OR BY THE REAL PROPERTY, (F) THE ADEQUACY OF DESIGN, SUITABILITY, QUALITY, DESCRIPTION, DURABILITY, OR QUALITY OF MATERIAL OR WORKMANSHIP OF THE REAL PROPERTY, OR (G) ANY OTHER MATTER WITH RESPECT TO THE ASSETS, EXCEPT AS SET FORTH IN THIS AGREEMENT.

(b) Without limiting the above, upon Closing the Purchaser on behalf of itself and its successors and assigns waives and releases Seller and his employees, officers, agents and their respective successors and assigns from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, arising from or relating to the Assets including the physical condition of the Real Property or any tenant claim (except any tenant claim which date of loss occurred during the pendency of the Nassau Bankruptcy Case or Abbaco Bankruptcy Case, respectively) in connection with the Real Property or any law or regulation applicable thereto, including the presence or alleged presence of asbestos or harmful or toxic substances in, on, under or about the Assets, including, without limitation, any claims under or on account of (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as the same may have been or may be amended from time to time, and similar state statutes, and any rules and regulations promulgated thereunder, (ii) any other federal, state or local law, ordinance, rules or regulation, now or hereafter in effect, that deals with or otherwise in any manner relates to, environmental or health and safety matters of any kind, or (iii) this Agreement or the common law.

(c) Purchaser acknowledges that as an accommodation to Purchaser, Seller shall prior to Closing: (i) with respect to the Nassau Real Property, provide all tenants in the Nassau Real Property with a fifteen (15) day termination notice pursuant to § 83.57, Florida Statutes (2016); and, (ii) with respect to the Abbaco Real Property, provide Bain Range Funeral Service, P.A., with a fifteen (15) day termination notice pursuant to § 83.03(3), Florida Statutes (2016). Purchaser further acknowledges there may exist hold-over tenants in the Nassau Real Property and Abbaco Real Property at the time of Closing. Purchaser further acknowledges that the removal of such hold-over tenants is not a condition precedent to Closing, that Seller and Purchaser shall consummate this transaction pursuant to the terms of this Agreement irrespective of whether there exist hold-over tenants in the Nassau Real Property or Abbaco Real Property at the time of Closing, and that Seller shall have no responsibility, obligation, or liability whatsoever to remove such hold-over tenants or provide any further notice(s) at, prior to, or following Closing from the Nassau Real Property or Abbaco Real Property, as the case may be. The parties acknowledge and agree that Seller shall have no obligation to deliver the Nassau Real Property and Abbaco Real Property vacant at the time of Closing. Following Closing, Purchaser hereby indemnifies and holds Seller and its shareholders, officers, employees, agents, members, guests and other invitees harmless from all injury, damage, loss, cost or expense, including, but not limited to, reasonable attorneys' fees and court costs resulting from or arising through the hold-over tenants, if any, and the notices provided herein. The provisions of this paragraph shall survive Closing and any cancellation or termination of this Agreement.

(d) Seller shall have no obligation to close and/or pay any open permits or code violations on either the Nassau Real Property or Abbaco Real Property.

(e) The provisions of this Section 2.9 shall survive the Closing.

2.10 *Limitation of Seller's Liability.* In no event shall Seller be liable under this Agreement for any incidental, indirect, impact, consequential or punitive damages, or in the cumulative.

2.11 *Title.* Seller shall convey title to the Real Property by special warranty deed free and clear of all liens except for Permitted Exceptions.

2.12 *Possession.* Possession of the Assets shall be delivered to Purchaser on the Closing Date; provided, however, Seller shall have up to thirty (30) days after Closing within which to remove any Excluded Assets belonging to Seller and located at the Real Property, all without cost or charge to Purchaser. Any Excluded Assets not removed within such 30-day period shall become the sole property and possession of Purchaser. Seller shall be responsible, at Seller's sole cost and expense, for any damage caused by Seller's removal activities, which liability shall survive Closing.

2.13 *Non-Assumed Liabilities.* Seller and Purchaser acknowledge and agree that, other than with respect to liabilities and obligations that Purchaser expressly assumes or covenants to satisfy and perform pursuant to the terms of this Agreement, Purchaser is not assuming or becoming liable for any debts, liabilities, losses, accounts payable, indebtedness, mortgages or any other obligations of Seller, or any of its officers, directors, employees, agents, representatives or attorneys, including but not limited to any claims for commissions or similar compensation made by any Person (whether employees or agents of Seller or Seller's affiliates, or co-brokers) respecting any contracts for the use of any portion of the Real Property that are in force and executory as of the Closing Date, or any claims filed against them in the Bankruptcy Case, whether the same are known or unknown, now existing or hereafter arising, of whatever nature or character, whether absolute or contingent, liquidated or disputed.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser as follows: Seller, acting as the Bankruptcy Court appointed trustee, and upon entry of the Sale Order, will have the requisite corporate power and authority to execute and deliver this Agreement and any documents required to consummate the transactions contemplated by this Agreement. Upon entry of the Sale Order, this Agreement shall be a valid and binding obligation of Seller, enforceable against him as Chapter 11 trustee in accordance with its terms.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller as follows:

4.1 *Corporate Organization and Qualification.* Purchaser is a Limited Liability Company, validly existing and in good standing under the laws of the state of Florida.

4.2 *Corporate Authority.* Purchaser has the requisite limited liability power and authority to execute and deliver this Agreement and any documents required to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement by

Purchaser has been duly authorized by all necessary limited liability company actions of Purchaser. This Agreement is a valid and binding obligation of Purchaser, enforceable against it in accordance with its terms.

4.3 *Conflicts and Defaults.* Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of the transactions contemplated hereby will, to Purchaser's knowledge, violate or constitute an occurrence of default under any provision of, or conflict with, or result in acceleration of any obligation under, or give rise to a right by any party to terminate its obligations under, any material contract, instrument, order, judgment, decree, or other arrangement to which Purchaser is a party or is bound. Purchaser is not in violation of any of its organizational documents.

4.4 *Consents and Approvals.* No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity or any Person is required with respect to Purchaser in connection with the execution, delivery or performance by Purchaser of its obligations under this Agreement except for consents, approvals, orders, authorizations, registrations, declarations or filings the failure of which to obtain or to make would not be material.

4.5 *Funds for the Acquisition.* Purchaser has access to sufficient unencumbered funds to pay in cash the Purchase Price and all of its fees and expenses relating to this Agreement and the transactions contemplated hereby.

4.6 *OFAC Compliance.* Neither Purchaser nor, to Purchaser's actual knowledge, any Person (defined below) who owns a direct or indirect interest in Purchaser (collectively, a "Purchaser Party") is now nor shall be at any time until the Closing under this Agreement a Person with whom a U.S. Person, including a Financial Institution, is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by OFAC (including those executive orders and lists published by OFAC with respect to Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC) or otherwise.

4.7 *Anti-Money Laundering.* Neither Purchaser nor, to Purchaser's actual knowledge, any Purchaser Party, nor to Purchaser's actual knowledge, any Person providing funds to Purchaser in connection with the transaction contemplated hereby (i) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist related activities, any crimes which in the United States would be predicate crimes to money laundering or any violation of any Anti-Money Laundering Laws or any violation of any Anti-Corruption Laws; (ii) has been assessed civil or criminal penalties under any Anti-Money Laundering Laws or under any Anti-Corruption Laws; or (iii) has had any of its funds seized or forfeited in any action under any Anti Money Laundering Laws or any Anti-Corruption Laws.

ARTICLE V
BANKRUPTCY COURT APPROVAL

5.1 *Cooperation.*

(a) Seller shall use all commercially reasonable efforts to (i) obtain all consents and approvals of all governments, and all other Persons, required to be obtained by Seller to effect the transactions contemplated by this Agreement, and (ii) take or cause to be taken, all action, and to do, or cause to be done, all things necessary or proper, consistent with applicable law, to consummate and make effective in an expeditious manner the transactions contemplated hereby.

(b) At the request and expense of Purchaser, at any time after the Closing Date, Seller shall execute and deliver such documents as Purchaser or its counsel may reasonably request to effectuate the purpose of this Agreement.

(c) To the extent Seller and Purchaser enter into this Agreement prior to the entry of the Sale Order, Seller and Purchaser shall use commercially reasonable efforts to cooperate, assist and consult with each other to secure the entry of the Sale Order following the date hereof, and to consummate the transactions contemplated by this Agreement, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court. Purchaser may require any affidavits relating to its financial information to be submitted in camera and only pursuant to a protective order.

5.2 *Approval.* Seller and Purchaser acknowledge that this Agreement and the sale of the Assets are subject to approval by the Bankruptcy Court (the “**Bankruptcy Court Approval**”). Within ten (10) days after the Effective Date, Seller shall file with the Bankruptcy Court a motion (the “**Bid Procedures Motion**”), in form and substance satisfactory to Seller and Purchaser, seeking approval of the Bid Procedures Order and, subsequently approval of the Sale Order. Seller and Purchaser acknowledge that the sale of the Assets to Purchaser is subject to higher and better offers in accordance with the Bid Procedures and the Bid Procedures Order. Seller and Purchaser also acknowledge that the payoffs for the existing debts, liens, and other monetary encumbrances on the Real Property may exceed the Purchase Price, and thus Seller and Purchaser acknowledge that this Agreement and the sale of the Assets are subject to approval by the Bankruptcy Court with respect to same.

5.3 *Bidding Matter.* Seller and Purchaser acknowledge that Seller may seek or entertain one or more bids for the purchase of the Assets, either as a whole or separate bids for the Nassau Real Property and the Abbaco Real Property, in accordance with the Bid Procedures and that the Bid Procedures will provide that Seller retains the right at Auction to reject all bids, including, the bid reflected by this Agreement, subject to the terms of the Bid Procedures. Upon rejection of the bid reflected by this Agreement, the Deposits shall be immediately returned to Purchaser and this Agreement shall be terminated.

ARTICLE VI
CLOSING MATTERS

6.1 *Closing.* The closing of the sale and transfer of the Assets (the "**Closing**") will occur within five (5) business days after entry of the Sale Order, which Sale Order shall contain a waiver of any stay pending appeal (the "**Closing Date**"). In the event insurance underwriting is suspended on the Closing Date and Purchaser is unable to obtain property insurance due to a pending, existing, or past storm, then the Closing Date shall be extended until the fifth (5th) business day after such insurance underwriting suspension is lifted and insurance becomes available. In the event this Agreement is determined to be a backup bid to an Alternative Offer (as defined in Section 5 of the Bid Procedures) and such Alternative Offer fails to close and the Assets are available for sale to Purchaser, then, the Closing Date shall occur as specified in the Bid Procedures. The preceding sentence shall be applicable whether the Alternative Offer is on the Nassau Real Property, the Abbaco Real Property, or both. The Closing shall take place in Miami, Florida, at the offices of Seller's counsel, Meland, Russin & Budwick, P.A. or by "mail away" procedure through Seller's counsel as closing agent ("**Closing Agent**" and "**Title Agent**"), which firm shall also act as the Title Agent. The Closing will be effective as of 11:59 p.m. prevailing Miami, Florida, time on the Closing Date.

6.2 *Closing Documents and Deliveries.*

(a) *Seller's Deliveries.* At Closing, Seller shall deliver the following documents duly executed as required:

(i) special warranty deed conveying fee simple title to the Real Property, subject only to the Permitted Exceptions;

(ii) one or more bill(s) of sale (in form and substance reasonably satisfactory to each of Seller and Purchaser) conveying to Purchaser the remaining Assets;

(iii) a customary "Owner's Affidavit" and other instruments to the extent reasonably necessary to permit the Title Agent to satisfy its requirements relative to, and to issue a customary title insurance policy for the Real Property without exception for, mechanic's or materialmen's liens, parties in possession, and any matters falling within the "gap" between the effective date of the title examination and the Closing (but subject to the Permitted Exceptions);

(iv) a Non-Foreign Affidavit stating that Seller is not a foreign person or disregarded entity for purposes of the Internal Revenue Code and any similar document required by Florida law so as to avoid Purchaser's obligation to withhold pursuant to such State's law;

(v) the Sale Order;

(vi) a closing statement evidencing the financial aspects of the transaction contemplated in this Agreement; and

(vii) any other documents specified in this Agreement or required by Title Agent to insure title to the Real Property.

(b) *Purchaser's Deliveries.* At Closing, Purchaser shall deliver the following items or documents duly executed as required:

(i) the Purchase Price, after applying or taking into account the Deposit and the Proration Items, to be paid in cash via wire transfer of immediately available funds to an account designated by Closing Agent;

(ii) incumbency and "bring-down" certificates from the corporate secretary or other authorized representative of Purchaser in a form reasonably satisfactory to Seller;

(iv) a closing statement evidencing the financial aspects of the transaction contemplated in this Agreement; and

(v) any other documents specified in this Agreement or required by Title Agent to insure title to the Real Property.

6.3 *Conditions to Closing.* The obligations of Seller and Purchaser to consummate the Closing and the transfer of the Assets are subject to the satisfaction of the following conditions:

(a) the Sale Order (as defined in Section 3 of the Bid Procedures) shall have been entered by the Bankruptcy Court and shall provide for a stay waiver pursuant to Rule 6004 of the Federal Rules of Bankruptcy Procedure;

(b) no judgment, injunction, order or decree shall have been issued and remain outstanding prohibiting the consummation of the transfer of the Assets or the transactions contemplated under this Agreement;

(c) (i) the obligation of Seller shall be subject to Purchaser having performed and complied with its obligations and covenants under this Agreement, and the delivery by Purchaser of the closing items and documents to be delivered by Purchaser as set forth above; and (ii) the obligation of Purchaser shall be subject to Seller having performed and complied with its representations, obligations and covenants under this Agreement, and the delivery by Seller of the closing items and documents to be delivered by Seller as set forth above;

ARTICLE VII

TERMINATION AND REMEDIES

7.1 *Termination.* Except as expressly provided herein, any termination of this Agreement must be in writing and delivered by the terminating party to the other party. In addition to any causes for termination that may be expressly set forth elsewhere in this Agreement, this Agreement may be terminated as follows:

(a) *Mutual Consent.* By mutual written consent of both Seller and Purchaser. In such event, Escrow Agent shall promptly return the Deposit to Purchaser and thereafter this Agreement shall be null and void and neither party shall have any further or other obligation to each other.

(b) *Termination Date.* By Purchaser (a) if the Purchaser provides notice of termination of this Agreement prior to the Final Inspection Deadline or (b) if the Closing shall not have occurred by the close of business on (x) no later than the sixty (60) calendar days following any Auction due to the fault of the Seller or (y) continuance of Auction for more than thirty (30) calendar days (the “**Termination Date**”). If Purchaser provides notice of termination of this Agreement prior to the Final Inspection Deadline, it shall serve as a termination of the Agreement as to both the Nassau Real Property and the Abbaco Real Property.

(c) *Auction; Alternative Offer.* By Seller, in the event that Seller selects an Alternative Offer, then (i) upon such rejection at Auction or at the time the Alternative Offer actually closes, or (ii) if the Alternative Offer does not close within the time specified in the Bid Procedures and the transaction contemplated in this Agreement is not thereafter closed in accordance with Section 6.1 above and the failure to close this Agreement was not caused by the terminating party, but Seller shall not have this termination right if Purchaser is a Back-Up Bidder (as defined in Section 4 of the Bid Procedures). In the event of termination pursuant to this Section 7.1(c), Escrow Agent shall promptly return the Deposit to Purchaser, and thereafter this Agreement shall be null and void, and neither party shall have any further or other obligation to the other. Purchaser and Seller acknowledge and agree that in the event this Agreement is determined to be a back-up bid to an Alternative Offer by Seller, then Escrow Agent shall retain the Deposit until such time as is specified in the Bid Procedures. Seller’s acceptance of an Alternative Offer shall not limit the Purchaser’s indemnity obligations under this Agreement arising or accruing under this Agreement for each the Nassau Real Property and Abbaco Real Property. This section shall apply equally to an Alternative Offer for the Real Property, as well as Alternative Offers for the Nassau Real Property and Abbaco Real Property, as the case may be. Accordingly, in the event the Seller accepts an Alternative Offer:

(i) for the Nassau Real Property but not the Abbaco Real Property, Seller has the right under this section to terminate this Agreement as to the Nassau Real Property and the Purchaser shall remain obligated to close on the Abbaco Real Property pursuant to the terms of this Agreement in the amount of the Abbaco Purchase Price.

(ii) for the Abbaco Real Property but not the Nassau Real Property, Seller has the right under this section to terminate this Agreement as to the Abbaco Real Property and the Purchaser shall remain obligated to close on the Nassau Real Property pursuant to the terms of this Agreement in the amount of the Nassau Purchase Price.

(b) *Seller's Material Breach.* By Purchaser, so long as Purchaser is not then in an uncured material breach of this Agreement, at any time in the event that Seller is in material breach of its obligations under this Agreement, including but not limited to Seller's failure to close by the Closing Date, and Seller failed to cure such breach to Purchaser's reasonable satisfaction within ten (10) days after Purchaser demands in writing its cure. In such event, Escrow Agent shall promptly return the Deposit to Purchaser, and thereafter this Agreement shall be null and void, and Seller and Purchaser shall not have any further or other obligation to the other. Any claimed breach by Purchaser of Section 2.9(c) herein shall under no circumstances be considered a material breach of this Agreement.

(c) *Purchaser's Material Breach.* By Seller, so long as Seller is not then in an uncured material breach of this Agreement, at any time in the event Purchaser is in material breach of its obligations under this Agreement, including but not limited to Purchaser's failure to close by the Closing Date, and Purchaser has failed to cure such breach to Seller's reasonable satisfaction within ten (10) days after Seller demands in writing its cure. In such event, Escrow Agent shall promptly deliver the Deposit to Seller, and thereafter this Agreement shall be null and void, and Seller and Purchaser shall not have any further or other obligation to the other. Purchaser agrees that Seller's damages would be uncertain, not readily ascertainable, and difficult or impossible to estimate or determine and that the liquidated damages provided herein are a good faith pre-estimate of the actual damages to be suffered by Seller in such event. Seller and Purchaser agree that in the event of breach pursuant to this section Seller shall be entitled to retain and keep the Deposit as liquidated damages, and not as a penalty, and which liquidated damages shall be in lieu of any other right or remedy of Seller.

(d) *Offer for Assemblage.* By Seller, in the event that Seller receives from a third party a bona fide offer to purchase the assemblage more particularly described on *Schedule 2* attached hereto (the "**Assemblage**") acceptable to the Seller at any time prior to the conclusion of the Auction (at which point the Seller can cancel the Auction and this Agreement shall be deemed terminated). In the event of such termination pursuant to this Section 7.1(f), Escrow Agent shall promptly return the Deposit to Purchaser, and thereafter this Agreement shall be null and void, and neither party shall have any further or other obligation to the other.

ARTICLE VIII **SURVIVAL MATTERS**

8.1 *Representations and Warranties.* The several representations and warranties of Seller and Purchaser contained in this Agreement (or in any document delivered in connection with this Agreement) will terminate upon the Closing; provided, however, the respective representations and warranties of Seller and Purchaser contained in Article III and Article IV will survive and expire three (3) months after Closing.

8.2 *Termination Matters.* The respective rights, remedies, and obligations of Purchaser, Seller and Escrow Agent with respect to the Deposit shall survive the termination of this Agreement (in the event Seller rejects all offers at Auction or upon closing of the sale of the Assets pursuant to a third party's Alternative Offer).

ARTICLE IX **MISCELLANEOUS**

9.1 *Entire Agreement.* This Agreement, including the Schedules to this Agreement and the documents and agreements to be executed at Closing, constitute the entire agreement of Seller and Purchaser with respect to the subject matter hereof and thereof and supersedes all prior agreements and undertakings, both written and oral, with respect to the subject matter hereof and thereof.

9.2 *Notices.* All notices and other communications delivered pursuant to this Agreement shall be in writing and shall be effective if and when delivered to the parties'

addresses listed below by any of the following means: by personal delivery, by any recognized carrier or overnight delivery service, by facsimile or electronic mail, provided a copy is sent the same day by the other methods set forth herein, or by certified United States Mail service, postage prepaid and return receipt requested:

As to Seller:

Drew M. Dillworth, Trustee
c/o Peter Russin, Esq.
Meland Russin and Budwick, P.A.
200 South Biscayne Blvd., Suite 3200
Miami, Florida 33130
Telephone: (305) 358-6363
Facsimile: (305) 358-1221
Email: prussin@melandrussin.com

As to Purchaser:

GV Nassau, LLC
c/o Paul J. McMahon, Esq.
2840 SW 3rd Avenue
Miami, Florida 33129
Telephone: (305) 285-1222
Facsimile: (305) 858-4864
Email: pjm@pjmlawmiami.com

9.3 *Amendments / Waivers.* Any provision of this Agreement may be amended or waived prior to the Closing Date if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by Seller and Purchaser or, in the case of a waiver, by the party against whom the waiver is to be effective, and such amendment or waiver is approved by the Bankruptcy Court to the extent such approval is required under the Bankruptcy Laws. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

9.4 *Expenses.* Except as otherwise provided in this Agreement, all costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense.

9.5 *Brokers.* The parties represent and warrant to each other that they have not retained a broker, salesman, or finder in connection with this transaction and hold each other harmless relating to same.

9.6 *Risk of Loss.* Seller assumes all risk of loss, damage, destruction or condemnation of the Assets until the Closing has been consummated, and thereafter all such risks are assumed by Purchaser. In the event of any loss, damage, destruction or condemnation before Closing, Seller shall immediately notify Purchaser, and, if such loss, damage, destruction or

condemnation equals or exceeds five percent (5%) of the Purchase Price, then Purchaser shall have the right, within five (5) business days after receipt of such notice, and before the Auction, to elect either to (a) terminate this Agreement, or (b) waive such termination right. Seller agrees that, from the Effective Date until the Closing Date, Seller will maintain in full force and effect all risk hazard insurance respecting any part of the Assets which constitutes improved real property so that insurance proceeds will be available, and that Seller will cause such insurance or condemnation proceeds to be turned over to Purchaser at Closing (in which event Seller will already have paid the deductible related to such proceeds), or will assign at Closing (if permitted under its policy) any claim for such loss not yet reduced to proceeds, to compensate for damage or destruction of any part of the Assets acquired by Purchaser. If Seller already has satisfied any deductible or self-insured retention related to such proceeds or claim, there will be no reduction in the Purchase Price. To the extent Seller has not satisfied any such deductible or self-insured retention, Purchaser shall undertake the obligation to pay such costs, and the Purchase Price will be reduced by an amount equal to such costs.

9.7 *Escrow Agent.*

(a) The payment of the Deposit and all other funds provided hereunder to the Escrow Agent is for the accommodation of the parties to this Agreement. The duties of the Escrow Agent shall be determined solely by the express provisions of this Agreement. In the event Escrow Agent receives a written demand from either Seller or Purchaser for the Deposit (which demand shall include an explanation setting forth the factual basis for such party's request for the Deposit), Escrow Agent shall give ten (10) days written notice to the other party of such demand and of Escrow Agent's intention to remit the Deposit to the party making the demand on the stated date. If Escrow Agent does not receive a written objection within ten (10) days after such notice, Escrow Agent is hereby authorized to so remit the Deposit. If, however, Escrow Agent receives written objection from the other party within ten (10) days after such notice, Escrow Agent shall continue to hold the Deposit until otherwise directed by joint written instructions from Seller and Purchaser, or until a final judgment of an appropriate court is issued. Purchaser and Seller authorize the Escrow Agent, without creating any obligation on the part of the Escrow Agent, in the event this Agreement or the Deposit becomes involved in litigation, to deposit the Deposit with the clerk of the court in which the litigation is pending and thereupon the Escrow Agent shall be fully relieved and discharged of any further responsibility under this Agreement. Purchaser and Seller also authorize the Escrow Agent, if it is threatened with litigation, to interplead all interested parties in any court of competent jurisdiction and to deposit the Deposit with the clerk of the court and thereupon the Escrow Agent shall be fully relieved and discharged of any further responsibility hereunder.

(b) Liability. The Escrow Agent shall not be liable for any mistake of fact or error of judgment or any acts or omissions of any kind unless caused by its own willful misconduct or gross negligence. The Escrow Agent shall be entitled to rely on any instrument or signature believed by it to be genuine and may assume that any person purporting to give any writing, notice or instruction in connection with this Agreement is duly authorized to do so by the party on whose behalf such writing, notice, or instruction is given.

(c) Hold Harmless. Purchaser and Seller will, and hereby agree to, jointly and severally, indemnify the Escrow Agent for and hold it harmless against any loss, liability, or

expense, including reasonable attorneys' fees and costs, incurred on the part of the Escrow Agent arising out of or in connection with the acceptance of, or the performance of, its duties under this Agreement, as well as the costs and expenses of defending against any claim or liability arising under this Agreement. This provision shall survive the Closing or earlier termination of this Agreement.

(d) Seller's Attorney. Purchaser acknowledges that the Escrow Agent is also Seller's attorney in this transaction, and Purchaser hereby consents to the Escrow Agent's representation of Seller and Escrow Agent in any litigation which may arise out of or is otherwise related to this Agreement.

9.8 *Successors and Assigns*. The provisions of this Agreement shall be binding upon and inure to the benefit of Seller and Purchaser and their respective successors and assigns. Purchaser shall have the right to assign and transfer its rights or obligations under this Agreement to one or more Purchaser Affiliates without having to obtain any consent of Seller. As used herein, "**Purchaser Affiliates**" as to any Person shall mean a Person under common ownership and control with such Person.

9.9 *Certain Interpretive Matters*. Titles and headings to Sections in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. No provision of this Agreement will be interpreted in favor of, or against, Seller or Purchaser by reason of the extent to which either Seller or Purchaser or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.

9.10 *Governing Law and Jurisdiction*. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida regardless of the laws that might otherwise govern under principles of conflict of laws applicable hereto. This Agreement is also subject to any applicable order or act of the Bankruptcy Court. In the event of a dispute hereunder not governed by any specific resolution process in this Agreement, such dispute shall be brought exclusively in the Bankruptcy Court which shall retain exclusive jurisdiction with respect to the interpretation, performance, and enforcement of this Agreement.

9.11 *Counterparts; Effectiveness*. This Agreement may be executed in two or more counterparts (including by means of facsimile signature pages or actual imaged signatures transmitted electronically), all of which shall be considered one and the same agreement.

9.12 *Severability*. If any term, provision, covenant or restriction of this Agreement is determined to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement will remain in full force and effect and will in no way be affected, impaired, or invalidated.

9.13 *Time*. Time is of the essence in this Agreement with regard to all acts and dates imposed on Seller and Purchaser. All time periods and deadlines set forth in this Agreement shall be calculated in calendar days, unless business days are expressly stated. In the event that the date upon which any duties or obligations hereunder are to be performed, or the exercise of any option or right or any deadline hereunder shall occur or be required to occur, shall be a

Saturday, Sunday or holiday on which banks in the State of Florida are closed, then, in such event, the due date for performance of any duty or obligation or the exercise of any option or right shall thereupon be automatically extended to the next succeeding business day. All deadlines and time periods shall be deemed to expire or occur, as applicable, at 5:00 p.m. Eastern prevailing time unless otherwise expressly stated herein.

9.14 *Attorneys' Fees.* If there is any legal action or proceeding between Seller and Purchaser to enforce or interpret any provisions of this Agreement or to protect or establish any right or remedy of any of them hereunder, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses (including, but not limited to, reasonable attorneys' fees and costs) incurred by such prevailing party in such action or proceeding. If either Seller or Purchaser secures a judgment in any such action or proceeding, then any costs and expenses (including, but not limited to reasonable attorneys' fees and costs) incurred by the prevailing party in enforcing such judgment, or any costs and expenses (including, but not limited to reasonable attorneys' fees and costs) incurred by the prevailing party in any appeal from such judgment in connection with such appeal shall be recoverable separately from and in addition to any other amount included in such judgment. The preceding sentence is intended to be severable from the other provisions of this Agreement, and shall survive and shall not be merged into any such judgment.

9.15 *Radon Gas.* Section 404.056, Florida Statutes, requires the following notice to be provided with respect to the contract for sale and purchase of any building:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

9.16 *WAIVER OF JURY TRIAL.* SELLER AND PURCHASER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER ARISING IN TORT OR CONTRACT) BROUGHT BY EITHER AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

[signatures on the following page]

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be duly executed by their respective authorized officers as of the Effective Date.

SELLER:

DREW M. DILLWORTH, Chapter 11 Bankruptcy Trustee for
NASSAU DEVELOPMENT OF VILLAGE WEST, CORP., a
Florida corporation

By: 

Drew M. Dillworth
Trustee

DREW M. DILLWORTH, Chapter 11 Bankruptcy Trustee for
GRAND ABBACO DEVELOPMENT OF VILLAGE WEST,
CORP., a Florida corporation

By: 

Drew M. Dillworth
Trustee

PURCHASER:

GV Nassau LLC, a Florida corporation

By: _____

Name: William Driscoll

Title: Manager

ESCROW AGENT:

Meland, Russin & Budwick, P.A.

By: 

Name: ~~Mark Meland~~ Peter Russin, Vice President

Title: _____

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be duly executed by their respective authorized officers as of the Effective Date.

SELLER:

DREW M. DILLWORTH, Chapter 11 Bankruptcy Trustee for
NASSAU DEVELOPMENT OF VILLAGE WEST, CORP., a
Florida corporation

By: 

Drew M. Dillworth
Trustee

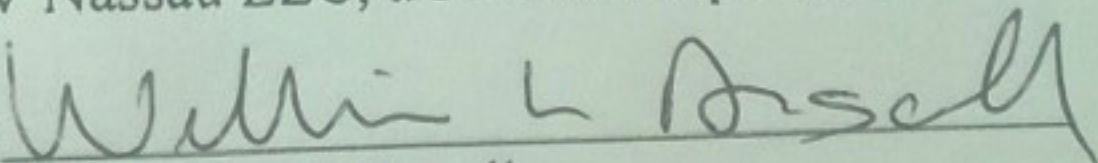
DREW M. DILLWORTH, Chapter 11 Bankruptcy Trustee for
GRAND ABBACO DEVELOPMENT OF VILLAGE WEST,
CORP., a Florida corporation

By: 

Drew M. Dillworth
Trustee

PURCHASER:

GV Nassau LLC, a Florida corporation

By: 

Name: William Driscoll

Title: Manager

ESCROW AGENT:

Meland, Russin & Budwick, P.A.

By: _____

Name: Mark Meland

Title: _____

SCHEDULE 1.1

Nassau Real Property

3441 Grand Avenue, Miami, Florida 33133

Lots 17 and 18, Less the South 10 feet thereof, Block 23 of AMENDED PLAT OF THE FROW HOMESTEAD, according to the Plat thereof as recorded in Plat Book B, Page 106, of the Public Records of Miami-Dade County, Florida.

3461 Grand Avenue, Miami, Florida 33133

Lots 15 and 16, Less the South 10 feet thereof, Block 23 of AMENDED PLAT OF THE FROW HOMESTEAD, according to the Plat thereof as recorded in Plat Book B, Page 106, of the Public Records of Miami-Dade County, Florida.

3412 Florida Avenue, Miami, Florida 33123

Lot 2, Block 23, of AMENDED PLAT OF THE FROW HOMESTEAD, according to the Plat thereof as recorded in Plat Book B, Page 106, of the Public Records of Miami-Dade County, Florida

3400 Florida Avenue, Miami, Florida 33123

Lot 1, Block 23, of AMENDED PLAT OF THE FROW HOMESTEAD, according to the Plat thereof as recorded in Plat Book B, Page 106, of the Public Records of Miami-Dade County, Florida

SCHEDULE 1.2

Grand Abbaco Real Property

3364 Grand Avenue, Miami, Florida 33133

Lots 17 and 18, Less the North 10 feet thereof, Block 28, of AMENDED PLAT OF THE FROW HOMESTEAD, according to the Plat thereof as recorded in Plat Book B, Page 106, of the Public Records of Miami-Dade County, Florida.

3384 Grand Avenue, Miami, Florida 33133

Lot 19, Less the North 10 feet thereof, and the East ½ of Lot 20, less the North 10 feet thereof, Block 28, of AMENDED PLAT OF THE FROW HOMESTEAD, according to the Plat thereof as recorded in Plat Book B, Page 106, of the Public Records of Miami-Dade County, Florida.

SCHEDULE 2

Assemblage

All real property owned in the Grand Avenue corridor by the following affiliates of the Nassau Debtor and Abbaco Debtor:

Paradise Island Development Corporation
West Grove Development Corporation
Freeport Development of Village West Corporation
Grand Abbaco Development II Corp.
3354 Grand, Inc.
Andros Development Corporation
Grand Bahamas Development of Village West Corporation
Jarrette Bay Investments Corporation
CG 3415 Grand, LLC
Bimini Development of Village West Corporation

SCHEDULE 3
Bid Procedures

BIDDING PROCEDURES

1. Marketing Period; Acceptance of Bids.

(a) *Marketing Period.* This Agreement represents the product of substantial marketing of the Assets by the Trustee, the Nassau Debtor, and the Abbaco Debtor. From the effective date hereof until the Auction (the "Marketing Period"), the Trustee shall be entitled to continue to market the Assets to third parties and solicit and accept Qualified Bids (as defined below) for the purchase of the Assets.

(b) *Potential Bidder.* Before submitting a Qualified Bid Packet (as defined below), every potential bidder other than GV NASSAU, LLC, a Florida Limited Liability Company (the "Stalking Horse Bidder") must deliver to the Trustee (i) an executed confidentiality agreement in form and substance satisfactory to the Trustee (the form of confidentiality agreement may be obtained from The Trustee upon request), and (ii) some form of evidence acceptable to The Trustee establishing, in the business judgment of the Trustee, that the potential bidder has the financial ability to close the potential sale.

(c) *Qualified Bid Packet.* A "Qualified Bid Packet" shall comply with and/or include all of the following items:

(i) A written statement identifying whether the Potential Bidder is bidding solely on either the Nassau Real Property or Grand Abbaco Real Property, or if the Potential Bidder is bidding on both the Nassau Real Property and Grand Abbaco Real Property.

(ii) A deposit (the "Bidder Deposit") in an amount equal to the Deposit paid by the Stalking Horse Bidder for either or both the Nassau Real Property or Grand Abbaco Real Property payable by cashier's check or wire transfer (or other form acceptable to The Trustee in its sole discretion). The Bidder Deposit shall be deposited with and held in trust by the Escrow Agent identified in the Agreement;

(iii) An executed asset purchase agreement that substantially conforms to the Agreement executed by the Stalking Horse Bidder that includes a purchase price equal to or greater than \$2,215,000.00 for the Nassau Real Property and/or equal to or greater than \$1,055,000.00 for the Grand Abbaco Real Property, and a redline version showing any changes from the Agreement, which executed asset purchase agreement The Trustee will file with the Bankruptcy Court prior to the Bid Deadline (as defined below);

(iv) Any bid must not contain any contingencies to the validity, effectiveness, and/or binding nature of the offer, including without limitation, contingencies for financing or due diligence;

(v) Financial information sufficient for the Trustee to assess the financial wherewithal of the bidder to close on the sale of the Assets in the event that the bidder is the successful bidder; such information shall include, at a minimum, financial statements, bank account statements, or other documents of such entity (including information on any third-party funding required to consummate and perform under the asset purchase agreement) establishing the ability to timely close the transaction by the Auction (as defined below);

(vi) A letter setting forth the identity of the potential bidder, the contact information for such potential bidder, and full disclosure of all parties participating with the potential bidder, as well as full disclosure of any pre-petition and post-petition affiliation that the potential bidder may have with (1) the Nassau Debtor or Abbaco Debtor, (2) the Nassau Debtor's or Abbaco Debtor's members, (3) the Nassau Debtor's or Abbaco Debtor's affiliates, (4) major creditors of the Nassau Bankruptcy Case or Abbaco Bankruptcy Case, (5) equity security holders of the Nassau Debtor or Abbaco Debtor, and (6) any of the Nassau Debtor's or Abbaco Debtor's former officers or directors or other insiders; and

(vii) The Qualifying Bid Packet must be delivered with the items described above on or before the Bid Deadline to: Drew M. Dillworth, 2200 Museum Tower, 150 West Flagler Street, Miami, Florida 33130, Telephone: (305) 789-3200, Facsimile: (305) 789-3395, E-mail: DDillworth@stearnsweaver.com with a copy to counsel, Peter Russin, Esq. 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33130, Telephone: (305) 358-6363, Facsimile: (305) 358-1221, Email: prussin@melandrussin.com.

(d) *Bid Deadline.* Subject to extension in the sole discretion of the Trustee, the deadline for submitting bids by a Qualified Bidder shall be three business days before the Auction (the "Bid Deadline") or such other date as the Bankruptcy Court determines in the Bid Procedures Order.

(e) *Qualified Bidder.* Before the Auction, the Trustee shall evaluate each Qualifying Bid Packet and may then identify a person, persons, entity, or entities from among those who submitted a Qualifying Bid Packet and deem those person(s) "Qualified Bidders" with "Qualifying Bids." By participating in the Auction, each Qualified Bidder consents to its bid being designated as a back-up bid in the event its bid is designated as the second highest and best offer to purchase the Assets (a "Back-Up Bid"). A Qualified Bid will be valued based upon the following factors: (a) the purchase price relating to the Qualified Bid; (b) the ability to close the sale transaction without delay and by the Auction; and (c) any other factors the Trustee may deem relevant. The Trustee reserves the right to make the final determination of who is a Qualified Bidder. The Stalking Horse Bidder shall be deemed to be a Qualified Bidder. The Trustee shall notify all Qualified Bidders no later than 5:00 p.m. Eastern Time one business day

before the Auction that they may participate in the Auction and shall also provide a summary of the Qualified Bids. All Qualified Bidders and Stalking Horse Bidder shall be bound by their bids until conclusion of the Auction.

(f) *Due Diligence.* The Trustee shall afford any Potential Bidder the opportunity to conduct a reasonable due diligence review in the manner determined by the Trustee. A Potential Bidder will be afforded the opportunity to conduct due diligence in a manner no less favorable than that provided to the Stalking Horse Bidder within the time from set by the Bankruptcy Court. Upon a request in writing or by e-mail to Trustee's counsel by any Potential Bidder, the Trustee will provide to such Potential Bidder copies or e-mail transmissions, as appropriate, of the Schedules of Assets and Liabilities and Statements of Financial Affairs prepared and filed by the Debtor in this Chapter 11 case. The Trustee shall make all reasonable efforts to provide a Potential Bidder with such additional information the Potential Bidder may request that is in the Trustee's possession on or before the Bid Deadline, as may reasonably be necessary or relevant to the formulation of its bid.

2. Auction.

(a) *No Qualified Bids.* If no Qualified Bid (other than Stalking Horse Bidder's bid) is received by the Bid Deadline, The Trustee shall report the same to the Bankruptcy Court and the Trustee shall deem Stalking Horse Bidder's bid the highest or otherwise best offer for the Assets and proceed with the transaction contemplated by the Agreement.

(b) *Time and Location of Auction.* If one or more Qualified Bids (other than Stalking Horse Bidder's bid) are received, the Trustee will conduct an auction (the "Auction") with respect to the Assets. The Auction, if required, will commence at 10:00 a.m. Eastern Time approximately one (1) business day before the sale confirmation hearing to be set by the Bankruptcy Court subject to its availability. The Auction will be conducted at the offices of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. 150 West Flagler Street, Suite 2200, Miami, Florida 33130, or at such later time or other place as agreed upon by the parties or ordered by the Bankruptcy Court, and of which the Trustee will notify all Qualified Bidders who have submitted Qualified Bids. The Auction may be adjourned from time to time at the discretion of the Trustee. The Auction is an absolute auction, and the Trustee reserves the right to reject any and all bids, other than the Qualified Bid of the Stalking Horse Bidder. Only Stalking Horse Bidder, the Trustee, and any Qualified Bidders (and such parties' representatives and professionals) will be entitled to attend, participate, and be heard at the Auction.

(c) *Bidding Increments.* The Auction shall be conducted as an "open cry" auction. Bidding will begin at the purchase price stated in the Agreement or if higher, highest purchase price stated by one or more Qualified Bids for the Assets provided that such highest purchase price equals the sum of \$2,215,000.00 for the Nassau Real Property and \$1,055,000.00 for the Abbaco Real Property - i.e. the purchase price plus the Breakup Fee plus the Overbid Protection discussed below. Bidding will subsequently continue in additional minimum increments of no less than Ten Thousand and 00/100 Dollars (\$10,000.00) in cash, unless the Trustee decides to lower the amount of the additional minimum increments. The Stalking Horse Bidder is not required to participate in the bidding but shall have the right to bid at any time during the Auction.

(d) *Prevailing Bid.* The Auction shall conclude when the Trustee receives what is determined by the Trustee to be the highest and best offer for the Assets – either as a whole or separate for the Nassau Real Property and Abbaco Real Property (the "Prevailing Bid") (the Prevailing Bid being submitted by the "Prevailing Bidder"). Subject only to the subsequent approval of the Bankruptcy Court, The Trustee shall have the unfettered discretion to determine whether any Qualifying Bid constitutes the highest and best bid for the Assets, based on, among other things, the form of consideration being offered and the likelihood of the bidder's ability to close a transaction and the timing thereof. The Trustee shall then designate one or more Back-Up Bidders.

3. Sale Order. As soon as the Bankruptcy Court's schedule permits, the Bankruptcy Court shall conduct a hearing to approve the sale of the Assets to the Prevailing Bidder and enter the Sale Order. "**Sale Order**" means an order of the Bankruptcy Court, in form and substance acceptable to the Prevailing Bidder in its reasonable discretion, that, among other things, (i) approves the (a) sale of the purchased Assets to the Prevailing Bidder free and clear of all Liens (hereinafter defined) and claims pursuant to sections 363(b) and 363(f) of the Bankruptcy Code (other than Permitted Exceptions), such Liens and claims to attach to the Purchase Price, and (ii) provides that (a) Prevailing Bidder has acted in "good faith" within the meaning of section 363(m) of the Bankruptcy Code, (b) the Agreement was negotiated, proposed and entered into by the parties without collusion, in good faith and from arm's length bargaining positions, (c) the Bankruptcy Court shall retain jurisdiction to resolve any controversy or claim arising out of or relating to this Agreement, or any breach hereof as provided in Section 9, and (d) this Agreement and the transactions contemplated hereby may be specifically enforced against and binding upon, and not subject to rejection or avoidance by, the Nassau Debtor or Abbaco Debtor, the Trustee or any other trustee of the Nassau Debtor or Abbaco Debtor subsequently appointed, as the case may be. The Sale Order shall further provide that the Prevailing Bidder is not a successor to the Nassau Debtor, Abbaco Debtor, or the Trustee; that the Prevailing Bid represents a fair market value of the Assets; that the Prevailing Bidder shall have no liability for any obligations of the Nassau Debtor, Abbaco Debtor, or the Trustee except as expressly provided herein; and that the automatic stays under Rule 6004 of the Federal Rules of Bankruptcy Procedures are waived. "**Lien**" means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, right of first offer, covenant, right of way, easement, servitude, proxy, voting trust or agreement, transfer restriction under any shareholder or similar agreement or encumbrance, or any other restriction or limitation whatsoever.

4. Back-Up Bidder. If any Prevailing Bidder fails to consummate the sale of the Assets (or the Nassau Real Property or Abbaco Real Property, as the case may be) within five (5) business days of the required closing date because of a breach or failure to perform on the part of such Prevailing Bidder, the Prevailing Bidder shall forfeit its Bidder Deposit to the Trustee and the next highest or otherwise best Qualified Bid or Qualified Bids for each of the Assets (or the Nassau Real Property or Abbaco Real Property, as the case may be) will be deemed to be the Prevailing Bidder, and the Trustee will be authorized to consummate the sale with the applicable Qualified Bidder submitting such bid without further order of the Bankruptcy Court (the "Back-Up Bidder"). The closing of the Sale to a Backup Bidder shall take place within ten calendar (10) days after such Back-Up Bidder receives notice from the Trustee that the Prevailing Bidder failed to close and that The Trustee has elected to proceed to close with one or more Back-Up

Bidders. If the Back-Up Bidder is unable or unwilling to close the sale in the time permitted, the Back-Up Bidder shall forfeit its Bidder Deposit to the Trustee.

5. Breakup Fee. If (a) the Bankruptcy Court approves the sale of the Assets (or the Nassau Real Property or Abbaco Real Property, as the case may be) to a third party Qualified Bidder unaffiliated with Stalking Horse Bidder pursuant to a higher or better offer for the Assets (or the Nassau Real Property or Abbaco Real Property, as the case may be)(an "Alternative Offer"), (b) the sale of the Assets (or the Nassau Real Property or Abbaco Real Property, as the case may be) pursuant to the Alternative Offer actually closes, and, (c) in either such case, Stalking Horse Bidder (x) is not in material breach of the Agreement beyond the period allowed for cure of such breach and (y) is otherwise willing and capable of closing the transaction contemplated by the Agreement, then Stalking Horse Bidder shall be paid by the Trustee, in cash, from the sale proceeds of such Alternative Offer the sum of \$100,000.00 (if the Assets are sold as a package) and \$50,000.00 for each of the Nassau Real Property and Abbaco Real Property (as the case may be, in the event the Stalking Horse Bidder is not the Prevailing Bidder for either) as a break-up fee (the "Breakup Fee"). Anything contained in the Agreement to the contrary notwithstanding, in the event that the Assets are sold and closed pursuant to an Alternative Offer, the Agreement is terminated and Stalking Horse Bidder shall receive a prompt return of the Deposit applicable to each of the Nassau Real Property or Abbaco Real Property, as the case may be, and the Breakup Fee shall be paid to Stalking Horse Bidder by wire transfer of immediately available funds within three (3) Business Days of the closing of a sale pursuant to an Alternative Offer. No bidder other than Stalking Horse Bidder shall be entitled to a break-up or termination fee, expense reimbursement, or similar payment. For the avoidance of doubt, the amount of the Breakup Fee shall act as a credit against any overbids made by the Stalking Horse Bidder. Notwithstanding the foregoing, the Stalking Horse Bidder shall not be entitled to the Breakup Fee in the event the Agreement is terminated pursuant to Section 7.1(f) of the Agreement.

6. Bid Protection. If Stalking Horse Bidder (x) is not in material breach of the Agreement beyond the period allowed for cure of such breach and (y) is otherwise willing and capable of closing the transaction contemplated by the Agreement, the Trustee agrees not to entertain or accept an Alternative Offer unless the amount of such Alternative Offer exceeds the Purchase Price by at least the Breakup Fee plus Five Thousand and 00/100 Dollars (\$5,000.00) (such overbid requirement being referred to as the "Overbid Protection"). Notwithstanding the foregoing, this provision does not apply to the sale of the Assemblage (as defined in Section 7.1(f) of the Agreement).

7. Return of Deposits. Each Bidder Deposit shall be maintained in a non-interest bearing account and subject to the jurisdiction of the Bankruptcy Court. Within five (5) business days after the entry of the Sale Order, the Trustee shall return all Bidder Deposits to all Qualified Bidders except (i) the Bidder Deposit submitted by the Prevailing Bidder, whose Bidder Deposit shall be applied by the Trustee against the purchase price at the closing, and (ii) the Bidder Deposit submitted by the Back-Up Bidder [(other than the Stalking Horse Bidder)]. In the event that the Prevailing Bidder closes the sale, the Trustee shall return to the Back-Up Bidder its Bidder Deposit within five (5) business days after the Closing. In the event the Back-Up Bidder closes on the purchase of the Assets, its Bidder Deposit shall be applied by the Trustee against

the purchase price. In no event shall the Stalking Horse Bidder's Deposit be unapplied and retained beyond thirty (30) calendar days following the Closing Date.

8. Modifications to Bid Procedures. The Trustee reserves all rights to impose, at or before the Auction, additional terms and conditions on the sale of the Assets, to extend or adjourn any deadlines set forth in these Bid Procedures, and to take any other actions with respect to the Auction, the Bid Procedures or the sale of the Assets which in his business judgment are reasonably necessary to preserve the bankruptcy estate or maximize the value thereof that are not inconsistent with these Bid Procedures, the Agreement, or any order of the Bankruptcy Court. However, the Auction may not be continued beyond thirty (30) calendar days.

9. Bankruptcy Court Jurisdiction. The Bankruptcy Court shall retain exclusive jurisdiction over any matter or dispute relating to the sale, the Bid Procedures, the Agreement, the Auction, and/or any other matter that in any way relates to the foregoing. Any party disputing the sale, the Bid Procedures, the Agreement, the Auction and/or any other matter that in any way relates to the foregoing shall file an objection with the Bankruptcy Court as soon as practicable to facilitate resolution of the objection.

10. Miscellaneous. All Qualified Bidders shall be deemed to have waived any right to a jury trial in connection with any disputes relating to the Auction and/or the sale of the Assets. All asset purchase agreements shall be governed by and construed in accordance with the laws of the State of Florida.

[End of Bid Procedures]

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division
www.flsb.uscourts.gov

In re:

NASSAU DEVELOPMENT
OF VILLAGE WEST CORP.,
a Florida Corporation

Case No. 15-27691-AJC
Chapter 11

Debtor.

**ORDER (I) APPROVING COMPETITIVE BIDDING AND SALE PROCEDURES;
(II) APPROVING FORM AND MANNER OF NOTICES; (III) APPROVING
PURCHASE AND SALE AGREEMENT WITH STALKING HORSE BIDDER; (IV)
SCHEDULING DATES TO CONDUCT AUCTION AND HEARING TO CONSIDER
FINAL APPROVAL OF SALE, INCLUDING TREATMENT OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES; (V) AUTHORIZING SALE OF
SUBSTANTIALLY ALL THE DEBTOR'S ASSETS FREE AND CLEAR
OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS;
AND (VI) GRANTING RELATED RELIEF**

THIS MATTER came before the court on July ____, 2017 at __:__ a.m/p.m. upon the Trustee's

(I) Approving Competitive Bidding and Sale Procedures; (II) Approving Form and Manner of
Notices; (III) Approving Purchase and Sale Agreement with Stalking Horse Bidder; (IV)
Scheduling Dates to Conduct Auction and Hearing to Consider Final Approval of Sale, Including

Treatment of Executory Contracts and Unexpired Leases; (V) Authorizing Sale of Substantially All the Debtor's Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; and (VI) Granting Related Relief (the "***Sale Procedures Motion***") [ECF No. ____].¹ The Court has considered and reviewed the Sale Procedures Motion, has heard and considered arguments of counsel at the hearing before the Court (the "***Bid Procedures Hearing***"), has considered the Court file, and noted no objections have been filed. Accordingly, and for the reasons stated on the record, the Court makes the following findings and conclusions:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***"), made applicable to this proceeding pursuant to Bankruptcy Rule 9014;

B. The Court has jurisdiction over the Sale Procedures Motion and the transaction contemplated by the Agreement pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409;

C. The statutory bases for the relief requested in the Sale Procedures Motion are (i) Sections 105 and 363 of Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "***Bankruptcy Code***"); (ii) Bankruptcy Rules 2002 6004, and 9014; and (iii) Rule 6004-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of Florida (the "***Local Rules***");

D. Good and sufficient notice of the Sale Procedures Motion and the relief sought therein has been given under the circumstances, and no other or further notice is required except

¹ Defined terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Sale Procedures Motion.

as set forth herein with respect to the Sale Hearing. A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to creditors, equity holders and other parties in interest;

E. The Trustee's proposed notice of the Bidding Procedures is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the sale of substantially all of the Debtor's Assets, and the Bidding Procedures to be employed in connection therewith;

F. The Trustee has articulated good and sufficient reasons for the Court to: (i) approve the Bidding Procedures; (ii) set the Sale Hearing and approve the manner of notice of the Auction and the Sale Hearing; (iii) designate GV as the stalking horse bidder and a Qualified Bidder entitled to the Break-Up Fee (as hereinafter defined); and (iv) designate GV's bid as the stalking horse bid and a Qualified Bid;

G. The Trustee has properly marketed the sale of the Property;

H. The entry of this Bidding Procedures Order is in the best interests of the Debtor's estate; and the Bidding Procedures are reasonably designed to maximize the value to be achieved for the Assets.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Sale Procedures Motion is **GRANTED** in all respects and the Bidding Procedures are approved. To the extent of any conflict between the terms of the Sale Procedures Motion and this Order, the terms of this Order shall control.

2. All objections to the Sale Procedures Motion or the relief provided herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, are overruled and denied on the merits.

3. The Bidding Procedures, as set forth in the form of notice attached hereto as Exhibit 1, are incorporated herein and approved in their entirety, including, without limitation, the Break-Up Fee and other bidding protections in favor of GV.

4. The bid submitted by GV as the stalking horse bid is deemed a Qualified Bid and GV as the stalking horse bidder is deemed a Qualified Bid without further action or process. Accordingly, GV is entitled to all of the bidding protections pursuant to the Bidding Procedures, including payment of a Break-Up if GV is not the Prevailing Bidder.

5. As further described in the Bidding Procedures, the deadline for submitting bids for the Assets (the “**Bid Deadline**”) shall be _____, 2017 (three (3) business days before the Auction). No bid shall be deemed to be a Qualified Bid or otherwise considered for any purposes unless such bid meets the requirements set forth in the Bidding Procedures.

6. The Trustee may sell the Assets and enter into the transaction contemplated by the Agreement by conducting an Auction in accordance with the Bidding Procedures.

7. If Qualified Bids are timely received by the Trustee in accordance with the Bidding Procedures, the Auction shall take place on _____, **2017 at 10:00 a.m. (prevailing Eastern Time)** at the offices of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. 150 West Flagler Street, Suite 2200, Miami, Florida 33130, or such other place and time as agreed upon by the Trustee or ordered by the Bankruptcy Court, and of which the Trustee shall notice all Qualified Bidders, including GV, counsel for GV and other invitees. Only GV, the Trustee, and any Qualified Bidders (and such parties' representatives and professionals) will be entitled to attend, participate, and be heard at the Auction. If, however, no such Qualified Bid is received by the Bid Deadline, then the Auction will not be held and the

Trustee shall seek Bankruptcy Court approval of the Sale to GV in accordance with the Agreement.

8. If GV is not the successful bidder at the Auction, GV shall be entitled to a break-up fee in the amount of \$50,000.00 (the “**Break-Up Fee**”).

9. The Sale Hearing shall be held before the Court on _____, **2017** at ____:**00 a.m./p.m. (prevailing Eastern Time)**.

10. Objections, if any, to the Sale of the Assets and the transaction contemplated by the Agreement must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) be filed with the clerk of the Bankruptcy Court for the Southern District of Florida, C. Clyde Atkins United States Courthouse, 301 North Miami Avenue, Room 150, Miami, Florida 33128 (or filed electronically via CM/ECF), on or before 4:30 p.m. (prevailing Eastern Time) on _____, 2017 (the “**Sale Objection Deadline**”); and (d) be served upon (i) counsel to the Trustee, (ii) counsel to the Debtor, and (iii) the Office of the United States Trustee, in each case, so as to be actually received no later than 4:30 p.m. (prevailing Eastern Time) on the same day.

11. The notice, substantially in the form attached hereto as Exhibit 1 (the “**Auction and Sale Notice**”) is approved.

12. On or before three (3) business days after entry of the Bidding Procedures Order, the Trustee will cause the Auction and Sale Notice to be sent by first-class mail postage prepaid, to all potential bidders previously identified or otherwise known to the Trustee as well as the Debtor’s entire creditor matrix, which includes, but is not limited to, the following: (a) all creditors or their counsel known to the Trustee to assert a lien (including any security interest), claim, right, interest or encumbrance of record against all or any portion of the Assets; (b) the Office of the United States Trustee; (c) all applicable federal, state and local taxing and

regulatory authorities of the Debtor or recording offices or any other governmental authorities that, as a result of the Sale, may have claims, contingent or otherwise, in connection with the Debtor's ownership of the Assets or have any known interest in the relief requested by this Motion; (d) counsel to GV; (e) the United States Attorney's office; (f) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002; and (g) all other known creditors and interest holders of Debtor.

13. The Sale Hearing may be continued, from time to time, without further notice to creditors or other parties in interest other than by announcement of said continuance before the Court on the date scheduled for such hearing or in the hearing agenda for such hearing.

14. No party submitting an offer or Qualified Bid for the Assets other than GV shall be entitled to any expense reimbursement, breakup, termination or similar fee or payment.

15. Except as otherwise provided in this Bidding Procedures Order and the Bidding Procedures, the Trustee further reserves the right as he may reasonably determine to be in the best interests of the Debtor's estate to: (a) determine which bidders are Qualified Bidders; (b) determine which bids are Qualified Bids; (c) determine which Qualified Bid is the highest and best proposal and which is the next highest and best proposal; (d) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtor's estate; (e) remove some or all of the Assets from the Auction; (f) waive terms and conditions set forth herein with respect to all potential bidders; (g) extend the deadlines set forth herein; (h) continue or cancel the Auction and/or Sale Hearing in open court without further notice; and (i) modify the Bidding Procedures as he may determine to be in the best interests of the Debtor's estate.

16. To the extent there are any inconsistencies between the terms of this Bidding Procedures Order and the Sale Procedures Motion or the Agreement, the terms of this Bidding Procedures Order, including the Bidding Procedures attached hereto as Exhibit 1, shall govern.

17. The form of the Agreement is approved in all respects. To the extent a conflict exists between the terms of the Agreement and this Bidding Procedures Order, the terms of this Bidding Procedures Order shall control and govern.

18. The stay provided for in Bankruptcy Rules 6004(h) is hereby waived and this Bidding Procedures Order shall be effective immediately upon its entry.

19. All time periods set forth in this Bidding Procedures Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

20. The Trustee is authorized to take all actions necessary to effectuate the relief granted pursuant to this Bidding Procedures Order in accordance with the Sale Procedures Motion.

21. The Court shall retain jurisdiction over any matters related to or arising from the implementation of this Bidding Procedures Order.

###

Submitted By:

Peter D. Russin, Esquire
Florida Bar No. 765902
prussin@melandrussin.com
MELAND RUSSIN & BUDWICK, P.A.
Attorneys for Trustee
3000 Southeast Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 358-6363
Telefax: (305) 358-1221

Copies Furnished To:

Peter D. Russin, Esquire, is directed to serve copies of this Order on all parties in interest and to file a Certificate of Service.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division
www.flsb.uscourts.gov

In re:

NASSAU DEVELOPMENT OF
VILLAGE WEST CORP.,
a Florida Corporation

Case No. 15-27691-AJC
Chapter 11

Debtor.

**NOTICE OF BIDDING PROCEDURES
FOR THE SALE OF THE DEBTOR'S ASSETS**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On June 30, 2017, Drew M. Dillworth, in his capacity as Chapter 11 Trustee ("**Trustee**") of Nassau Development of Village West Corp., (the "**Debtor**"), filed his motion [ECF No. ____](the "**Sale Procedures Motion**")¹ for entry of an order (the "**Bidding Procedures Order**"), among other things (I) Approving Competitive Bidding and Sale Procedures; (II) Approving Form and Manner of Notices; (III) Approving Purchase and Sale Agreement with Stalking Horse Bidder; (IV) Scheduling Dates to Conduct Auction and Hearing to Consider Final Approval of Sale, Including Treatment of Executory Contracts and Unexpired Leases; (V) Authorizing Sale of Substantially All the Debtor's Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; and (VI) Granting Related Relief.

On July __, 2017, the United States Bankruptcy Court for the Southern District of Florida entered the Bidding Procedures Order [ECF No. ____]. Pursuant to the Bidding Procedures Order, the Bankruptcy Court adopted the Bidding Procedures set forth in this Notice pursuant to which (a) interested parties will have the opportunity to make competing offers to purchase the Assets, as described below; and (b) the Assets will ultimately be sold to the bidder submitting the highest and best bid at an Auction (as defined herein)(the "**Sale**"), which highest and best bid must be approved by the Bankruptcy Court.

Pursuant to the Bidding Procedures Order, the auction for the Assets (the "**Auction**") shall take place on _____, **2017 at 10:00 a.m.** (prevailing Eastern Time) at the offices of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. 150 West Flagler Street, Suite 2200, Miami, Florida 33130, or at such later time or other place as agreed upon by the parties or ordered by the Bankruptcy Court. Only parties that have submitted a Qualified Bid in accordance with the Bidding Procedures detailed herein, by no later than three (3) business days before the Auction (the "**Bid Deadline**"), may participate at the Auction unless such Bid

¹ Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Sale Procedures Motion.

Deadline is extended by the Trustee in his sole discretion. Any party that wishes to take part in this process and submit a bid for the Assets must submit their competing bid prior to the Bid Deadline and in accordance with the Bidding Procedures. Parties interested in receiving information regarding the sale of the Assets should contact Debtor's counsel, Meland, Russin & Budwick, P.A., 3200 Southeast Financial Center, 200 South Biscayne Boulevard, Miami, Florida 33131, Attn: Peter Russin, Esq., and Daniel Gonzalez, Esq., Telephone No. (305) 358-6363, Facsimile No. (305) 358-1221, e-mail prussin@melandrussin.com and dgonzalez@melandrussin.com ("*Trustee's Counsel*").

The Sale Hearing to consider approval of the Sale of the Assets to the Proposed Purchaser or Prevailing Bidder free and clear of all liens, claims and encumbrances will be held before the Honorable A.J. Cristol, United States Bankruptcy Judge, _____ on _____, 2017 at __:00 __.m. (prevailing Eastern Time). The Sale Hearing may be continued from time to time without further notice to creditors or parties in interest other than by announcement of the continuance in open court on the date scheduled for the Sale Hearing (or in agenda).

Objections, if any, to the sale of the Assets contemplated by the Agreement, must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) be filed with the clerk of the Bankruptcy Court for the Southern District of Florida, C. Clyde Atkins United States Courthouse, 301 North Miami Avenue, Room 150, Miami, Florida 33128 (or filed electronically via CM/ECF), on or before 4:30 p.m. (prevailing Eastern Time) on _____, 2017, or such earlier date and time as the Trustee may agree; and, (d) be served so as to be received no later than 4:30 p.m. (prevailing Eastern Time) on the same day, upon: (i) Trustee's counsel; (ii) counsel to the Debtor; and (iii) the Office of the United States Trustee.

This Notice and the Sale Hearing are subject to the fuller terms and conditions of the Sale Procedures Motion, the Bidding Procedures Order and the Bidding Procedures, which shall control in the event of any conflict and the Trustee encourages parties in interest to review such documents in their entirety. Copies of the Sale Procedures Motion, the Agreement, and the Bidding Procedures Order may be obtained by written request to Trustee's Counsel.

BIDDING PROCEDURES

1. Marketing Period; Acceptance of Bids.

(a) *Marketing Period.* This Agreement represents the product of substantial marketing of the Assets by the Trustee, the Nassau Debtor, and the Abbaco Debtor. From the effective date hereof until the Auction (the "Marketing Period"), the Trustee shall be entitled to continue to market the Assets to third parties and solicit and accept Qualified Bids (as defined below) for the purchase of the Assets.

(b) *Potential Bidder.* Before submitting a Qualified Bid Packet (as defined below), every potential bidder other than GV NASSAU, LLC, a Florida Limited Liability Company (the "Stalking Horse Bidder"), must deliver to the Trustee (i) an executed confidentiality agreement in form and substance satisfactory to the Trustee (the form of confidentiality agreement may be obtained from The Trustee upon request), and (ii) some form

of evidence acceptable to the Trustee establishing, in the business judgment of the Trustee, that the potential bidder has the financial ability to close the potential sale.

(c) *Qualified Bid Packet.* A "Qualified Bid Packet" shall comply with and/or include all of the following items:

(i) A written statement identifying whether the Potential Bidder is bidding solely on either the Nassau Real Property or Grand Abbaco Real Property, or if the Potential Bidder is bidding on both the Nassau Real Property and Grand Abbaco Real Property.

(ii) A deposit (the "Bidder Deposit") in an amount equal to the Deposit paid by the Stalking Horse Bidder for either or both the Nassau Real Property or Grand Abbaco Real Property payable by cashier's check or wire transfer (or other form acceptable to The Trustee in its sole discretion). The Bidder Deposit shall be deposited with and held in trust by the Escrow Agent identified in the Agreement;

(iii) An executed asset purchase agreement that substantially conforms to the Agreement executed by the Stalking Horse Bidder that includes a purchase price equal to or greater than \$2,215,000.00 for the Nassau Real Property and/or equal to or greater than \$1,055,000.00 for the Grand Abbaco Real Property, and a redline version showing any changes from the Agreement, which executed asset purchase agreement the Trustee will file with the Bankruptcy Court prior to the Bid Deadline (as defined below);

(iv) Any bid must not contain any contingencies to the validity, effectiveness, and/or binding nature of the offer, including without limitation, contingencies for financing or due diligence;

(v) Financial information sufficient for the Trustee to assess the financial wherewithal of the bidder to close on the sale of the Assets in the event that the bidder is the successful bidder; such information shall include, at a minimum, financial statements, bank account statements, or other documents of such entity (including information on any third-party funding required to consummate and perform under the asset purchase agreement) establishing the ability to timely close the transaction by the Auction (as defined below);

(vi) A letter setting forth the identity of the potential bidder, the contact information for such potential bidder, and full disclosure of all parties participating with the potential bidder, as well as full disclosure of any pre-petition and post-petition affiliation that the potential bidder may have with (1) the Nassau Debtor or Abbaco Debtor, (2) the Nassau Debtor's or Abbaco Debtor's members, (3) the Nassau Debtor's or Abbaco Debtor's Affiliates, (4) major creditors of the Nassau Bankruptcy Case or Abbaco Bankruptcy Case, (5) equity security holders of the Nassau Debtor or Abbaco Debtor, and (6) any of the

Nassau Debtor's or Abbaco Debtor's former officers or directors or other insiders;
and

(vii) The Qualifying Bid Packet must be delivered with the items described above on or before the Bid Deadline to: Drew M. Dillworth, 2200 Museum Tower, 150 West Flagler Street, Miami, Florida 33130, Telephone: (305) 789-3200, Facsimile: (305) 789-3395, E-mail: DDillworth@stearnsweaver.com with a copy to Trustee's counsel, Peter Russin, Esq. and Daniel Gonzalez, Esq., 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33130, Telephone: (305) 358-6363, Facsimile: (305) 358-1221, Emails: prussin@melandrussin.com and dgonzalez@melandrussin.com.

(d) *Bid Deadline.* Subject to extension in the sole discretion of the Trustee, the deadline for submitting bids by a Qualified Bidder shall be the three business days before the Auction (the "Bid Deadline") or such other date as the Bankruptcy Court determines in the Bid Procedures Order.

(e) *Qualified Bidder.* Before the Auction, the Trustee shall evaluate each Qualifying Bid Packet and may then identify a person, persons, entity, or entities from among those who submitted a Qualifying Bid Packet and deem those person(s) "Qualified Bidders" with "Qualifying Bids." By participating in the Auction, each Qualified Bidder consents to its bid being designated as a back-up bid in the event its bid is designated as the second highest and best offer to purchase the Assets (a "Back-Up Bid"). A Qualified Bid will be valued based upon the following factors: (a) the purchase price relating to the Qualified Bid; (b) the ability to close the sale transaction without delay; and (c) any other factors the Trustee may deem relevant. The Trustee reserves the right to make the final determination of who is a Qualified Bidder. The Stalking Horse Bidder shall be deemed to be a Qualified Bidder. The Trustee shall notify all Qualified Bidders no later than 5:00 p.m. Eastern Time one business day before the Auction that they may participate in the Auction and shall also provide a summary of the Qualified Bids. All Qualified Bidders and Stalking Horse Bidder shall be bound by their bids until conclusion of the Auction.

(f) *Due Diligence.* The Trustee shall afford any Potential Bidder the opportunity to conduct a reasonable due diligence review in the manner determined by the Trustee. A Potential Bidder will be afforded the opportunity to conduct due diligence in a manner no less favorable than that provided to the Stalking Horse Bidder within the time from set by the Bankruptcy Court. Upon a request in writing or by e-mail to Trustee's counsel by any Potential Bidder, the Trustee will provide to such Potential Bidder copies or e-mail transmissions, as appropriate, of the Schedules of Assets and Liabilities and Statements of Financial Affairs prepared and filed by the Debtor in this Chapter 11 case. The Trustee shall make all reasonable efforts to provide a Potential Bidder with such additional information the Potential Bidder may request that is in the Trustee's possession on or before the Bid Deadline, as may reasonably be necessary or relevant to the formulation of its bid.

2. Auction.

(a) *No Qualified Bids.* If no Qualified Bid (other than Stalking Horse Bidder's bid) is received by the Bid Deadline, the Trustee shall report the same to the Bankruptcy Court and the Trustee shall deem Stalking Horse Bidder's bid the highest or otherwise best offer for the Assets and proceed with the transaction contemplated by the Agreement.

(b) *Time and Location of Auction.* If one or more Qualified Bids (other than Stalking Horse Bidder's bid) are received, the Trustee will conduct an auction (the "Auction") with respect to the Assets. The Auction, if required, will commence at 10:00 a.m. Eastern Time approximately one (1) business day before the sale confirmation hearing to be set by the Bankruptcy Court subject to its availability. The Auction will be conducted at the offices of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. 150 West Flagler Street, Suite 2200, Miami, Florida 33130, or at such later time or other place as agreed upon by the parties or ordered by the Bankruptcy Court, and of which the Trustee will notify all Qualified Bidders who have submitted Qualified Bids. The Auction may be adjourned from time to time at the discretion of the Trustee. The Auction is an absolute auction, and the Trustee reserves the right to reject, any and all bids, other than the Qualified Bid of the Stalking Horse Bidder. Only Stalking Horse Bidder, the Trustee, and any Qualified Bidders (and such parties' representatives and professionals) will be entitled to attend, participate, and be heard at the Auction.

(c) *Bidding Increments.* The Auction shall be conducted as an "open cry" auction. Bidding will begin at the purchase price stated in the Agreement or if higher, highest purchase price stated by one or more Qualified Bids for the Assets provided that such highest purchase price equals the sum of \$2,215,000.00 for the Nassau Real Property and \$1,055,000.00 for the Abbaco Real Property - i.e. the purchase price plus the Breakup Fee plus the Overbid Protection discussed below. Bidding will subsequently continue in additional minimum increments of no less than Ten Thousand and 00/100 Dollars (\$10,000.00) in cash, unless the Trustee decides to lower the amount of the additional minimum increments. The Stalking Horse Bidder is not required to participate in the bidding but shall have the right to bid at any time during the Auction.

(d) *Prevailing Bid.* The Auction shall conclude when the Trustee receives what is determined by the Trustee to be the highest and best offer for the Assets – either as a whole or separate for the Nassau Real Property and Abbaco Real Property (the "Prevailing Bid") (the Prevailing Bid being submitted by the "Prevailing Bidder"). Subject only to the subsequent approval of the Bankruptcy Court, The Trustee shall have the unfettered discretion to determine whether any Qualifying Bid constitutes the highest and best bid for the Assets, based on, among other things, the form of consideration being offered and the likelihood of the bidder's ability to close a transaction and the timing thereof. The Trustee shall then designate one or more Back-Up Bidders.

3. Sale Order. As soon as the Bankruptcy Court's schedule permits, the Bankruptcy Court shall conduct a hearing to approve the sale of the Assets to the Prevailing Bidder and enter the Sale Order. "**Sale Order**" means an order of the Bankruptcy Court, in form and substance acceptable to the Prevailing Bidder in its reasonable discretion, that, among other things, (i) approves the sale of the purchased Assets to the Prevailing Bidder free and clear of all Liens

(hereinafter defined) and claims pursuant to sections 363(b) and 363(f) of the Bankruptcy Code (other than Permitted Exceptions), such Liens and claims to attach to the Purchase Price, and (ii) provides that (a) Prevailing Bidder has acted in "good faith" within the meaning of section 363(m) of the Bankruptcy Code, (b) the Agreement was negotiated, proposed and entered into by the parties without collusion, in good faith and from arm's length bargaining positions, (c) the Bankruptcy Court shall retain jurisdiction to resolve any controversy or claim arising out of or relating to this Agreement, or any breach hereof as provided in Section 9, and (d) this Agreement and the transactions contemplated hereby may be specifically enforced against and binding upon, and not subject to rejection or avoidance by, the Nassau Debtor or Abbaco Debtor, the Trustee or any other trustee of the Nassau Debtor or Abbaco Debtor subsequently appointed. The Sale Order shall further provide that the Prevailing Bidder is not a successor to the Nassau Debtor, Abbaco Debtor, or the Trustee; that the Prevailing Bid represents a fair market value of the Assets; that the Prevailing Bidder shall have no liability for any obligations of the Nassau Debtor, Abbaco Debtor, or the Trustee except as expressly provided herein; and that the automatic stays under Rule 6004 of the Federal Rules of Bankruptcy Procedures is waived. "Lien" means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, right of first offer, covenant, right of way, easement, servitude, proxy, voting trust or agreement, transfer restriction under any shareholder or similar agreement or encumbrance, or any other restriction or limitation whatsoever.

4. Back-Up Bidder. If any Prevailing Bidder fails to consummate the sale of the Assets (or the Nassau Real Property or Abbaco Real Property, as the case may be) within five (5) business days of the required closing date because of a breach or failure to perform on the part of such Prevailing Bidder, the Prevailing Bidder shall forfeit its Bidder Deposit to the Trustee and the next highest or otherwise best Qualified Bid or Qualified Bids for each of the Assets (or the Nassau Real Property or Abbaco Real Property, as the case may be) will be deemed to be the Prevailing Bidder, and the Trustee will be authorized to consummate the sale with the applicable Qualified Bidder submitting such bid without further order of the Bankruptcy Court (the "Back-Up Bidder"). The closing of the Sale to a Backup Bidder shall take place within ten calendar (10) days after such Back-Up Bidder receives notice from the Trustee that the Prevailing Bidder failed to close and that The Trustee has elected to proceed to close with one or more Back-Up Bidders. If the Back-Up Bidder is unable or unwilling to close the sale in the time permitted, the Back-Up Bidder shall forfeit its Bidder Deposit to the Trustee.

5. Breakup Fee. If (a) the Bankruptcy Court approves the sale of the Assets (or the Nassau Real Property or Abbaco Real Property, as the case may be) to a third party Qualified Bidder unaffiliated with Stalking Horse Bidder pursuant to a higher or better offer for the Assets (or the Nassau Real Property or Abbaco Real Property, as the case may be)(an "Alternative Offer"), (b) the sale of the Assets (or the Nassau Real Property or Abbaco Real Property, as the case may be) pursuant to the Alternative Offer actually closes, and, (c) in either such case, Stalking Horse Bidder (x) is not in material breach of the Agreement beyond the period allowed for cure of such breach and (y) is otherwise willing and capable of closing the transaction contemplated by the Agreement, then Stalking Horse Bidder shall be paid by the Trustee, in cash, from the sale proceeds of such Alternative Offer the sum of \$100,000.00 (if the Assets are sold as a package) and \$50,000.00 for each of the Nassau Real Property and Abbaco Real Property (as the case may be, in the event the Stalking Horse Bidder is not the Prevailing Bidder for either) as a break-up fee (the "Breakup Fee"). Anything contained in the Agreement to the

contrary notwithstanding, in the event that the Assets are sold and closed pursuant to an Alternative Offer, the Agreement is terminated and Stalking Horse Bidder shall receive a prompt return of the Deposit applicable to each of the Nassau Real Property or Abbaco Real Property, as the case may be, and the Breakup Fee shall be paid to Stalking Horse Bidder by wire transfer of immediately available funds within three (3) Business Days of the closing of a sale pursuant to an Alternative Offer. No bidder other than Stalking Horse Bidder shall be entitled to a break-up or termination fee, expense reimbursement, or similar payment. For the avoidance of doubt, the amount of the Breakup Fee shall act as a credit against any overbids made by the Stalking Horse Bidder. Notwithstanding the foregoing, the Stalking Horse Bidder shall not be entitled to the Breakup Fee in the event the Agreement is terminated pursuant to Section 7.1(f) of the Agreement.

6. Bid Protection. If Stalking Horse Bidder (x) is not in material breach of the Agreement beyond the period allowed for cure of such breach and (y) is otherwise willing and capable of closing the transaction contemplated by the Agreement, the Trustee agrees not to entertain or accept an Alternative Offer unless the amount of such Alternative Offer exceeds the Purchase Price by at least the Breakup Fee plus Five Thousand and 00/100 Dollars (\$5,000.00) (such overbid requirement being referred to as the "Overbid Protection"). Notwithstanding the foregoing, this provision does not apply to the sale of the Assemblage (as defined in Section 7.1(f) of the Agreement).

7. Return of Deposits. Each Bidder Deposit shall be maintained in a non-interest bearing account and subject to the jurisdiction of the Bankruptcy Court. Within five (5) business days after the entry of the Sale Order, the Trustee shall return all Bidder Deposits to all Qualified Bidders except (i) the Bidder Deposit submitted by the Prevailing Bidder, whose Bidder Deposit shall be applied by the Trustee against the purchase price at the closing, and (ii) the Bidder Deposit submitted by the Back-Up Bidder (other than the Stalking Horse Bidder). In the event that the Prevailing Bidder closes the sale, the Trustee shall return to the Back-Up Bidder its Bidder Deposit within five (5) business days after the Closing. In the event the Back-Up Bidder closes on the purchase of the Assets, its Bidder Deposit shall be applied by the Trustee against the purchase price. In no event shall the Stalking Horse Bidder's Deposit be unapplied and retained beyond thirty (30) calendar days following the Closing Date.

8. Modifications to Bid Procedures. The Trustee reserves all rights to impose, at or before the Auction, additional terms and conditions on the sale of the Assets, to extend or adjourn any deadlines set forth in these Bidding Procedures, and to take any other actions with respect to the Auction, the Bid Procedures or the sale of the Assets which in its business judgment are reasonably necessary to preserve the bankruptcy estate or maximize the value thereof that are not inconsistent with these Bid Procedures, the Agreement, or any order of the Bankruptcy Court. However, the Auction may not be continued beyond thirty (30) calendar days.

9. Bankruptcy Court Jurisdiction. The Bankruptcy Court shall retain exclusive jurisdiction over any matter or dispute relating to the sale, the Bid Procedures, the Agreement, the Auction, and/or any other matter that in any way relates to the foregoing. Any party disputing the sale, the Bid Procedures, the Agreement, the Auction and/or any other matter that

in any way relates to the foregoing shall file an objection with the Bankruptcy Court as soon as practicable to facilitate resolution of the objection.

10. Miscellaneous. All Qualified Bidders shall be deemed to have waived any right to a jury trial in connection with any disputes relating to the Auction and/or the sale of the Assets. All asset purchase agreements shall be governed by and construed in accordance with the laws of the State of Florida.

DATED this ____ day of June, 2017.

Respectfully submitted,

s/ Peter D. Russin

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