

Law Office of Ira R. Abel
305 Broadway
14th Floor
New York, NY 10007
Phone: (212) 799-4672
iraabel@verizon.net
Ira R. Abel, Esq.

Proposed Substitute Counsel for the Debtor

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

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In re: :
: **Chapter 11**
Phili Equities, LLC, :
: **Case No. 16-44102-ess**
Debtor. :
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**APPLICATION FOR AN ORDER (A) AUTHORIZING THE SALE OF THE DEBTOR’S
REAL PROPERTY LOCATED AT 7618-7625 OGONTZ AVENUE, PHILADELPHIA PA
19138, (B) APPROVING SALE PROCEDURES IN CONNECTION THEREWITH AND
(C) GRANTING RELATED RELIEF**

Phili Equities, LLC, the debtor and debtor-in-possession herein (the “Debtor”), by its proposed attorneys, the Law Office of Ira R. Abel, respectfully represents:

SUMMARY OF REQUESTED RELIEF

1. By this application (the “Application”), the Debtor requests an order (i) authorizing it to conduct a public auction of substantially all of the Debtor’s property (the Property”) located at 7618-7625 Ogontz Avenue, Philadelphia Pa 19138¹, pursuant to §§ 105(a) and 363 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and (ii) waiving the requirement of Bankruptcy Rule 6004(h) that the order approving the sale be subject to a fourteen (14) day stay.

¹ The Debtor’s property consists of 3 contiguous commercial properties with an aggregate

2. Since the Petition Date (defined below), the Debtor has attempted to reorganize its business under the Bankruptcy Code by all available means, including sale of its assets, and in that regard it has reached out to members of the community and has had its managing agent, who is also an experienced real estate broker in the area do some informal marketing. In connection with this application the Debtor intends on retaining its managing agent, subject to approval by the US Trustees, Office, to conduct a more formal marketing of the Property. The Debtor has also sought, unsuccessfully, to reach an arrangement with its secured creditor, Ogontz Property Holdings, LLC (“OPH”).

3. As a result of the efforts of those efforts the Debtor has come to the conclusion that the best method to gain the most value for the Property is through a bankruptcy auction sale. The Debtor does not presently have a stalking horse contract, and rather than spend the time in obtaining one, the Debtor believes that an absolute auction without a stalking horse, but with a floor as a minimum bid price would be a more efficient way to proceed. The Debtor believes that the correct floor should be \$900,000.00, a number which will attract significant interest and potentially result in a robust bidding process. Proposed bid procedures are attached hereto as Exhibit A.

JURISDICTION AND STATUTORY BASES FOR REQUESTED RELIEF

4. This Court has jurisdiction over the Application pursuant to 28 U.S.C. §§ 157 and 1334.

5. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. This matter is a core proceeding pursuant to 28 U.S.C. § 157.

7. The statutory bases for this Application are 105(a) and 363 of title 11 of

of 6 commercial tenants.

the United States Code (the "Bankruptcy Code"), Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and this Court's Administrative Order No. 557, entered March 29, 2010.

BACKGROUND

8. On September 14, 2016 (the "Petition Date"), the Debtor filed its voluntary petition (the "Petition") for reorganization under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Eastern District of New York.

9. Pursuant to §§ 1107(a) and 1108 of the Code, the Debtor continues to operate its businesses as a debtor-in-possession.

10. No trustee has been appointed. No official committee of unsecured creditors has as yet been appointed.

11. On October 31, 2016, the Debtor filed its schedules of assets and liabilities and statement of financial affairs (ECF Doc. No. 30, the "Schedules"). The Schedules set forth, among other things, all of the Debtor's assets (the "Property").

12. The Debtor operates owns and operates commercial real estate located at 7618-7625 Ogontz Avenue, Philadelphia Pa 19138. The premises consist of 3 contiguous properties with 6 commercial tenants.

13. On November 14, 2016, the Debtor filed a Chapter 11 Plan of Reorganization. The Debtor will be updating its plan to conform with the instant application as well as filing a disclosure statement and intends for the contemplated sale to be a sale through a Plan of Reorganization.

14. On December 22, 2016, the Court entered an Order Setting a Bar Date To

File Proofs of Claim and Approving the Form and Manner of Notice with the Bar Date being February, 14, 2017. That motion was resolved by the Stipulation as described above.

15. On January 5, 2017, OPH filed a Motion to Dismiss Case or Alternatively for Relief from Stay; and Prohibiting Use of Cash Collateral. That motion was resolved by Stipulation and Order dated March 3, 2017. Pursuant to the Stipulation the Debtor was given permission to use cash collateral subject to its staying current with various costs and expenses of the Property. There has been some dispute as to whether the Debtor has complied with the terms of the Stipulation which has resulted in litigation before the Bankruptcy Court.

16. The Debtor has very few unsecured or priority creditors.

SALE OF THE PREMISESError! Bookmark not defined.

17. Under Bankruptcy Code § 363(f), a debtor may sell property free and clear of any interest in such property of an entity other than the estate only if, among other things: (a) applicable non-bankruptcy law permits sale of such property free and clear of such interest; (b) such entity consents; (c) 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; (d) such interest is in bona fide dispute; or (e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

18. Since Bankruptcy Code § 363(f) is drafted in the disjunctive, satisfaction of any one of its five (5) requirements will suffice to permit the sale of the Premises "free and clear" of Liens and Interests. See *In re Dundee Equity Corp.*, 1992 WL 53743, at *12 (Bankr. S.D.N.Y. Mar. 6, 1992) ("Section 363(f) is in the disjunctive, such that the

sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met."); *Accord In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986); *In re Wolverine Radio Co.*, 930 F.2d 1132, 1147 fn.24 (6th Cir. 1991).

19. In this case, the lien and interest holders will be adequately protected, because their liens and/or interests will attach to the net proceeds of the sale, subject to any claims and defenses the Debtor may possess with respect thereto. Although OPH mortgage is greater than the floor being set by the Debtor, the Debtor nevertheless believes that such a floor will attract a larger number of bidders. The issue of OPH's right to credit bid the full amount of its mortgage will be the subject of separate application or stipulation.

20. The Debtor seeks to sell the Property free and clear of all liens, claims, encumbrances, security interests and other charges, if any, which shall attach to the proceeds of the sale. It also seeks a finding that all requirements of Bankruptcy Code Sections 363(b) and (f) for the sale of assets and 363(m) with regard to the good faith status of the successful purchaser have been satisfied, and there are sufficient circumstances in this case to justify the sale of the Premises sought in the Application.

21. The Debtor seeks to sell the Property at auction with a minimum bid of \$900,000.00 being the opening bid with bidding increments of \$25,000.00. Such an absolute auction will meet the requirements of section 363 of the sale being subject to higher and better offers. The Debtor will also do marketing prior to the auction to ensure a broad array of potential bidders.

22. Accordingly, the Sale procedures annexed hereto as Exhibit A should be approved under Bankruptcy Code §363(f).

23. The Debtor will be seeking to take advantage of Section 1146(a) of the Code which is the transfer tax exemption for a sale pursuant to a plan.

NOTICE

24. Notice of this Motion is being given electronically by first class mail to the United States Trustee and all entities that have filed requests for notices. Notice will be separately provided to all creditors by first class mail. In light of the nature of the relief requested and it appearing that neither the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, nor the Local Rules of this Court dictate further or other types of notice for the relief sought herein, the Debtor respectfully submits that no further notice need be given.

NO PRIOR REQUEST

25. No prior request for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtor respectfully requests that the Bankruptcy Court enter an order, substantially in the form annexed hereto, granting the relief requested in this Motion and such other and further relief as may be just and proper.

Dated: New York, New York
July 25, 2017

Law Office of Ira R. Abel
Proposed Substitute Counsel for the Debtor

By: /s/ _____
Ira R. Abel, Esq.
305 Broadway
14th Floor
New York, NY 10007
Phone: (212) 799-4672
iraabel@verizon.net

Hearing Date: August 29, 2017
At: 11:00 a.m.
Objection Deadline: August 22, 2017
Not later than: 4:00 p.m.

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

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In re:	:
	:
Phili Equities, LLC,	:
	:
Debtor.	:
-----X	

Chapter 11
Case No. 16-44102-ess

NOTICE OF HEARING TO CONSIDER THE DEBTOR’S APPLICATION FOR AN ORDER (A) AUTHORIZING THE SALE OF THE DEBTOR’S REAL PROPERTY LOCATED AT 7618-7625 OGONTZ AVENUE, PHILADELPHIA PA 19138, (B) APPROVING SALE PROCEDURES IN CONNECTION THEREWITH AND (C) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that Phili Equities, LLC, debtor and debtor-in-possession (the “Debtor”), by and through its proposed substitute counsel, the Law Office of Ira Abel, will move before the Hon. Elizabeth S. Stong, United States Bankruptcy Judge for the Eastern District of New York at the U.S. Bankruptcy Court, Eastern District of New York, 271- C Cadman Plaza East, Brooklyn New York 11201 at Courtroom 3585, on **August 29, 2017 at 10:30 a.m.**, or as soon thereafter as counsel may be heard, for the entry of an order granting the relief set forth in the application in connection with the sale of the Debtor’s real property located at 7618-7625 Ogontz

Avenue, Philadelphia, PA 19138.

PLEASE TAKE FURTHER NOTICE, that responses, if any, to the relief requested by the Debtor shall be filed with the Bankruptcy Court on the Court's ECF filing system, with a copy to the Chambers of the Hon. Elizabeth S. Stong, United States Bankruptcy Judge, United States Bankruptcy Court, Eastern District of New York, Conrad B. Duberstein U.S. Bankruptcy Courthouse, 271-C Cadman Plaza East, Brooklyn, NY 11201-1800.

PLEASE TAKE FURTHER NOTICE, that responses, if any, must be mailed or otherwise delivered to (a) the Debtor's counsel, Law Office of Ira R. Abel, 305 Broadway, 14th Floor, New York, New York, 10007, Attn: Ira R. Abel, Esq. and (b) the United States Trustee for the Eastern District of New York, 201 Varick Street, Suite 1006, New York, NY 10014, Attn: Rachel Weinberger, Esq., in each case to be received no later than 4:00 pm (prevailing Eastern Time) on **August 22, 2017**.

PLEASE TAKE FURTHER NOTICE, that the hearing to consider the Motion may be adjourned from time to time without further notice other than announcement of the adjournment date in court on the date scheduled for the Hearing.

Dated: New York, New York
July 25, 2017

Law Office of Ira R. Abel
Proposed Substitute Counsel for the Debtor

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**UNITED STATES BANKRUPTCY COURT
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Debtor.	:
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Chapter 11

Case No. 16-44102-ess

BIDDING PROCEDURES

These bidding procedures (the "Bidding Procedures") have been approved by an order of the United States Bankruptcy Court for the Eastern District of New York (the "Bankruptcy Court") entered on [,] 2017 [Docket No.] (the "Bidding Procedures Order") on the docket in the above-captioned case, Phili Equities, LLC71 Clinton, Inc., (the "Debtor"). The Bidding Procedures set forth the process by which the Debtor is authorized to conduct the sale (the "Sale") by auction of the Property.

Notice

The Debtor shall provide notice of the Bidding Procedures and the date for a hearing to approve the sale of the Property (the "Sale Hearing"), to all parties identified by the Debtor as potentially having an interest in acquiring the Property.

Due DiligenceError! Bookmark not defined.

Parties interested in conducting due diligence should contact the Debtor's managing agent Ari Miller ("AM") 215-285-3983 or e-mail him at amiller@geltfinancial.com. Prospective bidders must contact AM 48 hours prior to the desired time that the prospective bidder desires to conduct the physical inspection of the Property.

Qualified Bid RequirementsError! Bookmark not defined.

To be considered, any bid submitted by a Potential Bidder for the Property must include language:

a. stating that the bid is irrevocable through the Auction, provided, however, that (a) if the Qualified Bid (defined below) becomes the Successful Bid, such bid shall be irrevocable through the Closing Date or such earlier date as the Bid may be terminated in accordance with its terms and (b) and in the case of the Second Highest Bid (defined below), such bid shall remain irrevocable through the closing of the sale of the Property to the Successful Bidder, unless the Successful Bidder fails to close and the Debtor shall have given notice to the Second Highest Bidder that it has decided to consummate the transaction contemplated by the Second Highest Bid in which case the Second Highest Bid shall remain open through the closing with such Second Highest Bidder;

b. stating that the Potential Bidder (i) has had an opportunity to conduct due diligence regarding the Property prior to making its offer and does not require further due diligence, (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Property in making its bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or

guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Property, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures;

c. stating that the Potential Bidder has obtained all necessary organizational approvals to make its competing bid and to enter into and consummate the transaction set forth in the Contract of Sale and to acquire the Property; and

d. be submitted in writing to (a) counsel for the Debtor, The Law Offices of Ira Abel, 305 Broadway 14th Floor, New York, NY 10007 New York, New York 10006, iraabel@verizon.net so as to be received no later than [INSERT DATE — 45 days from entry of Bid Procedures Order], 2015 at PM (Prevailing Eastern time) (the "Bid Deadline") or such other date established by the Bankruptcy Court in the Bidding Procedures Order. Upon receipt of a bid, the Debtor shall deliver a copy to counsel for the Secured Creditor Ogontz Property Holdings, LLC: Fox Rothschild LLP, 100 Park Avenue, 15th Floor, New York, New York 10017, (212) 878-7900, Paul J. Labov, Esq., plabov@foxrothschild.com

In addition to the foregoing, a "Qualified Bidder" is a Potential Bidder that delivers a binding bid ("Qualified Bid") that satisfies the following:

a. the bid must offer to purchase all of the Property;

b. the bid must be at least \$900,000.00 in cash without any financing conditions,

c. is accompanied by a deposit (the "Bid Deposit") in an amount equal to at least 10% of the purchase price proposed by the Potential Bidder, in the form of a certified check or wire transfer to Debtor's Counsel;

d. is accompanied by sufficient information, including to demonstrate, in the Debtor' sole discretion, that the Potential Bidder has the financial ability to timely consummate the sale, including, but not limited to, current bank account statements, current audited financial statements, commitments or other proof of available financing, and such other forms of financial disclosure and credit quality in support of such Potential Bidder (including financial information from any entities that will finance or guarantee the obligations of such Potential Bidder);

e. is firm and unconditional and not subject to any contingencies including, without limitation, further due diligence review or financing contingencies.

f. The Debtor may not consider any Bids received after the Bid Deadline although it can in it's discretion accept a late bid. Following entry of the Bidding Procedures Order, the Debtor, after consultation with their professionals and OPH, but otherwise at its sole discretion, may reject any competing bid that is on terms that are burdensome or conditional including, *inter alia*, requires any indemnification of the Potential Bidder; includes non-cash consideration; is contingent on receiving uncommitted funds from a governmental authority; entitles the Potential Bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment; is not in conformity with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or the Local Bankruptcy Rules of the Bankruptcy Court; is from an entity that the Debtor reasonably concludes does not have the financial ability to consummate the transaction or fulfill financial commitments under their proposal; or is contrary to the best interests of the Debtor's estate.

The Debtor may, in its sole and absolute discretion, communicate prior to the Auction or Sale Hearing with any Potential Bidder and may request any additional information reasonably required by the Debtor in connection with the Debtor' evaluation of such Potential Bidder's bid. Within three (3) business days after the Bid Deadline, the Debtor shall inform each Potential Bidder that has submitted a bid whether it is a Qualified Bidder and shall contemporaneously advise OPH of such determination(s).

AUCTION

If the Debtor receives two Qualified Bids for the Property by the Bid Deadline, the Debtor will hold an auction (the "Auction") on [INSERT DATE AND TIME OF BID PROCEDURE ORDER] (the "Auction Date") in New York, New York at a location to be determined or such later date and time, not to exceed ten (10) business days after the Bid Deadline, as Debtor determines in consultation with OPH.

Only a Qualified Bidder that has submitted a Qualified Bid will be eligible to participate at the Auction. The Debtor will evaluate all Qualified Bids received and, after consultation with their professionals, will select the Qualified Bid that reflect the highest or best offer for the Property as the "Starting Auction Bid." In considering which Qualified Bid shall be the Starting Auction Bid, the Debtor will consider, among other things, the Qualified Bid, and the Qualified Bidder's ability to finance and timely consummate the purchase of Property.

The following rules shall apply at the Auction: (i) the minimum initial overbid(s) must be, in the aggregate, at least \$25,000 greater than the Starting Auction Bid(s), (ii) subsequent overbids must be, in the aggregate, in increments of at least \$25,000 unless otherwise defined by the Debtor in consultation with OPH. From time to time, the

Debtor will, in an open forum, advise Qualified Bidders participating in the Auction of their determination as to the terms of the then highest or otherwise best bid for the Property.

An overbid at the Auction must comply with the conditions for a Qualified Bid set forth above, provided, however, that the Bid Deadline shall not apply.

Any overbid must remain open and binding on the Bidder until and unless the Debtor accepts a higher or otherwise better overbid from such Bidder. To the extent not previously provided, a Bidder submitting an overbid at the Auction must submit, as part of its overbid, written evidence (in the form of financial disclosure or credit quality support information or enhancement reasonably acceptable to the Debtor) demonstrating such Bidder's ability to close the Alternative Transaction proposed by such overbid.

The Debtor, after consultation with OPH, but otherwise at its sole discretion, may adopt other rules for the Auction at the Auction that, in their reasonable judgment, will better promote the goals of the Auction. All such rules will provide that: (i) the procedures must be fair and open, with no participating Qualified Bidder disadvantaged in any material way as compared to any other Qualified Bidder and (ii) all bids shall be made and bidding with the understanding that the true identity of each bidder shall be fully disclosed to all other bidders and that all material terms of each Qualified Bid shall be fully disclosed to all other bidders throughout the entire Auction. Nothing herein shall prohibit the Debtor from meeting privately with any Qualified Bidder to negotiate the terms of a bid or overbid.

During the Auction, the Debtor will review each bid or overbid submitted by a Qualified Bidder in order to identify, after consultation with their professionals and OHP, the bid or overbid that constitutes the highest or otherwise best bid for the Property. In evaluating Qualified Bids, the Debtor will consider, among other things: (i) the amount of consideration offered under the Qualified Bid, including the fair value to be provided to the Debtor under such bid; (ii) the length of time expected to close the proposed transaction and the cost to the Debtor and its creditors of any delay in closing; (iii) the Qualified Bidder's ability to finance and timely consummate the purchase of the Property; (iv) the ability to obtain all necessary approvals for the proposed transaction; (g) the confirmability of any proposed chapter 11 plan; and (g) any other factors that the Debtor, in consultation with OPH, may deem relevant.

The Auction shall continue until there is only one Qualified Bid for the Property that the Debtor determine, in their reasonable business judgment, after consultation with their advisors, is the highest or otherwise best Qualified Bid at the Auction for the Property. The bid that is selected by the Debtor as the highest or otherwise best bid for the Property will be considered the "Successful Bid" and such bidder the "Successful Bidder," Promptly following the Debtor' selection of the Successful Bid and the conclusion of the Auction (and in no event later than one (1) business day after the close of the Auction), the Debtor shall announce the Successful Bid and Successful Bidder and shall file with the Bankruptcy Court notice of the Successful Bid and Successful Bidder.

Any bid submitted after the conclusion of the Auction shall not be considered for any purpose unless an order of the Bankruptcy Court is entered directing that such bid

be considered, and neither the Debtor nor any other person shall have any obligation to seek such an order from the Bankruptcy Court.

The second highest or otherwise best bid (the "Second Highest Bid" and such bidder, the "Second Highest Bidder"), as determined by the Debtor at the conclusion of the Auction and approved by the Bankruptcy Court at the Sale Hearing, shall remain open and irrevocable through the closing of the sale of the Property to the Successful Bidder. In the event that, for any reason, the Successful Bidder fails to close the transaction contemplated by its Successful Bid, the Debtor, in their sole and absolute discretion, may elect to regard the Second Highest Bid as the highest or best bid for the Property, and the Debtor will be authorized to consummate the transaction contemplated by the Second Highest Bid without further order of the Bankruptcy Court. The Debtor may not compel the Purchaser to serve as the Second Highest Bidder without the Purchaser's express written consent.

The Sale Hearing and Return of DepositsError! Bookmark not defined.

The Sale Hearing will be held at a date and time established by the Bankruptcy Court in the Bidding Procedures Order. At the Sale Hearing, the Debtor will seek entry of a Sale Order, among other things, authorizing and approving the sale of the Property: (i) if no Auction is held or if the Contract of Sale is the Successful Bid, with the Purchaser pursuant to the terms and conditions set forth in the Contract of Sale, or (ii) if a Qualified Bid other than the Contract of Sale is determined by the Debtor after the Auction to be the Successful Bid, with the Successful Bidder pursuant to the terms and conditions set forth in the Successful Bid. Subject to the Contract of Sale and the terms

of the Successful Bid, the Sale Hearing may be adjourned or rescheduled on further Order of the Bankruptcy Court upon application and good cause shown.

The Debtor, and any Qualified Bidder, in each case, along with their representatives, advisors and counsel, shall attend the Auction in person, and only the Purchaser and such other Qualified Bidders will be entitled to make any Bids at the Auction. No offer shall be deemed accepted by the Debtor unless and until it is approved by the Bankruptcy Court. In the event the Purchaser or any Successful Bidder fails to consummate the purchase of the Property because of a breach or failure to perform on the part of such bidder, the bidder's Bid Deposit shall be forfeited to the Debtor

All Bid Deposits, other than the Bid Deposit of the Successful Bidder and the Second Highest Bidder, will be returned within five (5) business days following entry of the Sale Order. The Bid Deposit of the Second Highest Bidder will be returned as soon as practicable following the closing of the sale with the Successful Bidder pursuant to the Successful Bid, unless the Debtor has elected to regard the Second Highest Bid as the highest or best bid for the Property, as described above. Except as otherwise provided in the Contract of Sale, the Debtor will not be required to maintain any Bid Deposit in an interest-bearing account, but any interest earned on any Bid Deposit will be remitted to the appropriate Qualified Bidder if the Bid Deposit is returned to the Qualified Bidder pursuant to the above. Subject to the Contract of Sale in the case of the Purchaser's Bid Deposit, Bid Deposits may only be used in accordance with the terms of these Bidding Procedures. Neither the Debtor nor the Purchaser shall have any liability with respect to any Bid Deposit.

JURISDICTION

The Bankruptcy Court shall retain exclusive jurisdiction over any matter or dispute relating to the sale of the Property, the Bidding Procedures, the Sale Hearing, the Auction, and/or any other matter that in any way relates to the foregoing.

Dated: New York, New York
July 25, 2017

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