

LAW OFFICE OF RACHEL S. BLUMENFELD PLLC
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RACHEL BLUMENFELD
Counsel for the Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

HEARING DATE: April 20, 2017
HEARING TIME: 11:00 a.m.

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In Re:

Case No. 16-45609-cec
Chapter 11

WILLIAM IPPOLITO,

Debtor.

-----X

NOTICE OF HEARING ON THE DEBTOR’S MOTION SEEKING ENTRY OF AN ORDER PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE: (I) AUTHORIZING THE AUCTION SALE, AND APPROVING THE TERMS AND CONDITIONS OF SALE, OF THE DEBTOR’S REAL PROPERTY LOCATED AT 484 SHARROTT’S ROAD STATEN ISLAND, NEW YORK 10314; AND (II) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that on April 20, 2017 at 11:00 a.m., or as soon thereafter as counsel may be heard, a hearing will be held before the **Honorable Carla E. Craig United States Bankruptcy Judge, at the United States Bankruptcy Court, Eastern District of New York, 271 Cadman Plaza East, Brooklyn, New York, Courtroom 3529**, or as soon thereafter as counsel may be heard, to consider the application (the “Application”) of William Ippolito, the debtor and debtor in possession (the “Debtor”) in the above captioned chapter 11 case (the “Case”) seeking entry of an Order Pursuant to Sections 105 and 363 of title 11 of the United States Code and Rule 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (I) authorizing the public auction sale and approving the terms and conditions of sale of the Debtor’s Investment Property located at 484 Sharrotts Road, Staten Island, New York 10314, free and

clear of all liens, claims, encumbrances and interests pursuant to Bankruptcy Code sections 363(b) and (f) and (II) granting such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that response or objections, if any, to the Motion must (i) be in writing, (ii) conform to the Bankruptcy Rules, Local Bankruptcy Rules and General Orders, (iii) specify the name of the objecting party, and state with specificity the basis of the objection(s) and the specific grounds therefore, and (iv) be filed with the Court electronically, with a courtesy copy to the Honorable Carla E. Craig's chambers, and (v) simultaneously served upon The Law Office of Rachel S. Blumenfeld, Esq., counsel for the Debtor, at 26 Court Street, Suite 2220, Brooklyn, New York 11242 so as to be received no later than 7 days prior to the hearing date as set above.

PLEASE TAKE FURTHER NOTICE that unless objections are timely filed and received by the Court, the Court may grant the relief requested herein.

PLEASE TAKE FURTHER NOTICE that the hearing may be adjourned from time to time without further notice other than the announcement of such adjournment in open court or by posting of such adjourned date on the Court's calendar on the aforementioned date.

PLEASE TAKE FURTHER NOTICE that you need not appear at the Hearing if you do not object to the relief requested in the Motion.

Dated: Brooklyn, New York
March 31, 2017

Respectfully submitted,
Law Offices of Rachel S. Blumenfeld PLLC
Attorney for Debtor

By: /s/ Rachel S. Blumenfeld
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Debtor-In-Possession
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Hearing Date: April 20, 2017
Hearing Time: 11:00 a.m.
Objection Deadline: April 13, 2017

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK (BROOKLYN)

-----X

In Re:

Case No. 1-16-45609-cec
Chapter 11

William S. Ippolito

Debtor.

-----X

**DEBTOR’S MOTION PURSUANT TO SECTIONS 105 AND 363 OF THE
BANKRUPTCY CODE FOR ENTRY OF AN ORDER: (1) AUTHORIZING THE
AUCTION SALE, AND APPROVING THE TERMS AND CONDITIONS OF SALE, OF
THE DEBTOR’S REAL PROPERTY LOCATED AT 484 SHARROTT’S ROAD,
STATEN ISLAND, NEW YORK**

William S. Ippolito, the debtor and debtor in possession (the “Debtor”) in the above-captioned chapter 11 case (the “Case”) moves the court (the “Court”) pursuant to §§ 105 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”) for the entry of an Order: (I) authorizing the public auction sale of, and approving the terms and conditions of sale of, the Debtor’s real property located at 484 Sharrotts Road, Staten Island, New York (the “Debtor’s Building” or the “Property”), free and clear of liens, claims, encumbrances, tenancies, and interest pursuant to Bankruptcy Code §§ 363 (b) and (f); and (II) granting such other and further relief as this Court deems just and proper.

I. JURISDICTION

1. The United States Bankruptcy Court for the Eastern District of New York (the

“Court”) has jurisdiction over this case and the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this case and the Motion in this district is proper under 28 U.S.C. §§1408 and 1409.

2. The statutory and legal predicates for the relief requested herein are sections 105 and 363 of the Bankruptcy Code, and Rules 2002 and 6004 of the Bankruptcy Rules.

II. BACKGROUND

3. On December 13, 2016 (the “Petition Date”) the Debtor filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code. The Debtor’s case was converted to a case under chapter 11 of the Bankruptcy Code on February 28, 2017. The Debtor is operating and managing its property as a debtor in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a Trustee has been made in this chapter 11 case and no committee has been appointed or designated.

4. The Debtor is an individual who is a Vietnam Veteran. The Debtor owns three parcels of property: (1) 484 Sharrotts Road, Staten Island, New York 10314 (the “Investment Property”); (2) 492 Sharrotts Road, Staten Island, New York 10314(the “Residence”); and (3) a vacant lot located at Block 7328 Lot 363 in Staten Island, New York (the “Vacant Lot”).

5. The Debtor’s bankruptcy filing was precipitated by the foreclosure sale of his Investment Property and his desire to propose a confirmable plan of reorganization to repay his debts.

6. National Loan Investors, L.P. (“National”) filed a Motion for Relief from the Automatic Stay with regards to the Mortgage they hold on the Debtor’s Investment Property on January 13, 2017 and is claiming that \$917,183.64 is owed on the Investment Property to

National. NYCTL 1998-2 Trust, and the Bank of New York Mellon as Collateral Agent and Custodian for the NYCTL 1998-2 Trust (“NYCTL”).

7. In an effort to resolve the amounts owed on the Debtor’s Investment Property and seek to obtain the highest value of the Debtor’s building, subject to Court approval, the Debtor is looking to sell his Investment Property.

8. By application dated March 9, 2017, the Debtor seeks the entry of an Order employing Casandra Properties Inc., (“Casandra”) as Real Estate Broker for the Debtor and as its broker to market the Investment Property and conduct a public auction sale of the Debtor’s Investment Property on May 22, 2017 (the “Auction Sale”).’

9. Upon the Court’s entry of an Order substantially in the form attached hereto as **Exhibit A**, the Debtor will cause a “Notice to Creditors and Other Parties in Interest of Debtor’s Intended Sale” (the “Notice of Sale”) to be filed with the Court and served on the Office of the United States Trustee, all known creditors of the Debtor, and all known parties with an interest in the Debtor’s Building. A copy of the Notice of Sale is annexed as **Exhibit B**. The Notice of Sale provides notice to all interested parties of all the Debtor’s intended Auction Sale of the Debtor’s Building, the date, time and location of the Auction Sale, the terms and conditions of the Auction Sale, and the deadline for objections to be filed to the Auction Sale. *See* **Exhibit B**.

III. THE DEBTOR’S APPLICATION

10. By this Motion the Debtor seeks authorization of, and approval for, the Auction Sale of the Debtor’s Building and the Terms and Conditions of Sale annexed as **Exhibit C**.

The Auction Sale of the Debtor’s Investment Property Is A Reasonable Exercise Of The Debtor’s Business Judgment and Should Be Approved.

11. Section 363(b) of the Bankruptcy Code and Bankruptcy Rule 6004 governs the sale of assets outside of the ordinary course of a debtor's business. Section 363 of the Bankruptcy Code provides, in relevant part, that "[t]he Debtor, 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).

12. Although section 327 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor's assets, the Second Circuit, in applying this section, has required that it be based upon the sound business judgment of the Debtor. *See Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 466 (2d Cir. 2007) (quoting *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983)); *Official Comm. Of Unsecured Creditors of LTV Aerospace & Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 145 (2d Cir. 1993); *Parker v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 430 B.R. 65, 83 (S.D.N.Y. 2010) ("The overriding consideration for approval of a Section 363 sale is whether a 'good business reason' has been articulated." (citations omitted)); *In re Hirsch*, 360 B.R. 43, 45-46, 48, 50 (Bankr. E.D.N.Y. 2007) (requiring "existence of a 'good business reason to grant such an application' (quoting *In re Lionel Corp.*, 722 F.2d at 1071)).

13. The terms of such sale are also generally within the sound discretion of the Debtor. *See In re Dial-A Mattress Operating Corp.*, 2009 Bankr. LEXIS 1801, at *12 (Bankr. E.D.N.Y. June 24, 2009) (explaining courts "generally will defer to the business judgment of the debtor's management" (citations omitted)); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670 (Bankr. S.D.N.Y.

1989) (approving sale of debtor's airline shuttle assets where the debtor articulated a compelling business reason for the sale and price represented fair value and evidence exercise of independent good faith and non-coerced business judgment.

14. As established by the United States Court of Appeals for the Second Circuit in *In re Lionel Corp.*, a court may approve an application to sell under Bankruptcy Code § 363 after expressly determining from the record at the hearing that a good business reason exists to grant such application. *In re Lionel Corp.*, 722 F.2d at 1071.

15. In this instance, the Debtor has used its sound business judgment to determine that sale of the Investment Property at the scheduled Auction Sale is appropriate and in the best interest of the Debtor's estate. The Debtor has a duty to maximize the value of its assets for the benefit of the estate and its creditors and the Debtor believes that it will obtain the highest value for the benefit of the estate and its creditors through the sale of the Investment Property through the Auction. The Secured Creditors holding liens against the Investment Property have not objected to an expedited sale of the Investment Property, subject to Court approval.

16. The proposed Terms and Conditions of Sale of the Investment Property are annexed as Exhibit C. The Debtor submits that the proposed Terms and Conditions of Sale are reasonably designed to ensure that the Debtor's estate received the maximum benefit available from the sale of the Investment Property and therefore warrants Court approval.

17. Cassandra is ready to immediately market the Investment Property for sale and will continue to market the Investment Property and the Auction Sale. Among other things, Cassandra has or will advertise the Auction Sale in print publications, mail brochures to potential interested parties, distribute brochures with information about the Auction Sale, its the

Investment Property Auction Sale on real estate broker web sites and post signage at the Investment Property.

18. Pursuant to Bankruptcy Rule 6004(a) and (c) and 2002(a)(2), the Debtor is providing notice of the intended Auction Sale to all known creditors of the Debtor and any other known holders of liens, claims, encumbrances, or tenancies against or interest in the Investment Property, all parties who have filed a notice of appearance in the Debtor's case and the Office of the United States Trustee.

19. The proposed sale of the Investment Property is both necessary and appropriate and in the best interest of the Debtor's estate and its creditors. Accordingly, and for the reasons set forth above, the Debtor seeks authorization of an approval for the Auction Sale of the Investment Property in accordance with the Terms and Conditions of Sale.

The Investment Property Should Be Sold Free and Clear of Liens.

20. Pursuant to Bankruptcy Code § 363(f), property may be sold outside the ordinary course of business under subsection (b) free and clear of any interest in such property of an entity other than the estate, only if -

- (1) applicable nonbankruptcy law permits the 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 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). Thus, a Debtor may sell property of a bankruptcy estate outside the ordinary course of business if one of the five conditions under Bankruptcy Code §363(f) is satisfied. *See*

In re Grubb & Ellis Co., Case No. 12-10685 (MG), 2012 Bankr. LEXIS 1279, at *31 (Bankr. S.D.N.Y. Mar. 27, 2012) (discussing Bankruptcy Code § 363(f); *In re Borders Group, Inc.*, 453 B.R. 477, 483-84 (Bankr. S.D.N.Y. 2011)(discussing Bankruptcy Code § 363(f)).

21. Here, the Secured Creditors consents to the sale of the Investment Property. In addition, the sale price is greater than both liens on the Investment Property and the Debtor can satisfy the liens by paying them in full. Accordingly, the Debtor submits that Bankruptcy Code §§ 363(f)(2), (3), (5) are all satisfied.

22. Moreover, all potential holders of liens, claims, encumbrances or tenancies against or interests in the Investment Property will be provided with notice of the Auction Sale vis-a-vis the Sale Notice and will have an opportunity to object to the relief requested in the Motion. Any such entity that does not object to the sale shall be deemed to have consented. *See, e.g., Futuresource LLC v. Reuters, Ltd.*, 312 F.3d 281, 285-86 (7th Cir. 2002) (lack of an objection to a proposed sale of assets counts as consent); *Hargrave v. Township of Pemberton (In re T-bone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)); *In re Elliot*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (citing *In re Gabel*, 61 B.R. 661 (Bankr. W.D. La. 1985)). *See also In re Enron Corp.*, 2003 WL 21755006 at *2 (AJG) (Bankr. S.D.N.Y. 2003) (order deeming all parties who did not object the proposed sale to have consented under section 363(f)(2)).

C. The Successful Bidder May Be Entitled To The Protection of Section 363(m) of The Bankruptcy Code.

23. Bankruptcy Code § 363(m) protects good faith purchasers at sales conducted under Bankruptcy Code § 363(b) by providing that:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m)

24. Although the Bankruptcy Code does not define good faith, the Second Circuit Court of Appeals has provided the following definition of good faith in the context of sales under Bankruptcy Code § 363:

Good faith of a purchaser is shown by the integrity of his conduct during the course of the sale proceedings; where there is a lack of such integrity, a good faith finding may not be made. A purchaser's good faith is lost by fraud, collusion between the purchase and other bidders or the Debtor, or an attempt to take grossly unfair advantage of other bidders As just defined, the good-faith analysis is focused on the purchaser's conduct in the course of the bankruptcy proceedings.

Licensing by Paolo v. Sinatra (*In re Gucci*), 126 F.3d 380, 390 (2d Cir. 1997) (quotations and citations omitted); see *In re Motors Liquidation*, 430 B.R. at 78 (relying on *Gucci* definition of good faith in this context).

25. Here, the Debtor has scheduled a public Auction Sale of the Investment Property. The Debtor anticipates that, at the hearing to approve the Auction Sale, it will seek to confirm the results of the Auction Sale to the highest and best bidder. The Debtor anticipates that the successful bidder for the Investment Property will be acting in good faith since the Auction Sale is being conducted at arms' length with an opportunity for competitive bidding. Accordingly, the Debtor may request the entry of an Order affording the successful bidder at the Auction Sale the protections available under Bankruptcy Code § 363(m). At the hearing to consider the Auction Sale, the Debtor will seek authorization to distribute, without further order of the Court, the net

proceeds of the sale of the Investment Property to the secured creditors in reduction of, and up to the amount owed to the secured lenders liens.

26. No previous request for the relief sought herein has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that this Court grant the relief requested in this Motion and grant the Debtor such further relief as this Court deems proper.

Dated: Brooklyn, New York
March 31, 2017

Respectfully submitted,

Law Office of Rachel Blumenfeld
Proposed Attorneys for Debtor

By: */s/ Rachel S. Blumenfeld*
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TERMS AND CONDITIONS OF SALE

1. On December 13, 2016, William S. Ippolito (the "Debtor") filed a voluntary petition for relief under Chapter 13 of Title 11 of the United States Code (the "Bankruptcy Code") which was converted to a chapter 11 case on February 28, 2017. The Debtor' chapter 11 case is pending before The Honorable Carla E. Craig, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Eastern District of New York.. To date, no committee, trustee, or examiner has been appointed, and the Debtor continues to operate and manage its business and property as a debtor-in-possession under Bankruptcy Code §§ 1107(a) and 1108.

2. These Terms and Conditions of Sale are promulgated in connection with the court authorized Public Auction Sale (the "Auction Sale") of the Debtor's interest in real property located at 484 Sharrotts Road, Staten Island, New York (the "Investment Property"). The Auction shall be conducted by Casandra Properties Inc., ("Casandra"), the Debtor's proposed real estate broker for the sale contemplated herein.

3. The Debtor is represented by The Law Office of Rachel S. Blumenfeld PLLC ("The Law Office of Rachel Blumenfeld"), with offices at 26 Court Street, Suite 2220, Brooklyn, New York 11242

4. The Auction will be held on May 22, 2017 at 10:00 a.m. (the "Sale Date") at the Conrad B. Duberstein U.S. Courthouse, Bankruptcy Court for the Eastern District of New York, 271 Cadman Plaza East, Brooklyn, New York 11201-1800.

5. The Successful Purchaser (as hereinafter defined) of the Property, will, at the time and place of the conclusion of the Auction, sign a memorandum of sale (the "Memorandum of Sale") in accordance with these Terms and Conditions of Sale.

6. In order to be permitted to bid on the Property, prior to the commencement of the Auction, each prospective bidder ("Bidder") must deliver to Cassandra certified check or bank check made payable to "The Law Office of Rachel S. Blumenfeld PLLC, as Attorneys" in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) (the "Qualifying Deposit"), which amount shall serve as a partial good faith deposit against payment of the purchase price by such competing Bidder as The Law Office of Rachel Blumenfeld determines to have made the highest or best bid for the Property (the "Successful Purchaser"). Within 48 hours after conclusion of the Auction, the Successful Purchaser shall deliver to The Law Office of Rachel S. Blumenfeld, by certified check or bank check made payable to "The Law Office of Rachel S. Blumenfeld PLLC, as Attorneys" or by wire in immediately available federal funds, an amount equal to 10% of the high bid realized at Auction minus the Qualifying Deposit (together with the Qualifying Deposit, the "Deposit") plus a six (6%) percent Buyer's Premium (as hereinafter defined). The Buyer's Premium shall be deemed to have been earned immediately upon the fall of the hammer and is due within 48 hours after conclusion of the Auction. Failure of the Successful Purchaser to tender the 10% Deposit of the high bid at Auction and the Buyer's

Premium within 48 hours after conclusion of the Auction shall result in an immediate default under the terms of these Terms and Conditions of Sale and the Memorandum of Sale and shall result in the forfeiture of all earnest monies paid, including the Buyer's Premium. The Successful Purchaser and the competing Bidder who The Law Office of Rachel S. Blumenfeld determines to have made the second highest or best bid for the Property (the "Second Highest Bidder") must execute, and thereby agree to be bound by these Terms and Conditions of Sale and the Memorandum of Sale. At the conclusion of the Auction, Casandra will return the Qualifying Deposits to all Bidders, except for the Successful Purchaser and the Second Highest Bidder. The Second Highest Bidder's Qualifying Deposit shall be returned within two (2) business days following approval of the Auction by the Bankruptcy Court ("Court Approval Date").

7. Pursuant to an order of the Bankruptcy Court, the Successful Purchaser, and the Second Highest Bidder in the event of a Successful Purchaser's Default (as hereinafter defined), are solely responsible to pay Casandra six percent (6%) of the high bid at Auction (the "Buyer's Premium"). The sum of the high bid at Auction and the Buyer's Premium is defined herein as the "Purchase Price".

8. The Successful Purchaser must pay the balance of the Purchase Price for the Property to The Law Office of Rachel S. Blumenfeld by certified check or bank check or by wire in immediately available federal funds. The Successful Purchaser must close title to the Property at a date that is no more than thirty (30) days after the Court Approval Date but in any event ON OR BEFORE JUNE 20, 2017 (the "Closing Date"), TIME BEING OF THE ESSENCE as to the Successful Purchaser.

9. If the Successful Purchaser fails to post the total required ten (10%) percent Deposit and six (6%) percent Buyer's Premium within 48 hours following the Public Sale ("Successful Purchaser's Default"), The Law Office of Rachel S. Blumenfeld,, in its sole and absolute discretion, may, within three (3) business days of Successful Purchaser's Default, deem the Second Highest Bidder to hold all benefits and obligations under the Terms and Conditions of Sale and Memorandum of Sale, as the new Successful Purchaser (the "New Successful Purchaser"). The New Successful Purchaser shall not receive credit for any Deposit and/or Buyer's Premium forfeited by the initial Successful Purchaser. The New Successful Purchaser must close title to the Property no later than JULY 5, 2017, TIME BEING OF THE ESSENCE as to the New Successful Purchaser.

10. The closing shall take place at the offices of The Law Office of Rachel S. Blumenfeld PLLC, with offices at 26 Court Street, Suite 2220, Brooklyn, New York 11242 (the "Closing").

11. The Successful Purchaser, or the New Successful Purchaser, as the case may be, shall pay any and all costs and expenses in connection with the Closing related to obtaining a survey; fee title or mortgage insurance; title company endorsement, search and escrow charges; environmental, engineering or other Property inspections; appraisals, reports and other costs of Property due diligence; and County, State, New York City, or other real property transfer, deed or

documentary tax, or other taxes imposed upon the sale due in connection with the transfer of the Property from the Debtor at Closing. The Successful Purchaser acknowledges that they will be responsible for the completion of any ACRIS forms, if required. The Debtor shall not be required to execute any form of title affidavit (but may in its sole and absolute discretion) and all title exceptions customarily omitted from a title policy on account of such title affidavit shall be deemed permitted exceptions. The Successful Purchaser, or the New Successful Purchaser, as the case may be, acknowledges that it will be responsible for the preparation of all Closing documents required including, but not limited to, transfer tax forms. In connection with the Closing and Closing date, the Successful Purchaser or the New Successful Purchaser, as the case may be, is hereby given notice that TIME IS OF THE ESSENCE against the Successful Purchaser or the New Successful Purchaser, as the case may be, and the failure of the Successful Purchaser or the New Successful Purchaser, as the case may be, to close for any reason whatsoever (except as otherwise provided herein) including its failure to pay the balance of the Purchase Price on the Closing date, will result in an immediate forfeiture of the Deposit and Buyer's Premium and the termination of the Successful Purchaser's or the New Successful Purchaser's, as the case may be, right to acquire the Property under these Terms and Conditions of Sale and the Memorandum of Sale. The Successful Purchaser or the New Successful Purchaser, as the case may be, shall be obligated to close title to the Property and, except as expressly set forth herein, there is no contingency of any kind or nature that will permit the Successful Purchaser, or the New Successful Purchaser, as the case may be, to cancel or avoid its obligation under these Terms of and Conditions of Sale and the Memorandum of Sale other than the Debtor's inability to deliver insurable title to the Property. Further, the Successful Purchaser or the New Successful Purchaser, as the case may be, shall have demonstrated, to the satisfaction of Casandra and The Law Office of Rachel S. Blumenfeld PLLC, evidence of its ability to conclude the transaction upon these Terms and Conditions of Sale and the Memorandum of Sale, without delay. The Law Office of Rachel S. Blumenfeld PLLC reserves the right to reject any Purchaser or Bidder who the Debtor believes, in his sole discretion, is not financially capable of consummating the purchase of the Property. Expenses incurred by the Successful Purchaser, or any other Bidder, concerning any due diligence shall be the sole responsibility of such Bidder and, under no circumstances shall Casandra or the Debtor be responsible for, or pay, such expenses.

12. The only commission that will be paid is to the Casandra as the Licensed Real Estate Broker, who registers the Successful Purchaser in accordance with the Broker Participation Agreement and has received confirmation of receipt and acknowledgement of valid registration by Casandra. The commission for such registered real estate broker will be two (2%) of the Successful Bid.

13. Casandra and the Debtor and their professionals have not made and do not make any representations or warranties as to the physical condition, expenses, operations, value of the land or buildings thereon, or any other matter or thing affecting or related to the Property or this Auction, which might be pertinent to the purchase of the Property, including, without limitation, (i) the current or future real estate tax liability, assessment or valuation of the Property; (ii) the

potential qualification of the Property for any and all benefits conferred by or available under federal, state or municipal laws, whether for subsidies, special real estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated; (iii) the compliance or non-compliance of the Property, in its current or any future state, with applicable present or future zoning ordinances or other land use law or regulation, or the ability to obtain a change in the zoning or use, or a variance in respect to the Property; (iv) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Property from any source, including, but not limited to, any state, city or federal government or institutional lender; (v) the current or future use of the Property; (vi) the current or future rents, other operating incomes or expenses; (vii) the presence or absence of any laws, ordinances, rules or regulations issued by any governmental authority, agency or board and any violations thereof; (viii) the compliance or non-compliance with environmental laws and the presence or absence of underground fuel storage tanks, any asbestos, any lead paint or other hazardous materials anywhere on the Property, or notes or notices of violations of law or municipal ordinances, orders or requirements noted or issued by any governmental department, agency or bureau having authority as to but not limited to lands, housing, buildings, fire, health, environment and labor conditions affecting the property. Each Bidder hereby expressly agrees and acknowledges that no such representations or warranties have been made. Casandra and the Debtor shall not be liable or bound in any manner by expressed or implied warranties, guarantees, promises, statements, representations or information pertaining to the Property, made or furnished by Casandra or the Debtor or any real estate broker, agent, employee, servant or other person or professional representing or purporting to represent Casandra or Debtor unless such warranties, guaranties, promises, statements, representations or information are expressly and specifically set forth in writing within these Terms and Conditions of Sale and the Memorandum of Sale. The Property shall not be delivered vacant of tenancies at Closing.

14. The Property is being sold “AS IS” “WHERE IS”, “WITH ALL FAULTS”, without any representations, covenants, guarantees or warranties of any kind or nature, and free and clear of any liens, claims, or encumbrances of whatever kind or nature, with such liens, if any, to attach to the proceeds of sale in such order and priority as they existed immediately prior to the Closing, and sale of the Property is subject to, among other things (a) any state of facts that an accurate survey may show; (b) any covenants, restrictions and easements of record; (c) any state of facts a physical inspection may show; (d) any building or zoning ordinances or other applicable municipal regulations and violations thereof; and (e) environmental conditions; provided, however, the Property shall be delivered free and clear of any and all monetary liens. By delivering their respective Qualifying Deposits, all Bidders acknowledge that they have had the opportunity to review and inspect the Property, the state of title thereof and laws, rules and regulations applicable thereto, and will rely solely thereon and on their own independent investigations and inspections of the Property in making their bids. Neither Casandra, the Debtor nor any of their collective representatives makes any representations or warranties with respect to the permissible uses of the Property including, but not limited to, the zoning of the Property. All Bidders acknowledge that they have conducted their own due diligence in connection with the Property and are not relying on any information provided by Casandra, the Debtor, or their

professionals. The Property will be sold subject to any and all violations requiring corrective action.

15. The Successful Purchaser has five (5) days from the Court Approval Date to order title, copy of which shall promptly be provided to The Law Office of Rachel S. Blumenfeld. The Successful Purchaser has twenty (20) days from the Court Approval Date to advise The Law Office of Rachel S. Blumenfeld (by electronic mail to rblmnf@aol.com) of any and all title issues or defects that would in any way be an impediment to the Closing on the sale of the Property. Failure of the Successful Purchaser to advise The Law Office of Rachel S. Blumenfeld within twenty (20) days from the Court Approval Date of any such title issues or defects shall be deemed a waiver of any and all rights to raise any such title issues or defects, with The Law Office of Rachel S. Blumenfeld reserving the right to specify a particular title company to insure title, provided said company is licensed in the State of New York.

16. The Debtor shall convey the Property by delivery of a quitclaim deed. The quality of title shall be that which any reputable title insurance company authorized to do business in the State of New York is willing to approve and insure. If the Successful Purchaser or the New Successful Purchaser, as the case may be, is unable to obtain title insurance, subject to the permissible exceptions contained herein, Debtor may, at its option, arrange for the issuance of a title insurance policy by such a company at the sole cost and expense of the Successful Purchaser, or the New Successful Purchaser, as the case may be.

17. Nothing contained in these Terms and Conditions of Sale is intended to supersede or alter any provisions of the "Bankruptcy Code" or otherwise interfere with the jurisdiction of the Bankruptcy Court. All of the terms and conditions set forth in these Terms and Conditions of Sale are subject to modification as may be directed by The Law Office of Rachel S. Blumenfeld PLLC or by the Court. The Law Office of Rachel S. Blumenfeld reserves the right to modify these Terms and Conditions of Sale at the Auction or thereafter to maintain consistency with the provisions of the Bankruptcy Code and/or prior orders of the Court.

18. These Terms and Conditions of Sale will be read into the record, or specifically incorporated by reference, at the Auction of the Property. By making a bid for the Property, all Purchasers will be deemed to have acknowledged having read and understood these Terms and Conditions of Sale and have agreed to be bound by them.

19. If the Debtor is unable to deliver the Property in accordance with these Terms and Conditions of Sale for any reason whatsoever, the Debtor's and Cassandra's only obligation will be to refund the Deposit and Buyer's Premium, without interest, to the Successful Purchaser and/or the New Successful Purchaser, as the case may be, and upon such refund, the Successful Purchaser or the New Successful Purchaser, as the case may be, and/or New Successful Purchaser will have no claim or recourse against the Debtor, Cassandra or their professionals and shall have no further rights under these Terms and Conditions of Sale or Memorandum of Sale.

20. The Auction of the Property is subject to further order of the Bankruptcy Court confirming the Auction.

21. Either Cassandra or The Law Office of Rachel S. Blumenfeld PLLC shall notify the Successful Purchaser whether the Auction is confirmed.

22. The Bankruptcy Court shall determine any disputes concerning the Auction of the Property. By participating in the Auction, all Purchasers consent to the jurisdiction of the Bankruptcy Court to determine such disputes under the Debtor's pending case. I have read these Terms and Conditions of Sale and agree to be bound by them.

By: _____
Print Name: _____
Date: _____

MEMORANDUM OF SALE – SUCCESSFUL PURCHASER

The undersigned has this ____ day of _____, 2017, agreed to purchase the property located at 484 Sharrotts Road, Staten Island, New York 10314(the “Property”) of William Ippolito as the Chapter 11 debtor and debtor-in- possession for the sum of \$ _____ DOLLARS and hereby promises and agrees to comply with the annexed Terms and Conditions of Sale of the Property and this Memorandum of Sale.

_____ SUCCESSFUL PURCHASER (Signature)

_____ PRINT NAME

_____ ADDRESS

_____ ADDRESS (City, State, Zip)

_____ TELEPHONE NUMBER

_____ SUCCESSFUL PURCHASER (Signature)

_____ PRINT NAME

_____ ADDRESS

_____ ADDRESS (City, State, Zip)

Received from _____ the sum of \$150,000 DOLLARS, as a non-refundable deposit for the purchase of the Property pursuant to the Terms and Conditions of Sale.

This is to verify that the final Purchase Price in the above sale was for the sum of

\$ _____.

Casandra Properties Inc.,

The Law Office of Rachel S. Blumenfeld PLLC
Attorneys for the Debtor
26 Court Street, Suite 2220
Brooklyn, New York 11242
Tel: (718) 858-9600
Fax: (718) 858-9601

SUCCESSFUL PURCHASER ATTORNEY INFORMATION

Name _____ Address

_____ Phone

_____ TELEPHONE NUMBER