

LAW OFFICE OF RACHEL S. BLUMENFELD PLLC
Attorneys for Debtor and
Debtor-In-Possession
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Hearing Date: June 14, 2017
Hearing Time: 3:00 p.m.

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.

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**DEBTOR’S AMENDED MOTION PURSUANT TO SECTIONS 105 AND 363 OF THE
BANKRUPTCY CODE FOR ENTRY OF AN ORDER: (1) AUTHORIZING THE AUC-
TION SALE, AND APPROVING THE TERMS AND CONDITIONS OF SALE, OF THE
DEBTOR’S REAL PROPERTY/INVESTMENT PROPERTY AND VACANT LOTS
LOCATED AT 484 SHARROTT’S ROAD, STATEN ISLAND, NEW YORK,
BLOCK 7328 AND LOTS 293, 363, AND 290**

William S. Ippolito, the debtor and debtor in possession (the “Debtor”) in the above-cap-
tioned 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 Fed-
eral Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for the entry of an Order: (I) au-
thorizing the public auction sale of, and approving the terms and conditions of sale of, the
Debtor’s real property which is his investment property and vacant lots located at 484 Sharrotts
Road, Staten Island, New York, Block 7328; Lots 293, 363 and 290 (collectively the
“Properties”), 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 and vacant lot.

8. By application dated March 9, 2017, the Debtor sought 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.

9. By Application May 23, 2017, the Debtor seeks entry of an Order employing Maltz Auctions, Inc., (“Maltz”) as Real Estate Broker for the Debtor to market the Properties and conduct a public auction sale of the Properties on July 26, 2017 (the “Auction Sale”)

10. 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 Amended Notice of Sale is annexed as **Exhibit B**. The Amended 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.

11. As part of the Bidding Procedures, the Debtor seeks approval of the Break-Up fee of up to 2%. The Break-Up fee is inclusive and comprised of an expense reimbursement in favor of the respective Purchaser. The Break-Up Fee is payable upon the Debtor consummating any sale, transfer or other disposition of the respective Properties. The Debtor is also seeking up to 5% overbid protection.

III. THE DEBTOR'S APPLICATION

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

The Auction Sale of the Debtor's Properties Is A Reasonable Exercise Of The Debtor's Business Judgment and Should Be Approved.

13. 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).

14. 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)).

15. 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.

16. 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.

17. In this instance, the Debtor has used its sound business judgment to determine that sale of the Properties 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 Properties through the Auction. The Secured

Creditors holding liens against the Investment Property have not objected to an expedited sale of the Properties, subject to Court approval.

18. The proposed Terms and Conditions of Sale of the Properties 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 Properties and therefore warrants Court approval.

19. Maltz and Cassandra are ready to immediately market the Properties for sale and will continue to market the Properties and the Auction Sale. Among other things, Maltz and 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, including on real estate broker web sites and post signage.

20. 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 Properties, all parties who have filed a notice of appearance in the Debtor's case and the Office of the United States Trustee.

21. The proposed sale of the Properties 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 Properties in accordance with the Terms and Conditions of Sale.

The Properties Should Be Sold Free and Clear of Liens.

22. 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)).

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

24. Moreover, all potential holders of liens, claims, encumbrances or tenancies against or interests in the Properties 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.

25. 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)

26. 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).

27. Here, the Debtor has scheduled a public Auction Sale of the Properties. 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 Properties 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 Properties to the secured creditors in reduction of, and up to the amount owed to the secured lenders liens.

28. 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
June 8, 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

PURSUANT TO AN ORDER OF THE HONORABLE CARLA E. CRAIG, DATED _____, 2017, CERTAIN REAL PROPERTY OF THE DEBTOR WILL BE SOLD AT PUBLIC AUCTION SALE ON JULY 26, 2017 AT 11:00 AM EST.

1. On December 13, 2017, William Ippolito, the debtor and debtor-in-possession (the “Debtor”), filed a voluntary petition for relief under chapter 11 of Title 11, United States Code (the Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of New York (the “Court”), commencing case number 16-45609-cec. 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”) of the Debtor’s real property located at 484 Sharrotts Road, Staten Island, NY 10309 a/k/a Borough: Staten Island Block: 7328 Lots: 293, 290 & 363 (the “Property”). The Auction shall be conducted by Maltz Auctions, Inc. (“Maltz”), the Debtor’s duly retained real estate broker for the sale contemplated herein.
3. The Debtor is represented by Rachel Blumenfeld, Esq., (“Blumenfeld”), with offices at 26 Court Street, Suite 2220, Brooklyn, New York 11242.
4. The Auction will be held on July 26, 2017 at 11:00 am (the “Sale Date”) at New York LaGuardia Airport Marriott Hotel, 102-05 Ditmars Boulevard, East Elmhurst, NY 11369. The sale shall be free and clear of all liens, taxes and non-permitted exceptions pursuant to section 363(b) and 479 of the Bankruptcy Code.
5. The Successful Purchaser (as hereinafter defined) and Second Highest Bidder (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 Maltz a certified check or bank check made payable to “Rachel Blumenfeld, Esq., Escrow Account” in the amount of Two Hundred Thousand Dollars (\$200,000.00) (the “Qualifying Deposit”), which amount shall serve as a partial good faith deposit against payment of the purchase price by such competing Bidder as 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 Blumenfeld, by certified check or bank check made payable to “Rachel Blumenfeld, Esq., Escrow Account 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 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,**

Maltz 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 Maltz six (6%) percent 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 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 _____, **TIME BEING OF THE ESSENCE as to the Successful Purchaser**, although such date may be extended by Blumenfeld. Notwithstanding the foregoing, Debtor shall grant the Successful Bidder a single thirty (30) day extension, at the request of the Successful Bidder, provided Successful Bidder posts an additional, non-refundable deposit equal to ten (10%) percent of the Purchase Price prior to the thirtieth (30th) day following court approval (the "Additional Deposit"). The Additional Deposit shall be made by certified check or bank check made payable to "Rachel Blumenfeld, Esq., Escrow Account" or by wire in immediately available federal funds and, together with the original Deposit, shall be deemed the "Deposit". If Successful Bidder elects for an extension, the Closing shall take place on or before the sixtieth (60th) day following court approval, **TIME BEING OF THE ESSENCE as to the Successful Bidder**. If Successful Purchaser elects to exercise the Extension, Successful Purchaser shall be responsible for all real estate taxes incurred from the 30th day after the Court Approval Date through closing and shall pay interest on the Purchase Price at a nine (9%) percent annual rate from the 30th day after the Court Approval Date through to the actual day of closing.

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"), Blumenfeld 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 and shall post the ten (10%) percent Deposit and six (6%) percent Buyer's Premium within three business days following notification of Successful Purchaser's Default. The New Successful Purchaser must close title to the Property no later than thirty (30) days following receipt of written notice to the New Successful Purchaser of Successful Purchaser's Default (the "New Successful Purchaser's Closing"), **TIME BEING OF THE ESSENCE as to the New Successful Purchaser**, although such date may be extended by Blumenfeld. Notwithstanding the foregoing, Blumenfeld shall grant the New Successful Purchaser a single thirty (30) day extension (the "New Successful Purchaser's Extension"), at the request of the New Successful Purchaser, provided the New Successful Purchaser posts an additional, non-refundable deposit equal to ten (10%) percent of the Purchase Price prior to the thirtieth (30th) day following receipt of notification of Successful Purchaser's Default (the "New Successful Purchaser's Additional Deposit"). The New Successful Purchaser's Additional Deposit shall be made by certified check or bank check made payable to "Rachel Blumenfeld, Esq., Escrow Account" or by wire in immediately available federal funds and, together with the original Deposit, shall be deemed the "Deposit". If the New Successful Purchaser elects

to exercise the New Successful Purchaser's Extension, the Closing shall take place on or before the sixtieth (60th) day following receipt of notification of Successful Purchaser's Default, **TIME BEING OF THE ESSENCE as to the New Successful Purchaser**, although such date may be extended solely by Blumenfeld. If the New Successful Purchaser elects to exercise the New Successful Purchaser's Extension, the New Successful Purchaser shall be responsible for all real estate taxes incurred from the 30th day following receipt of notification of Successful Purchaser's Default through closing and shall pay interest on the Purchase Price at a nine (9%) percent annual rate from the 30th day following receipt of notification of Successful Purchaser's Default through to the actual day of closing.

10. The closing shall take place at the Law Office of Rachel S. Blumenfeld, 26 Court Street, Suite 2220, Brooklyn, NY 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 to the extent not otherwise exempt. 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 his 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 Blumenfeld, evidence of its ability to conclude the transaction upon these Terms and Conditions of Sale and the Memorandum of Sale, without delay. Blumenfeld reserves the right to reject any Purchaser or Bidder who they believe, in their reasonable 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 Maltz or the Debtor be responsible for, or pay, such expenses.

12. The only commission that will be paid is to 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 Maltz. The commission for such registered real estate broker will be two (2%) percent of the Successful Bid.

13. Maltz 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. Maltz 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 Maltz or the Debtor or any real estate broker, agent, employee, servant or other person or professional representing or purporting to represent Maltz 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 be delivered vacant of tenancies at Closing with the exception of lot #'s 290 and 363 "License Agreement Lots". The License Agreement Lots shall be rented back to the Debtor for a total of \$2,000/month for three months from the day of Closing (total rent of \$6,000 over the three month period). Debtor shall post an \$18,000 security deposit to ensure vacancy at the end of three months.**

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 Maltz, 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 Maltz, 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 Blumenfeld. The Successful Purchaser has twenty (20) days from the Court Approval Date to advise 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 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 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. To the extent applicable as subject to the terms herein, and except as provided above, the following shall be apportioned as of midnight of the day before the day of Closing: (i) taxes, water charges and sewer rents, on the basis of the fiscal period for which assessed; (ii) fuel; (iii) rents as and when collected and (iv) any existing security deposits. If Closing shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis of the tax rate for the immediately preceding fiscal period applied to the latest assessed valuation. If there is a water meter on the Premises, Seller shall furnish a reading to a date not more than 30 days before Closing and the unfixed meter charge and sewer rent, if any, shall be apportioned on the basis of such last reading. If at the date of Closing the Premises are affected by an assessment which is or may become payable in annual installments, and the first installment is then a lien, or has been paid, then for the purposes of this contract all the unpaid installments shall be considered due and shall be paid by Seller at or prior to Closing. All security deposits shall be transferred to Successful Bidder at Closing, with any unpaid rent balances, if any, being applied against said security deposits.

17. The Debtor shall convey the Property by delivery of a bargain and sale deed without covenants, after Bankruptcy Court approval. 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, Blumenfeld may, at her 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.

18. 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 Blumenfeld or by the Court. 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.

19. 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.

20. 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 Maltz'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, Maltz or their professionals and shall have no further rights under these Terms and Conditions of Sale or Memorandum of Sale.

21. The Auction of the Property is subject to confirmation by the Debtor and subject to further order of the Bankruptcy Court confirming the Auction.

22. Either Maltz or Blumenfeld shall notify the Successful Purchaser whether the Auction is confirmed.

23. 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: _____ Date: _____

Print Name: _____

MEMORANDUM OF SALE – SUCCESSFUL PURCHASER

High Bid Realized at Auction: _____

6% Buyer’s Premium: _____

Purchase Price: _____

The undersigned has this 26th day of July, 2017, agreed to purchase the property located at 484 Sharrotts Road, Staten Island, NY 10309 a/k/a Borough: Staten Island Block: 7328 Lots: 293, 290 & 363 (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)

SUCCESSFUL PURCHASER (Signature)

PRINT NAME

PRINT NAME

ADDRESS

ADDRESS

ADDRESS (City, State, Zip)

ADDRESS (City, State, Zip)

TELEPHONE NUMBER

TELEPHONE NUMBER

EMAIL ADDRESS

EMAIL ADDRESS

Received from _____ the sum of \$200,000 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 \$_____.

Maltz Auctions, Inc.

SUCCESSFUL PURCHASER ATTORNEY INFORMATION

Name _____

Address _____

Phone _____

MEMORANDUM OF SALE – SECOND HIGHEST BIDDER

Bid Realized at Auction: _____

6% Buyer’s Premium: _____

Purchase Price: _____

The undersigned has this 26th day of July, 2017, agreed to purchase the property located at 484 Sharrotts Road, Staten Island, NY 10309 a/k/a Borough: Staten Island Block: 7328 Lots: 293, 290 & 363 (the “Property”) of William Ippolito as the Chapter 11 debtor and debtor-in-possession for the sum of \$_____ DOLLARS in the event of the Successful Purchaser’s Default and if deemed by Blumenfeld, in her sole and absolute discretion, to hold all benefits and obligations of a Successful Purchaser under the Terms and Conditions of Sale and this Memorandum of Sale and hereby promises and agrees to comply with the annexed Terms and Conditions of Sale of said Property and this Memorandum of Sale.

SECOND HIGHEST BIDDER (Signature)

SECOND HIGHEST BIDDER (Signature)

PRINT NAME

PRINT NAME

ADDRESS

ADDRESS

ADDRESS (City, State, Zip)

ADDRESS (City, State, Zip)

TELEPHONE NUMBER

TELEPHONE NUMBER

EMAIL ADDRESS

EMAIL ADDRESS

Received from _____ the sum of \$200,000 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 for the 2nd Highest Bid was in the above sale was for the sum of \$_____.

Maltz Auctions, Inc.

SECOND HIGHEST BIDDER ATTORNEY INFORMATION

Name _____

Address _____

Phone _____