

## TERMS AND CONDITIONS OF SALE

1. These Terms and Conditions of Sale are promulgated in connection with the public auction sale ("363 Sale") of the real property and improvements located at 308-310 West 133rd Street, New York, New York 10030 ("Property").

2. The seller of the Property is Lori Lapin Jones, Esq., solely in her capacity as Chapter 11 Trustee ("Trustee") of W133 Owner LLC ("Debtor"). The Debtor's Chapter 11 bankruptcy case is pending in the United States Bankruptcy Court for the Eastern District of New York ("Bankruptcy Court") under case no. 20-42637 (NHL).

3. The 363 Sale will be conducted virtually on **July 15, 2021 at 11:00 a.m. (Eastern)** by the Trustee's retained real estate broker, MYC & Associates, Inc. ("Broker").

4. The 363 Sale is being conducted pursuant to Orders of the Bankruptcy Court and sections 363 (b), (d), (f), (k) and (m) of title 11 of the United States Code ("Bankruptcy Code").

5. To register and be permitted to bid on the Property at the 363 Sale: (a) each prospective bidder must deliver to the Trustee **by 5:00 p.m. (Eastern) on July 13, 2021** a certified check, bank check or wire transfer in the amount of one million dollars (\$1,000,000) ("Qualifying Deposit") drawn on an account of the bidder, payable to "Lori Lapin Jones, Esq., as Trustee of W133 Owner LLC" and delivered to 98 Cutter Mill Road, Suite 255 South, Great Neck, New York 11021, which Qualifying Deposit shall serve as a good faith deposit against payment of the purchase price for the Property; and (b) each prospective bidder must execute, and thereby agree to be bound by, these Terms and Conditions of Sale. The highest bidder ("Highest Bidder") and the second highest bidder ("Second Highest Bidder") must also execute, and thereby agree to be bound by, a Memorandum of Sale. Within two business days after the conclusion of the 363 Sale, the Trustee or her representative will return the Qualifying Deposits to all bidders except the Highest Bidder and the Second Highest Bidder.

6. Within two business days after the conclusion of the 363 Sale, the Highest Bidder shall: (a) deliver to the Trustee, by certified check, bank check, federal funds or wire transfer, an amount equal to 10% of its successful bid minus the amount of the Qualifying Deposit as and for a good faith deposit (such amount, plus the Qualifying Deposit, hereinafter "Deposit"); and (b) notify the Trustee whether the Highest Bidder will assume any leases or other executory contracts relating to the Property.

7. Within four business days after the conclusion of the 363 Sale, the Trustee will either: (a) return the Second Highest Bidder's Qualifying Deposit; or (b) notify the Second Highest Bidder of the Highest Bidder's default and, in that event, the Second Highest Bidder shall thereafter be deemed the Highest Bidder under these Terms and Conditions of Sale and shall, within two business days after such notice by the Trustee: (i) deliver to the Trustee, by certified check, bank check, federal funds or wire transfer, an amount equal to 10% of its bid minus the amount of its Qualifying Deposit as and for a good faith deposit; and (b) notify the Trustee whether it will assume any leases or other executory contracts relating to the Property.

8. The Highest Bidder must pay the balance of the purchase price ("Purchase Price") for the Property (the difference between the amount of the successful bid and the Deposit) to the Trustee, by certified check, bank check, federal funds or wire transfer from an account of the

Highest Bidder at the closing of title to the Property (“Closing”). The Highest Bidder must close title to the Property on or before the later of thirty (30) days from the entry of an Order confirming a Chapter 11 Plan or an Order confirming the results of the 363 Sale (“Closing Date”), **TIME BEING OF THE ESSENCE as to the Highest Bidder**, although such date may be extended solely by the Trustee.

9. Pursuant to section 363(k) of the Bankruptcy Code and a Bankruptcy Court-approved stipulation between the Trustee and Harlem 133 Lender, LLC (“Stipulation”), Harlem 133 Lender, LLC may credit bid for the Property at the 363 Sale. In the event Harlem 133 Lender, LLC is the highest or best bidder for the Property at the 363 Sale, Harlem 133 Lender, LLC shall be obligated to close title to the Property in accordance with the Stipulation and these Terms and Conditions of Sale. For the avoidance of doubt, Harlem 133 Lender does not need to submit a Qualified Deposit or take any other action in order to submit a qualifying bid for the Property.

10. The Closing shall take place on or before the Closing Date at the offices of the attorneys for the Trustee, LaMonica Herbst & Maniscalco LLP, 3305 Jerusalem Avenue, Wantagh, New York 11793, virtually or by mail, as elected by the Trustee.

11. Real estate taxes, water and sewer charges, utilities for common areas and income from the operation of the Property will be apportioned as of 12:00 a.m. (Eastern) on the Closing Date. There will be no other apportionments pertaining to the Property.

12. The Highest Bidder shall: (a) unless waived by an Order of the Bankruptcy Court under section 1146 of the Bankruptcy Code, pay any village, city, county, state or other real property transfer taxes incurred by the transfer of the Property by the estate at the Closing; and (b) be responsible for the preparation of any transfer forms.

13. In connection with the Closing and Closing Date, the Highest Bidder is hereby given notice that **TIME IS OF THE ESSENCE against the Highest Bidder and the failure of the Highest Bidder to timely close for any reason whatsoever (except as otherwise provided below), including its failure to pay the balance of the Purchase Price on the Closing Date, will result in the Trustee retaining the Deposit and the termination of the Highest Bidder’s right to acquire the Property under these Terms and Conditions of Sale.** The Highest Bidder shall be obligated to close title to the Property and there is no contingency of any kind or nature that will permit the Highest Bidder to cancel or avoid its obligation under these Terms and Conditions of Sale other than the Trustee’s inability to deliver insurable title to the Property free and clear of all Interests (as defined in paragraph 16). Further, the Highest Bidder shall have demonstrated, to the sole satisfaction of the Trustee, evidence of its ability to conclude the transaction upon these Terms and Conditions of Sale without delay. The Trustee reserves the right to reject any bidder who, in the sole discretion of the Trustee, the Trustee believes is not financially capable of consummating the purchase of the Property, provided, however, that the Trustee may not reject any bid of Harlem 133 Lender on this basis. **Expenses incurred by the Highest Bidder, or any competing bidder, including concerning any due diligence, such as obtaining title reports, shall be the sole responsibility of such bidder and under no circumstances shall the Trustee, the Debtor’s estate or the Trustee’s professionals be responsible for, or pay, such expenses.**

14. In the event that the Highest Bidder for the Property fails to tender the payment of the balance of the Purchase Price on the Closing Date, or otherwise perform any of its material

obligations under these Terms and Conditions of Sale, the Trustee, in her reasonable discretion, shall be authorized to sell the Property to the Second Highest Bidder without any further notice to any party other than Harlem 133 Lender, without giving credit for the Deposit forfeited by the Highest Bidder. Should the Second Highest Bidder fail to close on the Property within such time as the parties may agree but not to exceed 20 days after notice from the Trustee to the Second Highest Bidder, the Trustee shall be authorized to sell the Property to the next highest or best bidder, without the necessity of any further notice. In either event, the Second Highest Bidder or the next highest or best bidder shall be deemed to be "Highest Bidder" under these Terms and Conditions of Sale and shall be bound by these Terms and Conditions of Sale.

15. The Trustee and her professionals, including the Broker, have not made, and do not make, any representations or warranties of any kind, including, but not limited to, as to the physical condition, occupancies, tenancies, rents, leases, expenses, income, operations, value of the land or buildings thereon, or any other matter or thing affecting or related to the Property that might be pertinent to the purchase of the Property, and including, without limitation: (a) the current or future real estate tax liability, assessment or valuation of the Property; (b) 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; (c) 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; (d) 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; (e) the current or future use of the Property; (f) the present and future condition and operating state of any and all machinery, equipment or fixtures on the Property and the present or future structural and physical condition of any building thereon or its suitability for rehabilitation or renovation; (g) the ownership or state of title of any personal property on the Property; (h) the presence or absence of any laws, ordinances, rules or regulations issued by any governmental authority, agency or board and any violations thereof; (i) any present or future issues concerning subdivision or non-subdivision of the Property; or (j) the compliance or non-compliance with environmental laws and the presence or absence of underground fuel storage tanks, any asbestos or other hazardous materials anywhere on the Property. Each bidder hereby expressly agrees and acknowledges that no such representations or warranties have been made. The Trustee and her professionals, including the Broker, are not liable or bound in any manner by expressed or implied warranties, guaranties, promises, statements, representations or information pertaining to the Property, or any real estate broker, agent, employee, servant or other person or professional representing or purporting to represent the Trustee unless such warranties, guaranties, promises, statements, representations or information are expressly and specifically set forth in writing by the Trustee.

16. The Property is being sold "**AS IS**" "**WHERE IS**", "**WITH ALL FAULTS**," without any representations, covenants, guarantees or warranties of any kind or nature whatsoever, and free and clear of any and all interests including, but not limited to, liens, claims, encumbrances, interests, judgments and/or mortgages, or adverse claims to title, of whatever kind or nature (collectively, "Interests"), with such Interests, if any, to attach to the proceeds of sale in such order and priority as they existed immediately prior to the commencement of the Debtor's Chapter 11 case and subject to, among other things: (a) any and all occupancies; (b) any state of facts that an accurate survey may show; (c) any covenants, restrictions and easements of record; (d) any state of facts a physical inspection may show; (e) any building or zoning ordinances or other applicable

municipal regulations and violations thereof; and (f) environmental conditions.

17. By delivering Qualifying Deposits, each bidder acknowledges that it has had the opportunity to review the state of title thereof and laws, rules and regulations applicable thereto, and will rely solely thereon and on its own independent investigation of the Property in making its bids. Neither the Trustee nor any of her representatives make any representations or warranties with respect to the permissible uses of the Property, including, but not limited to, the zoning of the Property. Each bidder acknowledges that it has conducted its own due diligence in connection with the Property and is not relying on any information provided by the Trustee and her professionals.

18. The Trustee shall convey the Property by delivery of a Trustee's 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. The Trustee may at her option arrange for the issuance of a title insurance policy by such a company at the Highest Bidder's sole cost and expense.

19. Neither the Trustee nor the Trustee's professionals, including the Broker, are liable or responsible for the payment of fees of any broker. The only commissions that the estate may be liable for are those of the Broker, which was retained pursuant to an Order of the Bankruptcy Court, and those of the Trustee, provided that, in accordance with the Stipulation, in the event that: (a) the successful bidder for the Property is a purchaser for cash other than Harlem 133 Lender, LLC; (b) the gross sale price of the Property is \$27,000,000 or more, then the Broker shall be entitled to compensation, inclusive of all out-of-pocket costs and expenses, in the amount of 2% of the sale price; and (c) the successful bidder has retained a broker that is not affiliated with the successful bidder, then such third-party broker shall be entitled to 50% of the Broker's compensation.

20. 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 Trustee or by the Bankruptcy Court. The Trustee reserves the right to modify these Terms and Conditions of Sale at the 363 Sale or thereafter to maintain consistency with the provisions of the Bankruptcy Code and/or prior orders of the Bankruptcy Court.

21. These Terms and Conditions of Sale will be read into the record, or specifically incorporated by reference, at the 363 Sale of the Property. By making a bid for the Property, each bidder will be deemed to have acknowledged having read these Terms and Conditions of Sale and agreed to be bound by them.

22. If the Trustee is unable to deliver title to the Property in accordance with these Terms and Conditions of Sale for any reason whatsoever, her only obligation will be to refund the Deposit to the Highest Bidder and the Second Highest Bidder, and upon such refund, neither the Highest Bidder nor any other bidder shall have any claim or recourse against the Trustee, the Debtor's estate or the Trustee's professionals.

23. The Trustee reserves her right to withdraw the Property from the 363 Sale, either prior or subsequent to the 363 Sale, for any reason whatsoever, as she deems necessary or appropriate.

24. The 363 Sale of the Property is subject to confirmation by the Trustee and the entry of an order of the Bankruptcy Court confirming and approving the 363 Sale free and clear of all Interests. Prior to the Closing, the Bankruptcy Court may enter an Order confirming the results of the 363 Sale.

25. Each bidder represents and warrants that it has full power and authority to enter into, execute and deliver these Terms and Conditions of Sale to the Trustee.

26. Each bidder represents and warrants that it is capable of performing its obligations under these Terms and Conditions of Sale and has the financial wherewithal to perform its obligations under these Terms and Conditions of Sale.

27. Except as disclosed below, each bidder represents and warrants that it has no connections to the Debtor, Trustee and/or the Trustee's professionals and that it has never been affiliated in any manner whatsoever, or held any interest in, the Debtor:

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28. The Bankruptcy Court shall determine any disputes concerning the 363 Sale of the Property. By participating in the 363 Sale, all bidders consent to the exclusive jurisdiction of the Bankruptcy Court to determine such disputes.

I have read these Terms and Conditions of Sale and agree to be bound by them.

\_\_\_\_\_  
BIDDER SIGNATURE

\_\_\_\_\_  
BIDDER NAME

Name and Title of Individual Executing for bidder that is a company:

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

Bidder contact information:

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
EMAIL

\_\_\_\_\_  
TELEPHONE

Attorney name and contact information (if any):

\_\_\_\_\_  
NAME

\_\_\_\_\_  
FIRM

\_\_\_\_\_  
EMAIL

\_\_\_\_\_  
TELEPHONE

**MEMORANDUM OF SALE -- HIGHEST BIDDER**

The undersigned has this \_\_\_\_ day of \_\_\_\_\_ 2021, agreed to purchase the real property and improvements located at 308-310 West 133rd Street, New York, New York 10030 (“Property”), vested in Lori Lapin Jones, Esq., solely in her capacity as Chapter 11 Trustee for the bankruptcy estate of W133 Owner LLC, and being sold by Lori Lapin Jones, Esq., as the Chapter 11 Trustee of the Debtor for the sum of \$\_\_\_\_\_, and hereby promises and agrees to comply with the terms and conditions of the sale of said Property, as set forth in the annexed Terms and Conditions of Sale.

\_\_\_\_\_  
PRINT NAME OF PURCHASER

\_\_\_\_\_  
PRINT NAME OF PURCHASER

\_\_\_\_\_  
SIGNATURE OF PURCHASER

\_\_\_\_\_  
SIGNATURE OF PURCHASER

Name, title of individual executing for company: NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
E-MAIL

\_\_\_\_\_  
E-MAIL

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
FAX NUMBER

\_\_\_\_\_  
FAX NUMBER

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

Lori Lapin Jones, Esq., Chapter 11 Trustee  
c/o LaMonica Herbst & Maniscalco LLP  
3305 Jerusalem Avenue, Suite 201  
Wantagh, New York 11793  
Telephone: (516) 826-6500  
Facsimile: (516) 826-0222

This is to verify that the successful bid in the above sale was for the sum of \$\_\_\_\_\_.

\_\_\_\_\_  
Victor M. Money penny  
MYC & Associates, Inc.

**ATTORNEY INFORMATION**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-Mail: \_\_\_\_\_  
Phone: \_\_\_\_\_

**MEMORANDUM OF SALE -- SECOND HIGHEST BIDDER**

The undersigned has this \_\_\_\_ day of \_\_\_\_\_ 2021, agreed to purchase the real property and improvements located at 308-310 West 133rd Street, New York, New York 10030 (“Property”), vested in Lori Lapin Jones, Esq., solely in her capacity as Chapter 11 Trustee for the bankruptcy estate of W133 Owner LLC, and being sold by Lori Lapin Jones, Esq., as the Chapter 11 Trustee of the Debtor for the sum of \$\_\_\_\_\_, and hereby promises and agrees to comply with the terms and conditions of the sale of said Property, as set forth in the annexed Terms and Conditions of Sale.

\_\_\_\_\_  
PRINT NAME OF PURCHASER

\_\_\_\_\_  
PRINT NAME OF PURCHASER

\_\_\_\_\_  
SIGNATURE OF PURCHASER

\_\_\_\_\_  
SIGNATURE OF PURCHASER

Name, title of individual executing for company: NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
E-MAIL

\_\_\_\_\_  
E-MAIL

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
FAX NUMBER

\_\_\_\_\_  
FAX NUMBER

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

Lori Lapin Jones, Esq., Chapter 11 Trustee  
c/o LaMonica Herbst & Maniscalco LLP  
3305 Jerusalem Avenue, Suite 201  
Wantagh, New York 11793  
Telephone: (516) 826-6500  
Facsimile: (516) 826-0222

This is to verify that the second highest or best bid in the above sale was for the sum of \$\_\_\_\_\_.

\_\_\_\_\_  
Victor M. Money penny  
MYC & Associates, Inc.

**ATTORNEY INFORMATION**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-Mail: \_\_\_\_\_  
Phone: \_\_\_\_\_