

HEARING DATE AND TIME: JULY 15, 2021 AT 10:00 A.M. (ET)
OBJECTION DEADLINE DATE AND TIME: JULY 8, 2021 AT 4:00 P.M. (ET)
SALE HEARING DATE AND TIME: AUGUST 10, 2021 AT 10:00 A.M. (ET)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

MICHAEL RODGER BROWN,

Debtor.

-----X

Chapter 7

Case No. 18-10617 (JLG)

RELATED DOC. NO. 150

**NOTICE OF TELEPHONIC HEARING ON
TRUSTEE'S AMENDED MOTION FOR AN ORDER (I) APPROVING THE
TRUSTEE'S ENTRY INTO STALKING HORSE AGREEMENT; (II) AUTHORIZING
VIRTUAL PUBLIC AUCTION; (III) ESTABLISHING BIDDING PROCEDURES; AND
(IV) APPROVING SALE OF TRUSTEE'S RIGHT TITLE AND INTEREST IN
CERTAIN OF THE DEBTOR'S TANGIBLE PERSONAL PROPERTY FREE AND
CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES PURSUANT TO 11 U.S.C.
§§105(a) AND 363, FED. R. BANKR. P. 2002 AND 6004 AND LOCAL RULE 6004-1**

PLEASE TAKE NOTICE that a telephonic hearing on the *TRUSTEE'S AMENDED MOTION FOR AN ORDER (I) APPROVING THE TRUSTEE'S ENTRY INTO STALKING HORSE AGREEMENT; (II) AUTHORIZING VIRTUAL PUBLIC AUCTION; (III) ESTABLISHING BIDDING PROCEDURES; AND (IV) APPROVING SALE OF TRUSTEE'S RIGHT, TITLE AND INTEREST IN CERTAIN OF THE DEBTOR'S TANGIBLE PERSONAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §§ 105(a) AND 363, FED. R. BANKR. P. 2002 AND 6004 AND LOCAL RULE 6004-1* (the "Motion")¹ is scheduled to be heard before the Honorable James L. Garrity, Jr., United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York, NY 10004, on **July 15, 2021 at 10:00 a.m. (ET)**., or as soon thereafter as counsel may be heard.

¹ This amendment sets forth new deadlines as related to the bidding on, and sale of, the Property.

PLEASE TAKE FURTHER NOTICE that, as more particularly set forth in the Motion, the Trustee is seeking authorization to sell, free and clear of all liens, claims and encumbrances, the Trustee's right, title, and interest in certain tangible personal property such as jewelry, free and clear of any liens, claims and encumbrances.

PLEASE TAKE FURTHER NOTICE that pursuant to General Order M-543, dated March 20, 2020 (Morris, C.J.) (“**General Order M-543**”), the Hearing will be conducted telephonically. Parties wishing to appear at, or attend, the Hearing must refer to and comply with the Bankruptcy Court’s guidelines for telephonic appearances² and make arrangements with Court Solutions LLC by telephone at (917) 746-7476.

PLEASE TAKE FURTHER NOTICE the Hearing may be continued or adjourned from time to time without further notice other than an announcement of the adjourned date or dates at the Hearing or at a later hearing.

PLEASE TAKE FURTHER NOTICE that any opposing affidavits, answering memoranda of law, or other responses shall be filed and served no later than **July 8, 2021 at 4:00 p.m. (ET)**, must be made in writing, state with particularity the grounds therefore, shall conform to the United States Bankruptcy Rules and the Local Rules of the Bankruptcy Court, include in the upper right hand corner of the caption, the ECF docket number to which the filing relates, and shall be filed with the Bankruptcy Court electronically in accordance with General Order M-399 (with two (2) hard copies sent to the Chambers of James L. Garrity, Jr.), and served via e-mail upon Akerman LLP, Special Counsel for the Trustee to John P. Campo john.campo@akerman.com and a hard copy served upon the Office of the United States Trustee, 201 Varick Street, Ste. 1006, New York, New York 10014 together with proof of service thereof.

² The Bankruptcy Court’s procedure for telephonic appearances is available at: <http://www.nysb.uscourts.gov/general-orders-and-guidance-created-covid-19>

PLEASE TAKE FURTHER NOTICE that objecting parties are required to attend the Hearing **telephonically** so long as General Order M-543 is in effect or unless otherwise ordered by the Bankruptcy Court. Failure to appear may result in relief being granted as requested.

PLEASE TAKE FURTHER NOTICE that unless responses are received by that time, the relief may be granted as requested.

Dated: New York, New York
July 1, 2021

AKERMAN LLP

By: /s/Ann Marie Sinisi
Ann Marie Sinisi
John P. Campo
1251 Avenue of the Americas, 37th Floor
New York, NY 10020
Tel: (212) 880-3800
E-mail: john.campo@akerman.com
E-mail: annmarie.sinisi@akerman.com

Special Counsel to the Trustee

HEARING DATE AND TIME: JULY 15, 2021 AT 10:00 A.M. (ET)
OBJECTION DEADLINE DATE AND TIME: JULY 8, 2021 AT 4:00 P.M. (ET)
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

MICHAEL RODGER BROWN,

DEBTOR
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Chapter 7

Case No. 18-10617 (JLG)

RELATED DOC. NO. 150

TRUSTEE'S AMENDED MOTION FOR AN ORDER (I) APPROVING THE TRUSTEE'S ENTRY INTO STALKING HORSE AGREEMENT; (II) AUTHORIZING VIRTUAL PUBLIC AUCTION; (III) ESTABLISHING BIDDING PROCEDURES; AND (IV) APPROVING SALE OF TRUSTEE'S RIGHT TITLE AND INTEREST IN CERTAIN OF THE DEBTOR'S TANGIBLE PERSONAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §§105(a) AND 363, FED. R. BANKR. P. 2002 AND 6004 AND LOCAL RULE 6004-1

**TO THE HONORABLE JUDGE JAMES L. GARRITY, JR.
UNITED STATES BANKRUPTCY JUDGE:**

John S. Pereira, Chapter 7 Trustee (the "Trustee") for the estate of Michael Rodger Brown (the "Debtor"), by and through undersigned counsel, submits this amended motion (the "Motion")¹ pursuant to §§105(a) and 363 of Title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and General Order M-383 of the Bankruptcy Court for the Southern District of New York ("Gen. Order M-383"), for, *inter alia*, the entry of: (a) an order authorizing the Trustee to enter into and perform under an asset purchase agreement attached hereto as **Exhibit B** (the "Stalking Horse Agreement") between the Trustee and Roopang Shukla (the "Stalking Horse Bidder" or "Buyer"), subject to the solicitation of higher and better offers for the Trustee's right, title, and interest in certain tangible personal property, such as jewelry "Property"

¹ This amendment sets forth new deadlines as related to the bidding on, and sale of, the Property.

(an inventory of the Property is annexed hereto as **Exhibit A**); (b) an order authorizing a public auction sale (the "Auction Sale") of the Property free and clear of all liens, claims and encumbrances, and approving the bid procedures in connection with the sale of the Property; (c) an order authorizing the sale to the successful bidder(s) free and clear of all liens, claims, interests and encumbrances affecting the Property, with such liens, claims, interests and encumbrances attaching to the net proceeds of Sale pursuant to sections 363(b), (f) and (h) of title 11 of the Bankruptcy Code, net of all Trustee commissions, attorneys' fees and all other expenses of the Sale. In support of the Motion, the Trustee respectfully represents as follows:

BACKGROUND

1. On March 5, 2018 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York.

2. On March 5, 2018, the Trustee was appointed as the Chapter 7 Trustee for the Debtor's estate.

3. On November 20, 2019, the Court approved the retention of Prominent International Inc. ("Prominent") as the Trustee's appraiser to appraise the jewelry listed in Exhibit A [Doc. No. 84]. Pursuant to the terms of Prominent's retention, Prominent submitted an appraisal for the jewelry (the "Jewelry Appraisal").²

4. On March 3, 2020, MYC & Associates, Inc. ("MYC") was retained as the Trustee's auctioneer to assist the Trustee in the liquidation of assets of the Debtor, including but not limited to jewelry listed on Exhibit A.

² Pursuant to Local Rule 6004-1(b)(2), the Jewelry Appraisal is being filed as "confidential" under seal no later than 12:00 noon on the day prior to the scheduled Auction Sale of the Property

5. On March 5, 2020, the Trustee filed a complaint *In re: Pereira v. Jennifer Brown, et al.* (Adv. No 20-01058-JLG) (Adv. Doc. No. 1) (the "J. Brown Adv."), seeking, *inter alia*, to avoid, preserve and recover the Transfers (as defined in the J. Brown Adv.).

THE PROPERTY

6. The Debtor listed on Schedule A/B (8) and (12) of the bankruptcy schedules the ownership of Jewelry: Miscellaneous with a current value of \$750,000 [Doc. No. 1].

7. On or about September 2019, the following jewelry was turned over to the Trustee: (i) a Bulgari Serpenti watch and (ii) 18k yellow gold diamond pair of earrings, total carat weight: 8.07 cts. Thereafter, on or about January 15, 2020, two (2) additional pieces of jewelry were turned over to the Trustee consisting of (i) a pair of 14k white gold earrings, total diamond weight 2:00 cts and (ii) an 18k white gold diamond cuff bangle, estimated diamond weight: 7.25cts.

8. Subsequent to the Jewelry Appraisal, a discrepancy as to valuation arose caused by the loss and replacement of one of the earrings which was lost prior to the Trustee taking possession. In order to obtain the highest value at this time, a GIA certification³ has been obtained.

JURISDICTION AND VENUE

9. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

10. The statutory predicates for the relief requested herein are sections 363 and 105 of the Bankruptcy Code, Rules 4001 and 6004 of the Bankruptcy Rules and Local Rule 6004-1 for the Southern District of New York.

³ A GIA certification is grading of the stones by the Gemological Institute of America.

RELIEF REQUESTED

11. By this motion, the Trustee seeks entry of an order: (a) authorizing the Trustee to enter into and perform under the Stalking Horse Agreement, subject to the solicitation of higher and better offers for the Property; (b) approving the Bidding Procedures Order which approves (i) the Trustee's proposed Bidding Procedures for marketing the Property, which procedures are attached as Exhibit 1 to the Bidding Procedures Order, and (ii) the form and manner of notice of the Auction and the Sale Hearing, including the form and manner of notice (the "Auction and Hearing Notice"); (iii) establishing **July 27, 2021 at 5:00 p.m.** (prevailing Eastern Time) as the deadline for the submission of bids (the "Bid Deadline"); (iv) scheduling the Auction, if necessary, no later than **July 29, 2021 at 11:00 a.m.** (prevailing Eastern Time); and (v) scheduling the Sale Hearing for **August 10, 2021 at 10:00 a.m.** (prevailing Eastern Time), subject to the Court's availability, to consider the sale of the Property to the successful bidder(s) at the Auction.

12. In addition, the Trustee respectfully requests the entry of an order (the "Sale Order")⁴: (a) approving the sale of the Property to Roopang Shukla or the successful bidder(s) at the Auction, free and clear of all liens, claims and encumbrances; (b) finding that the successful bidder(s) is a "good faith purchaser," as that term is defined in section 363(m) of the Bankruptcy Code, and has not violated section 363(n) of the Bankruptcy Code; (c) waiving the fourteen (14)-day stay requirements of Bankruptcy Rules 6004(h) and 6006(d); and (d) granting certain related relief.

⁴ The Trustee will file and serve the proposed Sale Order in advance of the Sale Hearing.

The Stalking Horse Agreement

13. On or about May 4, 2021, the Trustee entered into the Stalking Horse Agreement with Roopang Shukla (the "Stalking Horse Bidder") for the amount of \$59,000 (the "Stalking Horse Bid"), subject to higher and better offers and with no stalking horse protections.

14. The Stalking Horse Bid by the Stalking Horse Bidder will serve as the critical function of setting a "floor" for further competitive bidding.

15. The terms of the Stalking Horse Bid are reasonable and were the product of good faith, arm's length negotiations between the Trustee and the Stalking Horse Bidder. In accordance with Court's Guidelines for the Conduct of Asset Sales (the "Sale Guidelines"), the pertinent terms of the Stalking Horse Agreement are summarized in the table below. The Trustee respectfully submits that the all terms of the Stalking Horse Agreement are fair, reasonable, and appropriate.

SUMMARY OF STALKING HORSE AGREEMENT	
Parties	<u>Seller</u> : John S. Pereira, as chapter 7 Trustee for the estate of Michael R. Brown <u>Buyer</u> : Roopang Shukla
Purchase Price:	\$59,000
Property:	(i) a Bulgari Serpenti watch; (ii) 18k yellow gold diamond pair of earrings, total carat weight: 8.07 cts.; (iii) a pair of 14k white gold earrings, total diamond weight: 2:00 cts and (iv) 18k white gold diamond cuff bangle, estimated diamond weight: 7.25 cts.

The Proposed Asset Purchase Agreement

16. The Trustee will provide a form asset purchase agreement (the "APA") to Potential Bidders (as defined below). Potential Bidders will be required to submit a revised Asset Purchase Agreement to the Trustee prior to the Bid Deadline.

The Proposed Bidding Procedures

17. The Trustee requests that the bidding on the Property be conducted on the terms and conditions set forth in the Bidding Procedures annexed hereto as **Exhibit C**.⁵

18. The Bidding Procedures are intended to permit a fair and efficient competitive sale process to promptly identify the alternative bid that is higher or otherwise better. Because the proposed Bidding Procedures are attached hereto as Exhibit C, they are not restated herein. A summary of the Bidding Procedures are:

19. **Submission of Bids**: Each interested party must submit the Required Bid Documents (as defined in the Bidding Procedures) to the Trustee's retained auctioneer with copies to Trustee's counsel by no later than **July 27, 2021 at 5:00 p.m. (prevailing Eastern Time)** (the "**Bid Deadline**").

20. **Good Faith Deposits**: The submission of a bid by the Bid Deadline shall and must be accompanied by a deposit which may be made by wired funds, pursuant to wire instructions which the Trustee or MYC will provide upon request, certified or bank check made payable to "John S. Pereira, as chapter 7 Trustee for the estate of Michael Rodger Brown" (the "**Good Faith Deposit**") of not less than twenty-five percent (25%) of the bid, to be held in escrow by the Trustee.

21. **Qualified Bids**: The Trustee, will identify, in his business judgment, **on or before 4:00 p.m. (prevailing Eastern Time) on July 28 2021**, those Bidders whose bids have been

⁵ The summaries provided below are for informational purposes only and the Court is referred to the proposed APA and the Bidding Procedures for the terms and conditions thereof.

deemed Qualified Bids and who may participate in the Auction (each such party, a “Qualified Bidder”).

22. Auction Sale: If the Trustee does not receive any Qualified Bids, the Trustee will not hold an Auction. If the Trustee determines that he has received a timely Qualified Bid, the Trustee intends to conduct a Court-approved Auction Sale in order to identify the bid that is higher or otherwise better. The Auction Sale will be held via Zoom **on July 29 2021 at 11:00 a.m. (prevailing Eastern Time)**.

23. Successful Bidder: At the close of the Auction Sale, the Trustee, in the exercise of his business judgment acting through his professionals, shall identify which Qualified Bidder has the highest or otherwise best bid (the “Successful Bid,” and such bidder, the “Successful Bidder”) and promptly thereafter the Successful Bidder shall submit a fully executed revised APA memorializing the terms of the Successful Bid by no later than **July 30 2021 at 12:00 p.m.**, and (ii) by no later than **July 30, 2021 at 4:00 p.m.**, the Successful Bidder shall submit an additional wire, pursuant to wire instructions which the Trustee or MYC will provide upon request, certified or bank check made payable to "John S. Pereira, as chapter 7 Trustee for the estate of Michael Rodger Brown," if necessary, so that the Trustee is holding an amount equal to twenty-five percent (25%) of the Successful Bid, including any prior Good Faith Deposit, as the deposit to be held in escrow pending Closing.

24. Backup Successful Bidder: The Trustee shall further announce the Qualified Bidder who submitted the second highest Qualified Bid at the Auction (the “Backup Successful Bidder”), and their Qualified Proposal shall remain a binding offer, supported by the Good Faith Deposit of the Backup Successful Bidder until such time as the Successful Bidder closes with

respect to the Successful Bid. If the Successful Bidder fails to complete the purchase of the Property, the Trustee shall close with the Backup Successful Bidder.

25. To facilitate an orderly sale of the Property, the Trustee requests that the Court approve the Bidding Procedures. The Trustee believes that the Bidding Procedures are appropriate, will not discourage potential bidders from participating in the Auction, and provide the Trustee with the best opportunity to maximize the recovery for the Debtor's estate and its creditors in connection with the sale of the Property.

Proposed Notice of the Virtual Auction and Sale Hearing

26. The Trustee proposes the following notice and other procedures to be implemented in connection with the Sale of the Property:

- a) Notice of Sale, Auction and Sale Hearing: Immediately upon entry of the Bidding Procedures Order, the Trustee shall provide the Auction and Sale Notice (the form of which is attached hereto as **Exhibit D**) by email, mail, facsimile or overnight delivery upon:
 - i) All creditors who have filed claims against the Debtor's estate, all parties who have filed notices of appearance in this chapter 7 case,
 - ii) any parties known to the Trustee that have, or assert, any liens, claims and encumbrances or other interests in the Property;
 - iii) any and all prospective bidders (or their counsel) that have expressed an interest in the Property; and
 - iv) the Office of the United States Trustee (the "Sale Notice Parties").
- b) Advertisement and Publication of Auction and Sale Notice: The Trustee will advertise the Auction Sale for one (1) day in the national edition of *The New York Times* on or before **July 4, 2021**, in accordance with Local Rule 6004-1(h). The Auction Sale will also be listed and advertised on the Auctioneer's website at: <http://www.mycorp.com/>, and the Trustee will file the required Proof of Publication upon receipt thereof.

- c) Bid Deadline: The Auction and Sale Notice will set forth the deadline for the submission of the required bid documents and a Good Faith Deposit of not less than \$15,000 or 25% of the bid, whichever is higher, as **5:00 p.m. (prevailing Eastern Time) on July 27, 2021** (the “Bid Deadline”).
- d) Date, Time and Place of Auction: The Auction will be conducted virtually via Zoom by MYC on **July 29, 2021 at 11:00 a.m. (prevailing Eastern Time)**.
- e) Date, Time and Place of Sale Hearing: The hearing to approve the Sale of the Property to the Successful Bidder shall be held via telephonic hearing before Judge James L. Garrity in the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, Courtroom 723, New York, NY 10004, **on August 10, 2021 at 10:00 a.m. (prevailing Eastern Time)** or such other date and time that the Court may direct. The Sale Hearing may be adjourned without further notice by announcement at the Sale Hearing.
- f) Objection Deadline to the Approval Order: Objections to the relief sought in the Approval Order shall be in writing, filed and served so as to be actually received by: (i) with two (2) hard copies to Honorable James L. Garrity, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004; (ii) counsel for the Trustee, Akerman LLP, 1251 Avenue of the Americas, 37th Floor, New York, New York 10020 (Attn: John P. Campo, Esq. and Ann Marie Sinisi, Esq.); (iii) the Office of the United States Trustee for the Southern District of New York, 201 Varick Street, Ste. 1006, New York, New York 10014 no later than **August 3, 2021 at 4:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”). Objections with respect to the Auction and the Successful Bidder shall be interposed at the Sale Hearing.

THE SALE TO THE HIGHEST AND BEST BIDDER

27. Due to the significant limitations placed upon the conducting of normal in-person business operations as a result of the coronavirus pandemic, the Trustee's and MYC's ability to arrange for regular in-person inspections of the Property by prospective purchasers and to thereby solicit purchase offers from a wide array of such parties have been inhibited.

Accordingly, at the Trustee's direction, MYC proceeded to market and contact certain jewelry wholesalers in order to solicit bids for the present group of the Property.

28. The Trustee respectfully submits that given the present economic circumstances of the pandemic the Trustee's sale of the Property represents a prudent and reasonable exercise of the Trustee's business judgment that will be beneficial to the Debtor's estate and its creditors.

29. Thus, in the continued exercise of the Trustee's business judgment after consultation with MYC, the Trustee has determined that, given the very substantial and ongoing obstacles to marketing and selling the Property in the middle of the pandemic crisis which to date does not have a determinable end, the most economically prudent way at this juncture to maximize proceeds of a sale for the benefit of the estate, and avoid a deterioration of the value of the Property during said crisis, is for the Trustee to proceed with a public auction sale of the Property pursuant to the terms of the APA.

30. The APA contains the following terms:

- **Purchase Price for Jewelry:** A twenty-five percent (25%) deposit made by wire, pursuant to wire instructions which the Trustee or MYC will provide upon request, certified or bank check made payable to "John S. Pereira, as chapter 7 Trustee for the estate of Michael Rodger Brown" of the bid amount to be held in escrow by the Trustee. The balance of seventy-five percent (75%) to be paid by wire, certified or bank check within three (3) business days after the entry of the order by the Bankruptcy Court approving the sale.
- **"As Is, Where Is":** The Property is being sold **"AS IS, WHERE IS, AND WITH ALL FAULTS"** with respect to all facts, circumstances, conditions and defects and specifically and expressly without any warranties, representations or guarantees, either expressed or implied, of any kind, nature, or type whatsoever from or on behalf of the Trustee, and without recourse of any kind against the Trustee.
- **Subject to Bankruptcy Court Order:** Closing of the sale of the Property is subject to the entry of an Order of this Court approving the APA and authorizing consummation of the sale transaction (a **"Sale Order"**).

- **Closing:** Closing of the sale of the Property (the “**Closing**”) shall take place within seven (7) business days of the earlier of the following dates:
 - (i) the date of entry of the Sale Order, if said Order includes a provision pursuant to Rule 6004(h) of the Federal Rules of Bankruptcy Procedure waiving the usual fourteen (14) day stay of a sale order; or (ii) the date as of which the Sale Order is no longer appealable.

SALE OF THE PROPERTY VIA A PUBLIC AUCTION SALE IS WARRANTED

31. Section 363(b)(1) of the Bankruptcy Code provides that:

"the trustee, after notice and a hearing, may use, sell, or lease,
other than in the ordinary course of business, property of the estate."

32. Section 363(b)(1) of the Bankruptcy Code governs transactions outside the ordinary course of business of the Debtor and provides that a debtor in possession may enter into such transactions after notice and a hearing. When a proposed use, sale or lease of assets is outside the ordinary course of business, section 363(b)(1) requires that the transaction have a business justification. *See In re Chateaugay Corp.*, 973 F.2d 141 (2d Cir. 1992); *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983). That is, the debtor in possession or trustee must satisfy its fiduciary duty to the debtor, creditors and equity holds, that there is some articulated business justification for using, selling or leasing the property outside the ordinary course of business. *Id. See also In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984) (debtor in possession is “required to justify the proposed [transaction] with sound business reason”); *In re St. Petersburg Hotel Assoc. Ltd.*, 37 B.R. 341, 343 (Bankr. M.D. Fla. 1983) (section 363 “also impliedly requires the Court to find that it is a good business judgment for the Debtor to enter into” the transaction at issue). As the Second Circuit held in *Lionel*, the bankruptcy judge should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and equity holders alike.

33. A public auction sale of a bankruptcy estate's assets is specifically authorized under the Bankruptcy Code and the Bankruptcy Rules. Bankruptcy Rule 6004(f) provides that :

"all sales not in ordinary course of business may be by private sale or public auction."

34. Federal Rule of Bankruptcy Procedure 6004(f)(1) expressly provides that a trustee or debtor in possession may conduct either a public or private sale of estate property. *In re Terrace Chalet Apartments Ltd.*, 159 B.R. 821, 824 (N.D. Ill. 1993) (sale under section 363 may be private or by public auction).

35. It is within the discretion of the court to determine whether to approve or disapprove of a method for the disposition of property. *In re Alves*, 52 B.R. 353 (Bankr. D.R.I. 1985; *see, generally, In re Stogsdill*, 102 B.R. 587 (Bankr. W.D. Tex. 1989).

36. The Trustee submits that a public auction of the Property is reasonable under the present economic realities attendant to the pandemic crisis. MYC has marketed and actively solicited sale offers. Entry into the Stalking Horse Agreement, which sets the baseline for the auction, and the Bidding Procedures, to elicit higher or better offers for the Property, will allow the Trustee to solicit additional offers and conduct the sale process in a controlled, fair and open fashion that will encourage the participation by financially capable bidders. Accordingly, the Trustee submits that the Stalking Horse Agreement and the Bidding Procedures should be approved.

Any Successful Bidder Should be Deemed a Good Faith Purchaser

37. The Trustee requests that any successful bidder at the Auction receive the protections set forth in section 363(m) of the Bankruptcy Code. Specifically, section 363(m) of the Bankruptcy Code provides:

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).

38. The Trustee submits that any APA it enters into with such other party that is the successful bidder(s) at the Auction will also have been negotiated at arm's-length and in good faith. Accordingly, the Trustee seeks a finding that the successful bidder(s) at the Auction is a good faith purchaser under section 363(m) of the Bankruptcy Code and has not violated section 363(n) of the Bankruptcy Code.

Approval of the Sale Free and Clear of Liens, Claims and Encumbrances

39. The Trustee requests approval to sell the Property free and clear of any and all liens, claims, interests and encumbrances in accordance with section 363(f) of the Bankruptcy Code. Pursuant to section 363(f), the Trustee may sell estate property "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is satisfied:

- a. applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- b. such entity consents;

- c. such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- d. such interest is in bona fide dispute; or
- e. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

40. The bar date of August 6, 2018 for the filing of claims against the Debtor's estate has passed, and there are no claims on the Claims Register listed as secured. Accordingly, pursuant to Section 363(f), the sale of the Property should be free and clear of liens, claims and encumbrances, with any such liens, claims and encumbrances, of which the Trustee does not have any present knowledge, to attach to the proceeds of sale.

Compliance with Local Rule 6004-1

41. The Auction Sale will comply with the requirements of Local Rule 6004-1 as follows:

- a. The Trustee will file the Jewelry Appraisal as "confidential" under seal no later than 12:00 noon on the day prior to the scheduled Auction Sale of the property pursuant to Local Rule 6004-1(b)(2).
- b. MYC will post the required notice and information of the Auction Sale on their website pursuant to Local Rule 6004-1(c)(1);
- c. MYC will announce the terms of the sale at the Auction Sale pursuant to Local Rule 6004-1(c)(2). The Auction Sale and Property will also be listed and advertised on the Auctioneer's website at: <http://www.mycorp.com/>.
- d. MYC will publish the Auction and Sale Notice for one (1) day in the national edition of *The New York Times*, before the hearing on this Motion, in order to provide adequate notice of the Auction and Sale pursuant to Local Rule 6004-1(h).

The 14-Day Stay Under Bankruptcy Rule 6004(h) Should Be Waived

42. The Trustee respectfully requests that the Court, upon entry of the Sale Order, waive the 14-day stay requirements of Bankruptcy Rule 6004(h). Said Bankruptcy Rule states

that “An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, **unless the court orders otherwise**” [emphasis added].

NOTICE

43. Notice of this Motion will be served upon: (a) the Debtor; (b) the United States Trustee; (c) the Stalking Horse Bidder and its counsel; (d) parties that have filed requests for service in this case; (e) all creditors; and (f) anyone who has contacted the Trustee's counsel and/or MYC that has expressed an interest in the Property. Due to the nature of the relief requested herein, the Trustee respectfully submits that no further notice of this motion is necessary.

NO PRIOR REQUEST

44. No prior request for the relief sought herein has been made to this Court or any other Court, except as otherwise stated herein.

WHEREFORE, the Trustee respectfully requests that this Court: (i) approve the Stalking Horse Agreement; (ii) enter the Bidding Procedures Order, in substantially the form attached hereto as **Exhibit C**; (iii) authorize the Virtual Auction; (iv) enter the Sale Order; (v) and grant such other and further relief to the Trustee as the Court may deem proper.

Dated: New York, New York
July 1, 2021

AKERMAN LLP

By: /s/Ann Marie Sinisi
Ann Marie Sinisi
John P. Campo
1251 Avenue of the Americas, 37th Floor
New York, NY 10020
Tel: (212) 880-3800
E-mail: john.campo@akerman.com
E-mail: annmarie.sinisi@akerman.com

Special Counsel to the Trustee

EXHIBIT “A”

INVENTORY OF THE PROPERTY

- (I) BULLGARI SERPENTI WATCH
- (II) 18K YELLOW GOLD DIAMOND PAIR OF EARRINGS,
TOTAL CARAT WEIGHT: 8.07 CTS.
- (III) A PAIR OF 14K WHITE GOLD EARRINGS,
TOTAL DIAMOND WEIGHT: 2:00 CTS
- (IV) AN 18K WHITE GOLD DIAMOND CUFF BANGLE,
ESTIMATED DIAMOND WEIGHT: 7.25 CTS

EXHIBIT "B"

STALKING HORSE AGREEMENT

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) is made and entered into this 4th day of May, 2021 by and between Roopang Shukla (“Purchaser”), and John S. Pereira, in his capacity as Chapter 7 Trustee (the “Trustee”) of the bankruptcy estate of Michael Rodger Brown (the “Debtor”).

RECITALS

A. On March 5, 2018, the Debtor filed a voluntary petition for relief under chapter 7 of the United States Bankruptcy Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the Bankruptcy Court”) under case number 18-10617 (JLG). Thereafter, on or about March 5, 2018, the Trustee was appointed as the Chapter 7 Trustee for the Debtor’s estate.

B. The Trustee desires to sell, and Purchaser desires to purchase, the Jewelry items (collectively the “Property”) as identified on the attached **Exhibit “A,”** free and clear of all liens, claims and encumbrances, security interests and other interests (collectively, the “Liens”), subject to higher and better offers, pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and intending to be legally bound, the parties agree as follows:

1. **PROPERTY BEING SOLD:** Upon the terms and subject to the conditions set forth in this Agreement, the Trustee shall sell, assign, transfer, convey and deliver to Purchaser, and Purchaser shall purchase, acquire and accept from the Trustee on behalf of the Debtor, all of Trustee’s right, title and interest in and to all of the Property.

2. **PURCHASE PRICE:**

(a) **Purchase Price.** The consideration to be paid by the Purchaser to the Trustee for the Property under this Agreement is Fifty Nine Thousand U.S. Dollars (\$59,000) in cash or other immediately available funds (the “Purchase Price”), without offset or reduction as follows:

(b) **The Deposit.** The parties hereby acknowledge that, upon execution and delivery of this Agreement, the Purchaser will deliver to the Trustee, by certified check or wire transfer of Purchaser a twenty-five percent (25%) deposit in the amount of Fourteen Thousand Seven Hundred and Fifty U.S. Dollars (\$14,750) (the “Deposit”), payable to the order of John S. Pereira, as Trustee to be held in Escrow (the “Escrow”).

(c) **The Remaining Balance:** The Purchaser shall deliver to the Trustee, the balance of Forty-Four Thousand Two Hundred and Fifty U.S. Dollars (\$44,250) within three (3) business days after the entry of the order by the Bankruptcy Court approving the Agreement and the sale pursuant to Section 363 of the Bankruptcy Code (the “Approval Order”), by unendorsed certified check or wire transfer of Purchaser or official bank check drawn on a bank which is a

member of the N.Y. Clearing House Association or otherwise satisfactory to the Trustee, to be held in Escrow.

3. **AS IS, WHERE IS:** The Property is being sold "**AS IS, WHERE IS, AND WITH ALL FAULTS**" with respect to all facts, circumstances, conditions and defects and specifically and Expressly without any warranties, representations or guarantees, either expressed or implied, of any kind, nature, or type whatsoever from or on behalf of Seller, and without recourse of any kind against Seller.

4. **HIGHER AND BETTER OFFERS:** The sale to Purchaser is subject to his offer being the highest and best offer received by the Trustee. The Trustee will conduct, through MYC & Associates, Inc., a virtual auction sale on a date to be determined, with interested parties registering with a deposit of twenty-five percent (25%) of their offer.

5. **SUBJECT TO BANKRUPTCY COURT ORDER:** Closing of this transaction is subject to the entry of an Order by the United States Bankruptcy Court for the Southern District of New York in the Debtor's bankruptcy case approving this Agreement for Seller's sale of the Property to Purchaser (the "Sale Order").

6. **CLOSING:** Closing of the sale of the Property (the "Closing") shall take place within seven (7) Business days of the date of entry of the Sale Order. Seller shall deliver the Property to the Purchaser at that time.

7. **MISCELLANEOUS.**

(a) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof.

(b) **Governing Law.** This Agreement shall be construed and enforced in accordance with, and shall be governed by, the laws of the State of New York without regard to the conflicts of law provisions thereof.

(c) **Severability.** In the event that any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, so long as the remaining provisions do not fundamentally alter the relations between the parties.

(d) **Expenses.** Each of the parties shall bear its own expenses (including, without limitation, fees and disbursements of counsel, accountants and experts) incurred by it in connection with the preparation, negotiation, execution, delivery and performance of this Agreement and the Other Transaction Documents.

(e) **Notices.** All notices, requests and other communications to either party shall be in writing and shall be given by certified mail, return receipt requested, or by recognized

overnight courier service, to a party at the following address, or to such other address as such party may have specified by notice given to the other party pursuant to this provision:

If to the Trustee, to:

John S. Pereira, Trustee
Pereira & Sinisi, LLP
35-35 221st Street
Bayside, New York 11361
Tel: (212) 758-5777

With a copy to Trustee's counsel:

John P. Campo, Esq.
Akerman LLP
1251 Avenue of the Americas, 37th Floor
New York, NY 10020
Email: john.campo@akerman.com

If to Purchaser, to:

Roopang Shukla
43-23 Calder Street, Unit 21K
Flushing, New York 11355
Email:

Notice given as provided above shall be deemed duly given (i) three (3) days after sending, if sent by registered or certified mail, (ii) one (1) business day after sending, if sent by overnight express mail or by Federal Express, or (iii) on the date of delivery, if delivered by personal delivery, as the case may be. Notices may be given by and to attorneys for the respective parties.

(f) Binding Effect; Beneficiaries; Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties and their successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any person not a party to this Agreement. No party may transfer any of its rights or obligations under this Agreement without the express, written consent of the other party, and any such attempted transfer in violation of this Section shall be null and void.

(g) Amendments. This Agreement may be amended, supplemented or modified only pursuant to a written instrument making specific reference to this Agreement signed by both of the parties hereto. Any provision of this Agreement may be waived only pursuant to a written instrument making specific reference to this Agreement signed by the party or parties entitled to waive the applicable provision.

(h) Waiver. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise

thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(i) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(j) Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the parties may require.

(k) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York and applicable provisions of the Bankruptcy Code.

(l) No Presumption. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting or causing any instrument to be drafted.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Dated: Queens, New York
May 4, 2021

Dated: Flushing, New York
May 3, 2021

By: /s/John S. Pereira, Trustee
John S. Pereira as Chapter 7 Trustee
for estate of Michael Rodger Brown,
Seller

By: /s/Roopang Shukla
Roopang Shukla
Purchaser

EXHIBIT "C"

BIDDING PROCEDURES ORDER

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

MICHAEL RODGER BROWN,

Chapter 7

Case No. 18-10617 (JLG)

DEBTOR

-----X

**ORDER APPROVING (I) STALKING HORSE AGREEMENT AND
(II) ESTABLISHING BID PROCEDURES AND GRANTING RELATED RELIEF**

This matter coming before the Court on the *Trustee's Amended Motion for an Order (i) Approving the Trustee's Entry Into Stalking Horse Agreement; (ii) an Order Establishing Bid Procedures and Granting Related Relief and (ii) an Order Approving the Sale of the Property* (the "Motion")¹; the Court having reviewed the Motion [**Doc. No. ____**]; no objections to the Motion having been filed; and the Court having considered the statements of counsel at a hearing held before the Court on July 15, 2021 (the "Hearing"); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (iv) notice of the Motion and the Hearing was sufficient under the circumstances; the Court having determined that the relief requested in the Motion is in the best interests of the Trustee, the Debtor's estate and its creditors; and good and sufficient cause having been shown;

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N) and (O). The statutory predicates for the relief sought herein are sections 105, 363 and 365 of the

¹ Capitalized terms not otherwise defined in this Order shall have the meanings given to them in the Motion.

Bankruptcy Code and Bankruptcy Rules 2002 and 6004. Venue of this case and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The Trustee has offered good and sufficient reasons for, and the best interests of the Debtor's estate will be served by, this Court granting the Motion to the extent provided in this Order, including approval of (i) the Bidding Procedures, attached hereto as Exhibit 1, (ii) the form and manner of notice of the Auction and Sale Hearing described in the Motion and this Order.

C. Good and sufficient notice of the relief sought in the Motion has been given under the circumstances, and no further notice is required. A reasonable opportunity to object or to be heard regarding the relief requested in the Motion was afforded to all interested persons and entities.

D. The issuance and immediate effectiveness of this Order as of the date hereof, including approval of the Bidding Procedures, is supported by evidence of compelling business justifications and other circumstances demonstrating that the relief granted by this Order is necessary to avoid immediate and irreparable harm to Debtor's estate.

E. The proposed notice of the Auction, the Sale Hearing and the Bidding Procedures as set forth in the Motion and this Order, is appropriate and sufficient, and is reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale Hearing and the Bidding Procedures, and no other or further notice shall be required for the Sale.

F. The Stalking Horse Agreement was negotiated in good faith and at arm's-length.

G. The Bidding Procedures are reasonably designed to maximize the value to be received for the Property.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Bidding Procedures, as attached as **Exhibit 1**, are hereby approved, are incorporated herein by reference, and shall govern all bids and bid proceedings relating to the Property. The Trustee is authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.
3. The deadline for submitting a Qualified Bid shall be **July 27, 2021 at 5:00 p.m. prevailing Eastern Time** (the "Bid Deadline"), provided that the Trustee may extend the Bid Deadline without further order of the Court.
4. All bidders submitting a Qualified Bid are deemed to have submitted to the exclusive jurisdiction of this Court with respect to all matters related to the Auction and the terms and conditions of the transfer of the Property.
5. If at least one (1) Qualified Bid in respect of the Property is received by the Bid Deadline, the Trustee shall conduct the Auction. The Auction will take place virtually via Zoom by MYC & Associates at **11:00 a.m. (prevailing Eastern Time) on July 29, 2021**, provided that the Trustee may adjourn the Auction without further order of the Court, subject to providing notice to all interested parties.
6. Each Qualified Bidder participating at the Auction will be required to confirm in writing, that (a) it has not engaged in any collusion with respect to the bidding process, and (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder.

7. Pursuant to Local Rule 6004-1(f) and (g), on or before **July 30, 2021 at 4:00 p.m. (prevailing Eastern Time)**, the Trustee must file the auctioneer's Report of Sale with the Court and transmit a copy to the United States Trustee.

8. On **August 10, 2021 at 10:00 a.m. (prevailing Eastern Time)** or as soon thereafter as counsel and interested parties may be heard, the Court will hold a hearing to consider approval of the Sale to the Successful Bidder(s) and the entry of the Sale Order. The Trustee may adjourn the Sale Hearing from time to time without further order of the Court, subject to providing notice to interested parties.

9. The publication of the notice to the public of the Auction of the Property for one (1) day in the national edition of *The New York Times* is hereby approved.

10. Objections to approval of the Sale must be in writing, state the basis of such objection with specificity and be filed with this Court and served so as to be received on or before **August 3, 2021 at 4:00 p.m.** (prevailing Eastern Time) with a copy to be served upon: (i) Akerman LLP, Counsel for the Chapter 7 Trustee, 1251 Avenue of the Americas, 37th Flr., New York, New York (Attention: John. Campo); (ii) Office of the United States Trustee, 201 Varick Street, Ste. 1006, New York, New York 10014; (iii) two hard copies upon Honorable James L. Garrity, Jr., One Bowling Green, New York, New York 10004. Failure to timely file an objection in accordance with this Order shall forever bar the assertion of any objection to the Motion, entry of the Sale Order or consummation of the Sale, and shall be deemed to constitute consent to entry of the Sale Order and consummation of the Sale and all transactions related thereto including, without limitation, for purposes of section 363(f) of the Bankruptcy Code.

11. The Trustee is hereby authorized to select Roopang Shukla as the Stalking Horse Bidder and authorized to enter into and perform under the Stalking Horse Agreement, subject to the solicitation of higher and better offers for the Property and entry of the Sale Order.

12. The Stalking Horse Agreement is hereby authorized and approved in the form attached to the Motion as Exhibit B as the stalking horse bid for the Property and is authorized under 363(k) of the Bankruptcy Code.

13. The Stalking Horse Bidder shall be deemed a Qualified Bidder, and the Stalking Horse Bid shall be deemed a Qualified Bid, for all purposes under the Bidding Procedures Order and Bidding Procedures.

14. The Stalking Horse Agreement shall be binding and enforceable on the parties thereto in accordance with its terms subject to entry of the Sale Order.

15. Not later than one (1) day following the Auction, the Trustee shall file: (i) a notice identifying the Successful Bidder with the Court, and serve such notice upon: (a) the United States Trustee; (b) all parties that have filed requests for service in this case; and (c) all creditors and interested parties; and (ii) the auctioneer's Report of Sale and transmit a copy upon the United States Trustee in accordance with Local Rule 6004-1(f) and (g).

16. The form of the Auction and Hearing Notice is hereby approved and appropriate and sufficient for all purposes and no other or further notice shall be required if the Trustee serves such notice in the manner provided in the Motion and this Order. Within one (1) business day of the entry of this Order or as soon thereafter as practicable, the Trustee shall cause the Auction and Hearing Notice to be served by e-mail or first-class mail, postage prepaid to all entities set forth in the Notice Provision of the Motion.

17. The requirements set forth in Local Rules 6004-1 and 9013-1 are hereby satisfied or waived.

18. Notwithstanding any applicability of Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon entry of this Order. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

19. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

Dated: New York, New York
July __, 2021

PROPOSED

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

BIDDING PROCEDURES

By the *Trustee's Amended Motion for an Order (i) Approving the Trustee's Entry Into Stalking Horse Agreement; (ii) Establishing Bid Procedures and Granting Related Relief and (ii) an Order Approving the Sale of the Property* [Doc. No. ___] (the "Motion"), the Trustee sought, *inter alia*, approval of the process and procedures for soliciting bids for and obtaining approval of the sale of substantially all or any portion of the Property¹ (a "Sale Transaction").

On July ___, 2021, the United States Bankruptcy Court for the Southern District of New York (the "Court") entered an order (the "Bidding Procedures Order") that, *inter alia*, authorizes the Trustee (a) enter into an asset purchase agreement (the "Stalking Horse Agreement") with Roopang Shukla (the "Stalking Horse Bidder") pursuant to which the Stalking Horse Bidder has committed to purchase, free and clear of all liens, claims and encumbrances (except, as otherwise provided in the Stalking Horse Agreement) for \$59,000, subject to higher and or better offers for which the Trustee, through MYC & Associates, Inc. ("MYC"), shall solicit bids for the Property through the procedures described below (the "Bidding Procedures") and (b) to seek approval of one or more Successful Bids at a hearing (the "Sale Hearing") before the Honorable James L. Garrity, Jr. scheduled for **August 10, 2021 at 10:00 a.m. (prevailing Eastern Time)**.

A. Bid Deadline

1. John S. Pereira, as chapter 7 Trustee (the "Trustee") of Michael Rodger Brown (the "Debtor"), seeks to solicit bids for the sale of the Property, free and clear of all liens, claims and encumbrances.

2. If the Trustee receives one or more Bids (as defined below) for the Property, an auction (the "Auction") shall be conducted as set forth below. In order to bid at the Auction, a bidder (each, a "Bidder", and collectively, the "Bidders") must submit a written bid in the form of the Required Bid Documents (as defined below) for the Property no later than **July 27, 2021 at 5:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline"). All due diligence requests and the submission of any original Required Bid Documents (as further set forth in paragraphs 8-11] hereof) by a Bidder must be submitted to the Trustee's retained broker, MYC & Associates, Inc., 1110 South Avenue, Suite 61, Staten Island, New York 10314 (Attention: Marc P. Yaverbaum), Tel: (347) 273-1258, Fax: (347) 273-1358, Email: my@myccorp.com, with copies to Trustee's counsel, Akerman LLP, 1251 Avenue of the Americas, 37th Floor, New York, 10020 (Attention: Ann Marie Sinisi, Esq), Tel: (212) 880-3800, Email: annmarie.sinisi@akerman.com.

3. Each Bidder shall be deemed to acknowledge: (a) that it had an opportunity to review all documents made available to such Bidder with respect to the Property prior to making its offer and that each such Bidder relied solely on that review and upon its own investigation of the Property in making its offer and (b) that Bidder is not relying upon any

¹ Capitalized terms not otherwise defined in herein shall have the meanings given to them in the Motion.

written or oral statements, representations, or warranties of the Trustee, his attorneys, agents, or representatives.

4. By accepting documents and data from the Trustee and/or his professionals, the recipient acknowledges and agrees that: the information provided by the Trustee and/or his professionals has been prepared to assist interested parties in making their own evaluation of the Property and does not purport to be all-inclusive or to contain all of the information that a prospective buyer may desire. In all cases, interested parties should conduct their own investigation and analysis of the Property, and scrutinize the information. The Trustee and his professionals have assumed no responsibility for independent verification of any of the information contained herein and have not in any way audited such information. The Trustee and his professionals and any or all respective affiliates and representatives are not making nor will they make and expressly disclaim making any written or oral statements, representations, warranties, promises or guarantees, whether express, implied or by operation of law or otherwise, with respect to the Property and with respect to the accuracy, reliability or completeness of the information, except as expressly stated in any documents filed with the Court and stating as such. The Trustee and his professionals expressly disclaim any and all liability based on or relating or pertaining to any written or oral statements, financial information, projections, representations, warranties, promises or guarantees, whether express, implied or by operation of law or otherwise. Additionally, in the sole discretion of the Trustee, a prospective bidder and/or purchaser may be required to enter a nondisclosure agreement in form and substance acceptable to the Trustee.

B. Reservation of Rights

5. The Trustee, reserves all rights to reject any and all bids for the Property which he does not deem to be a Qualified Bid (as defined below).

6. The Trustee, shall have the right to modify these Bid Procedures and/or adopt such other rules for the bidding process which will better promote the goals of the bidding process, and which are not inconsistent with any of the other provisions hereof, the Bankruptcy Code, the Rules, the Local Rules or of any Court order.

C. Required Bid Documents

7. All bids must be submitted to the Trustee's retained broker (with copies to the Trustee's counsel) by the Bid Deadline and include the following documents ("the Required Bid Documents"):

- a. A written offer, on Bidder's corporate letterhead, or, if on behalf of Bidder by Bidder's legal counsel, then on Bidder's legal counsel's letterhead, for the purchase of the Property for cash only, for the sum of not less than \$60,000. The written offer must attest to the Bidder's financial ability to consummate the sale. Such written offer for the Property must also expressly state that the Bidder's offer is irrevocable until the earlier to occur of: (a) the Closing (as defined

herein); or (b) ninety (90) days following the entry of an Approval Order approving the sale of the Property to the Successful Bidder;

- b. Wired funds, pursuant to wire instructions which the Trustee or MYC will provide upon request, certified or bank check made payable to "John S. Pereira, as chapter 7 Trustee for the estate of Michael Rodger Brown" for the Good Faith Deposit (as defined herein); and
- c. an executed Asset Purchase Agreement (the "APA"), a copy of which may be obtained from MYC or counsel for the Trustee. In the event there are any proposed changes to the APA a redline of the APA shall be submitted.

8. Each bidder shall tender a deposit in the amount of twenty-five percent (25%) of such bid, and the next bid shall not be less than \$60,000. Therefore for the avoidance of doubt, each Bidder must tender a deposit of not less than \$15,000 (the "Good Faith Deposit"). The Good Faith Deposit shall be by wired funds, pursuant to wire instructions which the Trustee or MYC will provide upon request, certified or bank check made payable to "John S. Pereira, as chapter 7 Trustee for the estate of Michael Rodger Brown" to be held in escrow by the Trustee.

9. All bids for the Property shall remain open and irrevocable until the earlier to occur of: (a) the Closing (as defined herein); or (b) ninety (90) days following the entry of an Approval Order approving the sale of the Property to the Successful Bidder.

D. Qualified Bids

10. Unless such requirement is waived by the Trustee and subject to the terms of these Bidding Procedures, only Bidders that have submitted qualified bids ("Qualified Bids") shall be eligible to participate in the Auction. In order to be a Qualified Bid, a bid shall:

- a. include each of the Required Bid Documents;
- b. be a bona fide, good faith offer to purchase the Property for a Purchase Price of not less than \$60,000.
- c. not be contingent on any subsequent event, including, but not limited to, conducting due diligence or obtaining financing; and
- d. attest to the Bidder's financial ability to consummate the sale, and pay the balance of the Purchase Price in full at Closing with immediate available funds consisting of cash, wire transfer, certified check or bank check.

11. The Trustee will identify, in his business judgment, **on or before 4:00 p.m. (prevailing Eastern Time) on July 28, 2021**, those Bidders whose bids have been deemed Qualified Bids and may participate in the Auction (each such party, a “Qualified Bidder”).

E. The Auction

12. If the Trustee does not receive any Qualified Bids, the Trustee will not hold the Auction.

13. If the Trustee determines that he has received a timely Qualified Bid, the Auction will be held virtually via Zoom by MYC & Associates, the Trustee's broker, on **July 29, 2021, at 11:00 a.m. (prevailing Eastern Time)**. The Trustee reserves the right to change the date, time and location of the Auction upon notice to all interested parties. Only Qualified Bids will be considered at the Auction. THE SALE SHALL BE SUBJECT TO APPROVAL OF THE BANKRUPTCY COURT.

14. The terms and procedures governing the Auction are as follows:

- a. On or before the commencement of the Auction, the Trustee shall select, in his business judgment, the transaction he intends to use to commence the Auction (the “Pre-Auction Successful Bid”), provided such Proposal is in an amount at least equal to the amount of the First Topping Bid (i.e., \$60,000), with each additional bid to increase by one thousand dollars (\$1,000).
- b. The Trustee’s professionals shall direct and preside over the Auction.
- c. Each Qualified Bid shall remain enforceable until the conclusion of the Auction. In the event a Qualified Bidder does not attend the Auction as required, such Qualified Bidder’s Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the selection of the Successful Bidder and the Backup Successful Bidder (as such terms are defined below) at the conclusion of the Auction.
- d. All Qualified Bidders wishing to participate in the Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the Auction. All proceedings at the Auction will be recorded.
- e. The Trustee or his professionals may announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the bid increments or the amount of time allotted to make Subsequent Bids (as defined below)) for conducting the Auction, provided that such rules are (i) not inconsistent with these Bidding Procedures, the Bankruptcy Code, or any order of the Bankruptcy Court, and (ii) disclosed to each Qualified Bidder at the Auction.

- f. Bidding at the Auction will begin with the Pre-Auction Successful Bid (provided the Trustee has selected a Pre-Auction Successful Bid). In the event no Pre-Auction Successful Bid has been selected, then the Auction shall commence with the highest or otherwise best Qualified Proposal. The bidding at the Auction shall continue, in one or more rounds of bidding, so long as during each round at least one subsequent bid (a "Subsequent Bid") is submitted by a Qualified Bidder that the Trustee determines is a higher or otherwise better bid by the minimum bid increment set by the Trustee for each such round than the best bid of the previous round.
- g. The Trustee or his professionals shall announce the Subsequent Bid at the Auction in order to (i) confirm that each Subsequent Bid meets the minimum bid increment set by the Trustee for the round in which such Subsequent Bid was submitted, and (ii) to provide a floor for further Subsequent Bids.

15. At the close of the Auction, the Trustee, in the exercise of his business judgment acting through his professionals, shall identify which Qualified Bidder has the highest or otherwise best bid (the "Successful Bid," and such bidder, the "Successful Bidder"), which will be determined by considering, among other things: (i) the number, type and nature of any proposed changes to the APA requested by each Qualified Bidder, it being understood that certain changes may be viewed as improving the value of the bid or reducing the value of the bid, (ii) the extent to which any requested changes to the APA are likely to delay the Closing, and the likely cost to the Debtor's estate of any such modifications or delay, and (iii) each Qualified Bidder's ability to timely close.

16. Upon the close of the Auction, the Trustee shall announce the Successful Bidder, and such Successful Bidder shall promptly thereafter submit fully an executed revised APA memorializing the terms of the Successful Bid. By (i) no later than **July 30, 2021 at 12:00 noon**, the Successful Bidder shall submit a fully executed revised APA memorializing the terms of the Successful Bid, and (ii) by no later than **July 30, 2021 at 4:00 p.m.**, the Successful Bidder shall submit additional wired funds, pursuant to wire instructions which the Trustee or MYC will provide upon request, certified or bank check made payable to "John S. Pereira, as chapter 7 Trustee for the estate of Michael Rodger Brown" to the Trustee so that the Trustee is holding an amount equal to twenty-five percent (25%) of the Successful Bid, including any prior Good Faith Deposit, as the deposit to be held in escrow pending Closing. Objections with respect to the Auction and the Successful Bidder shall be heard at the Sale Hearing.

17. The Trustee shall further announce the Qualified Bidder who submitted the second highest Qualified Bid at the Auction (the "Backup Successful Bidder"), and their Qualified Proposal shall remain a binding offer, supported by the Good Faith Deposit of the Backup Successful Bidder until such time as the Successful Bidder closes with respect to the Successful Bid. For the avoidance of doubt, the Successful Bidder and the Backup Successful

Bidder (as the case may be) shall be required to close on the Sale of the Property and in accordance with the APA.

F. "As Is, Where Is"

18. Any Sale Transaction will be on an "as is, where is" basis and without representations or warranties of any kind by the Trustee, its agents or the Debtor's estate, except and solely to the extent expressly set forth in the APA approved by the Court. Each Qualified Bidder will be required to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property that are the subject of the Auction prior to making its bid, that it has relied solely on its own independent review and investigation in making its bid and that it did not rely on the completeness of any information provided in connection with the Auction or its bid. Except as otherwise provided in the APA approved by the Court, all of the Trustee's right, title and interest in the Property will be sold free and clear of all liens, claims (as such term is defined in section 101(5) of the Bankruptcy Code), interests and encumbrances (collectively, "Liens"), with any Liens to attach to the proceeds of the Sale Transaction as provided in the final Sale Order.

G. Return of Good Faith Deposits

19. Any Good Faith Deposits submitted by Qualified Bidders will be held in escrow by the Trustee. Each Good Faith Deposit will be forfeited to the Debtor's estate if (i) the applicable Qualified Bidder attempts to modify, amend or withdraw its Qualified Bid, except for proposed amendments to increase the purchase price or otherwise improve the terms of the Qualified Bid, during the time the Qualified Bid remains binding and irrevocable under these Bidding Procedures, or (ii) the Qualified Bidder is selected as the Successful Bidder and fails to consummate the Sale according to these Bidding Procedures and the terms of the APA.

20. If the Qualified Bidder has breached or failed to satisfy its obligations or undertakings under the terms of the APA, the Trustee shall retain the Good Faith Deposit within two (2) business days after either: (i) the receipt by the Trustee's counsel of a written statement stating that the Qualified Bidder has breached or failed to satisfy its obligations or undertakings, or (ii) an order of the Court. If the Backup Successful Bidder fails to satisfy its obligations or undertakings under the terms of the APA: (a) the Trustee will retain the Good Faith Deposit of such bidder and (b) the Trustee will maintain the right to pursue all available remedies against such bidder.

21. The Trustee shall promptly return to any applicable Qualified Bidder that has not been selected as either the Successful Bidder or the Backup Successful Bidder, any Good Faith Deposit previously paid by such Qualified Bidder within three (3) business day after the close of the Auction. For the avoidance of doubt, the Trustee will continue to hold the Good Faith Deposit of the Backup Successful Bidder until such time as the Sale to the Successful Bidder is consummated, at which time such Good Faith Deposit shall be returned.

22. The Good Faith Deposit of the Successful Bidder shall be applied against the cash amount to be paid by the Successful Bidder upon the consummation of the Sale proposed in the Successful Bid.

H. Sale Approval

23. The Trustee will seek approval at the Sale Hearing of the Sale to the Successful Bidder or the Backup Successful Bidder (as the case may be) through an order of the Court approving the Sale (the “Approval Order”). The closing (the “Closing” or “Closing Date”) shall mean the settlement of the obligations of the parties (*i.e.* the Trustee, Successful Bidder, Backup Successful Bidder or Qualified Bidder) under the APA, the delivery of the Closing Documents provided for in the APA, and satisfaction of each of the conditions to Closing set forth in the APA (“Closing Conditions”). A Closing of the Sale will be set by the Trustee and scheduled to take place on Trustee giving notice of the Closing to Purchaser, which Closing Date shall be within seven (7) Business days of the date of entry of the Sale Order.

24. In the event the Successful Bidder fails to timely close, the Trustee shall proceed with Closing of the Sale with the Backup Successful Bidder. The Backup Successful Bidder shall be required to close the Sale within fourteen (14) Business days of the entry of the Approval Order. The Trustee shall give notice of the Closing to the Backup Successful Bidder immediately after the Successful Bidder fails to timely close, time being of essence.

25. No Property shall be deemed sold pursuant to the procedures described herein unless (a) the Bankruptcy Court has approved such sale at a hearing, and (b) such proposed transaction is in fact consummated.

I. Miscellaneous Terms of Sale

26. The Trustee, at or before the Auction, in his sole discretion, may impose or modify the terms and conditions herein as it determines to be in the best interests of the Debtor’s estate, creditors, and other parties in interest.

27. To the extent there is any inconsistency between and/or among the Bid Procedures, the Bid Procedures Order and the Motion, the terms and conditions set forth in these Bid Procedures shall control.

28. Any and all disputes related to the Bid Procedures, the Auction, and the sale of the Property, shall be adjudicated solely by the United States Bankruptcy Court for the Southern District of New York. The submission of a Bid by a Bidder shall constitute such Bidder’s express consent to the exclusive jurisdiction of the Bankruptcy Court for all matters related to the Sale.

EXHIBIT D

NOTICE OF AUCTION AND SALE HEARING

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 7

MICHAEL RODGER BROWN,

Case No. 18-10617 (JLG)

DEBTOR

-----X

**TRUSTEE'S NOTICE OF VIRTUAL
PUBLIC AUCTION AND SALE HEARING**

TO: CREDITORS AND PARTIES IN INTEREST

NOTICE IS HEREBY GIVEN that John S. Pereira, as chapter 7 Trustee (the "Trustee") for the estate of Michael Rodger Brown (the "Debtor"), pursuant to 11 U.S.C. § 363(b)(2), Fed. R. Bankr. P. 2002(a)(2), (c)(1), (i) and (k) and 6004, and Local Bankruptcy Rule 6004-1, will offer for sale all of his right, title and interest in the following tangible personal property which consists of: (i) a Bulgari Serpenti watch; (ii) 18k yellow gold diamond pair of earrings, total carat weight: 8.07 cts.; (iii) a pair of 14k white gold earrings, total diamond weight: 2:00 cts and (iv) 18k white gold diamond cuff bangle, estimated diamond weight: 7.25 cts. (collectively, the "Property"), to the highest and best bidder at a virtual public auction via Zoom to be held on **July 29, 2021 at 11:00 a.m. (prevailing Eastern Time)**, or at such other date and time as the Trustee shall determine.

PLEASE TAKE FURTHER NOTICE that the auction will be conducted by MYC & Associates, Inc. (the "Auctioneer"). Those interested in participating in the auction will have the option of participating remotely. The proposed sale procedures are more particularly described below and in the *TRUSTEE'S AMENDED MOTION FOR AN ORDER (I) APPROVING THE TRUSTEE'S ENTRY INTO STALKING HORSE AGREEMENT; (II) AUTHORIZING VIRTUAL PUBLIC AUCTION; (III) ESTABLISHING BIDDING PROCEDURES; AND (IV) APPROVING*

SALE OF TRUSTEE'S RIGHT, TITLE AND INTEREST IN CERTAIN OF THE DEBTOR'S TANGIBLE PERSONAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §§ 105(a) AND 363, FED. R. BANKR. P. 2002 AND 6004 AND LOCAL RULE 6004-1 (the "Motion").

PLEASE TAKE FURTHER NOTICE that the Property will be sold free and clear of all liens, claims, interests, or encumbrances, with such valid liens, claims and encumbrances, if any, attaching to the net proceeds of the sale to the same extent and in the same order of priority as such liens, claims and encumbrances attached to the Property. The Trustee is not aware of any liens, claims, interests, or encumbrances on any of the Property.

PLEASE TAKE FURTHER NOTICE that the Property shall be transferred on an "as is, where is" basis, without any representation or warranty of any kind by the Trustee. The Trustee reserves the right prior to the auction to enter into an agreement for the disposition of the Property and to sell such Property by private sale subject to Court approval. The Property or any portion thereof may be withdrawn from sale prior to or during the auction for any reason whatsoever. The Trustee reserves the right to reject, in his sole discretion, any and all bids for the Property. All bidding increments have been determined by the Auctioneer and the Trustee to be one thousand dollars.. Bidding increments may be modified by the Trustee during the auction. Each participating bidder ("Bidder") shall be deemed to acknowledge: (a) that it had an opportunity to inspect and examine the Property prior to making its offer and that each such Bidder relied solely on that review and upon its own investigation and inspection of the Property in making its offer; and (b) that the Bidder is not relying upon any written or oral statements, representations, or warranties of the Trustee, its agents or representatives or the Auctioneer, its agents or representatives.

PLEASE TAKE FURTHER NOTICE that any sale of the Property shall be final, upon acceptance of a bid by the Trustee in his business judgment, and subject to further Court approval. The Trustee, at or before the auction, may impose such other and additional terms and conditions as he determines to be in the best interests of the Trustee, the Debtor's estate, its creditors and other parties in interest.

PLEASE TAKE FURTHER NOTICE that any information regarding the Auction and the Property can be obtained by contacting the Auctioneer at 1110 South Avenue, Suite 22, Staten Island, New York 10314; Tel. No. (347) 273-1258; Fax No. (347) 273-1358; e-mail: info@myccorp.com.

PLEASE TAKE FURTHER NOTICE that a Sale Hearing to consider approval of the sale of the Property to the Successful Bidder(s) at the Auction, free and clear of all liens, claims and encumbrances, will be held telephonically before the Honorable James L. Garrity, Jr., United States Bankruptcy Judge, One Bowling Green, New York, New York 10004 on **August 10, 2021 at 10:00 a.m. (prevailing Eastern Time)**. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing of a notice of adjournment with the Court.

PLEASE TAKE FURTHER NOTICE that any objections to the Sale Hearing shall be in writing, filed and served as to be actually received by: (i) with two (2) hard copies to Honorable James L. Garrity, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004; (ii) counsel for the Trustee, Akerman LLP, 1251 Avenue of the Americas, 37th Floor, New York, New York 10020 (Attn: John P. Campo, Esq. and Ann Marie Sinisi, Esq.); (iii) the Office of the United

States Trustee for the Southern District of New York, 201 Varick Street, Ste. 1006, New York, New York 10014 no later than **August 3, 2021 at 4:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”).

PLEASE TAKE FURTHER NOTICE that this Notice of Auction and Sale Hearing is subject to the fuller terms and conditions of the Bidding Procedures and Sale Motion and the Bidding Procedures Order, with such Bidding Procedures Order controlling in the event of any conflict, and the Trustee encourages parties in interest to review such documents in their entirety. Copies of the Bidding Procedures and Sale Motion, the Bidding Procedures Order and this Notice are available on the Court's website or by contacting counsel for the Trustee.

**CONSEQUENCES OF FAILING TO TIMELY FILE AND SERVE A SALE OBJECTION
ANY PARTY OR ENTITY THAT FAILS TO TIMELY FILE AND SERVE A SALE
OBJECTION ON OR BEFORE THE SALE OBJECTION DEADLINE IN
ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER
BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH
RESPECT TO THE PROPERTY FREE AND CLEAR OF LIENS, CLAIMS,
ENCUMBRANCES AND OTHER INTERESTS AFFECTED THEREUNDER.**

Dated: New York, New York
July __, 2021

AKERMAN LLP

By: _____

John P. Campo
Ann Marie Sinisi
1251 Avenue of the Americas, 37th Floor
New York, NY 10020
Tel: (212) 880-3800
E-mail: john.campo@akerman.com
E-mail: annmarie.sinisi@akerman.com

Special Counsel to the Trustee