

## TERMS AND CONDITIONS OF A VIRTUAL PUBLIC AUCTION SALE

1. On March 20, 2024 (“Filing Date”), Giovanni Culotta (“Debtor”) filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code (“Bankruptcy Code”) was filed in the United States Bankruptcy Court for the Eastern District of New York (“Court”).
2. By Order of the Court dated July 22, 2024, the Debtor’s chapter 11 was converted to one under Chapter 7 of the Bankruptcy Code. Gregory Messer was appointed as the interim Chapter 7 Trustee (“Trustee”) of the Debtor’s estate, has since duly qualified and is the permanent Trustee administering the Debtor’s estate.
3. The Debtors’ estates own the real property known as and located at 820 Richmond Road, a/k/a 7 Baltic Avenue a/k/a 9 Baltic Avenue, Staten Island, New York 10304 [Block 3151, Lots 7 & 9] (“Property”).
4. Subject to Order entered by the Court on [·], the Trustee is authorized to sell the Property free and clear of all liens, claims, encumbrances and interests (collectively, “Liens”) at a public auction.
5. These Terms and Conditions of Sale (“Sale Terms”) are promulgated in connection with the Court authorized public auction sale (“363 Sale”) of the Debtor’s Property.
6. Pursuant to an Order entered on October 4, 2024, the Court approved the retention of MYC & Associates, Inc. as the Trustee’s broker (“Broker”) to sell the Property.
7. The 363 Sale will be held on **Tuesday, May 20, 2025, at 11:00 a.m., prevailing Eastern time** (“Sale Date”). The deadline to register to participate in the 363 Sale is **Monday, May 19, 2025, by 5:00 p.m.** (“Registration Deadline”). **The bids will be submitted online and/or telephonic** and directions on how to register for the 363 Sale and submit an online and/or telephonic bid can be found on the Broker’s website at [\\_https://myccorp.com/properties/staten-island-multi-family](https://myccorp.com/properties/staten-island-multi-family).
8. In order to be permitted to submit a bid on the Property at the 363 Sale, each prospective bidder (each as “Bidder”, and all “Bidders”) must deliver to the Broker by the Registration Deadline: (i) an executed copy of these Sale Terms for the 363 Sale; and (ii) a wire or official cashier’s or bank check (as determined by the Trustee) made payable to “Gregory Messer, Chapter 7 Trustee” in the amount of \$125,000 (“Qualifying Deposit”), which shall serve as a partial good faith deposit against payment of the purchase price by such competing Bidder as the Trustee, in his sole discretion determines to have made the highest or best bid for the Property (“Successful Purchaser”). PHH Mortgage Corporation on behalf of Wells Fargo Bank N.A. and Cucamonga LLC are not required to submit a Qualifying Deposit.
9. The initial bid at the 363 Sale will be \$1,250,000 (“Initial Bid”) with bid increments of \$25,000 or an amount the Trustee and his retained professionals deems appropriate at the 363 Sale.
10. At, or prior to the 363 Sale, each Bidder with the submission of its bid, shall provide written evidence of its/their ability to close on the 363 Sale of the Property,
11. At the 363 Sale the Property shall be auctioned for sale with the bidding to remain open until there are no higher bids tendered for the Property.

12. At the conclusion of the bidding, the Trustee shall determine the Successful Purchaser and the Bidder making the second highest or best bid ("Second Highest Bidder") and announce such results at the 363 Sale.

13. The Successful Purchaser and the Second Highest Bidder of the Property, will, at the time and place of the conclusion of the 363 Sale, sign a memorandum(s) of sale ("Memorandum of Sale") in accordance with these Sale Terms.

**14. At the conclusion of the 363 Sale, the Broker or the Trustee will return the Qualifying Deposits to all Bidders, except for the Successful Purchaser and the Second Highest Bidder.**

15. Within 48 hours after conclusion of the 363 Sale, the Successful Purchaser shall deliver to the Trustee, by certified check or bank check made payable to "Gregory M. Messer, Chapter 7 Trustee" or by wire in immediately available federal funds, an amount equal to ten (10%) percent of the bid submitted at the 363 Sale by the Successful Purchaser, *minus* such Successful Purchaser's applicable Qualifying Deposit (together with the Qualifying Deposit, "Initial Deposit"), *plus* a five (5%) percent buyer's premium of the amount of the bid by the Successful Purchaser ("Buyer's Premium"). The Buyer's Premium shall be deemed to have been earned immediately upon the fall of the hammer and is due within 48 hours after the conclusion of the 363 Sale. Failure of the Successful Purchaser to tender both (i) the ten (10%) percent Initial Deposit of the highest or best bid at the 363 Sale and (ii) the Buyer's Premium within 48 hours after conclusion of the 363 Sale, shall result in an immediate: (a) default under these Sale Terms and the Memorandum of Sale; and (b) forfeiture of all earnest monies paid, including without limitation, any part of the Initial Deposit paid. The Trustee shall retain the Qualifying Deposit of the Second Highest Bidder until the Closing (as defined herein) with the Successful Purchaser.

16. The Successful Purchaser (and the Second Highest Bidder in the event of a Successful Purchaser's Default (as hereinafter defined) are solely responsible for paying the 5% Buyer's Premium by such Successful Purchaser, and Second Highest Bidder as applicable, at the 363 Sale). The amount highest or best bid by the Successful Purchaser at the 363 Sale, together with the Buyer's Premium is defined herein as the "Purchase Price".

17. The Successful Purchaser must pay the balance of the Purchase Price for the Property to the Trustee by wire in immediately available federal funds unless the Trustee in his sole discretion authorizes payment of the balance Purchase Price by bank or cashier's check. The Successful Purchaser must close title to the Property at a date that is no more than thirty (30) days after the date of the 363 Sale, \_\_\_\_\_, 2025 ("Closing Date"). The Trustee shall seek the entry of an Order confirming the 363 Sale from the Court. **TIME BEING OF THE ESSENCE as to the Successful Purchaser**, although such Closing Date may be extended by the Trustee, in his sole discretion.

18. To the extent that the Trustee grants any such extension, the Successful Purchaser shall provide to the Trustee, at least two (2) business days prior to the scheduled Closing Date, an additional, non-refundable deposit equal to ten (10%) percent of the Purchase Price ("Additional Deposit"). The Additional Deposit shall be made by wire in immediately available federal funds unless the Trustee in his sole discretion authorizes payment of the Additional Deposit by bank or cashier's check and, together with the Initial Deposit, shall be deemed the "Deposit". In addition, all closing adjustments shall be made as of the original Closing Date. Further, the Successful Purchaser shall also be responsible

for any and all real estate taxes, costs, fees and expenses incurred by the Debtor's estate after the original Closing Date through the date of the actual closing of the 363 Sale of the Property. The Successful Purchaser shall also be responsible for any additional interest, fees and other amounts due to the Lender and any other party asserting a lien against the Property from the original Closing Date through the actual closing of the 363 Sale of the Property. If the Successful Purchaser fails to close on or before the extended Closing Date, the Trustee shall retain the Deposit and the Successful Purchaser waives all rights to the Deposit.

19. If the Successful Purchaser fails to post the total required ten (10%) percent Initial Deposit and five (5%) percent Buyer's Premium within 48 hours following the 363 Sale or if the Successful Purchaser fails to Close on the 363 Sale of the Property as set forth and required herein, ("Successful Purchaser's Default"), the Trustee, in his sole and absolute discretion, may, within three (3) business days of any Successful Purchaser's Default, deem the Second Highest Bidder to hold all benefits and obligations under the Sale Terms and Memorandum of Sale, as the new Successful Purchaser ("New Successful Purchaser"). In the event that of the Successful Purchaser's Default, then within 48 hours after notification by the Trustee that the Second Highest Bidder is the New Successful Purchaser (except for the Lender) the New Successful Purchaser shall deliver to the Trustee, by wire in immediately available federal funds, unless the Trustee in his sole discretion authorizes payment by bank or cashier's check made payable to "Gregory M. Messer, Chapter 7 Trustee", an amount equal to ten (10%) percent of the bid submitted at the 363 Sale by the New Successful Purchaser minus such New Successful Purchaser's Qualifying Deposit (together with the New Successful Purchaser's Qualifying Deposit, "New Initial Deposit"), *plus* a five (5%) percent Buyer's Premium. The Buyer's Premium shall be deemed to have been earned immediately upon the fall of the hammer and is due within 48 hours after notification by the Trustee that the Second Highest Bidder is the New Successful Purchaser. Failure of the New Successful Purchaser to tender both (i) the ten (10%) percent New Initial Deposit and (ii) the Buyer's Premium within 48 hours after notification by the Trustee that the Second Highest Bidder is the New Successful Purchaser, shall result in an immediate: (a) default under the terms of these Sale Terms and the Memorandum of Sale; and (b) forfeiture of all earnest monies paid, including without limitation, any part of the New Initial Deposit and the Buyer's Premium paid. The Trustee may close on the 363 Sale of the Property without further order of the Court

20. Any New Successful Purchaser shall **not** receive credit for any monies or funds paid by the Successful Purchaser, including the Buyer's Premium if paid by the Successful Purchaser. The New Successful Purchaser must close title no later than thirty (30) days following receipt of written notice to the New Successful Purchaser of Successful Purchaser's Default ("New Successful Purchaser's Closing"), **TIME BEING OF THE ESSENCE as to the New Successful Purchaser**, although such Closing Date may be extended by the Trustee, as determined in his sole discretion. To the extent that the Trustee grants any such extension, the New Successful Purchaser shall provide to the Trustee at least two (2) business days prior to the scheduled Closing Date an additional, non-refundable deposit equal to ten (10%) percent of the Purchase Price ("New Additional Deposit"). The New Additional Deposit shall be made by wire in immediately available federal funds unless the Trustee in his sole discretion authorizes payment of the New Additional Deposit by bank or cashier's check made payable to "Gregory M. Messer, Chapter 7 Trustee" and, together with the New Initial Deposit, shall be deemed the "New Deposit". In addition, all adjustments shall be made to the original Closing Date. Further, the New Successful Purchaser shall also be responsible for any and all real estate taxes, costs, fees and expenses incurred by the Debtor's estate after the New Successful Purchaser's Closing through the date of the actual closing of the 363 Sale of the Property. The New Successful Purchaser shall also be responsible for any additional interest due any Lender or other party asserting a lien against the Property from the New Successful Purchaser's Closing through the actual closing of the 363 Sale of the Property.

21. The closing shall take place at the Law Office of Gregory M. Messer, 26 Court Street, Suite 2400, Brooklyn, NY 11242 on or before **June 20, 2025** (“Closing”) unless otherwise directed by the Trustee.

22. At or before the Closing, the Successful Purchaser, or the New Successful Purchaser, as the case may be, shall pay any and all costs and expenses in connection with the Closing related to obtaining a survey; fee title or mortgage insurance; title company endorsement, search and escrow charges; environmental, engineering or other inspections; appraisals, reports and other costs of due diligence; and County, State, City, or other real property transfer, deed or documentary tax, or other taxes imposed upon the 363 Sale due in connection with the transfer of the Property, including, but not limited to, any transfer tax imposed by New York State and/or the City of New York.

23. The Successful Purchaser and the New Successful Purchaser (as the case may be) acknowledges that they will be responsible for the completion of any ACRIS forms, if required. The Trustee shall not be required to execute any form of title affidavit (but may in its sole and absolute discretion) and all title exceptions customarily omitted from a title policy on account of such title affidavit shall be deemed permitted exceptions. The Successful Purchaser, or the New Successful Purchase (as the case may be) acknowledges that it will be responsible for the preparation of all Closing documents required including, but not limited to, transfer tax forms. In connection with the Closing and Closing Date, the Successful Purchaser or the New Successful Purchaser, as the case may be, is hereby given notice that **TIME IS OF THE ESSENCE against the Successful Purchaser or the New Successful Purchaser, as the case may be, and the failure of the Successful Purchaser or the New Successful Purchaser, as the case may be, to close for any reason whatsoever (except as otherwise provided herein) including its failure to pay the balance of the Purchase Price on the Closing Date, will result in an immediate forfeiture of the Deposit, or New Deposit, as the case may be, and Buyer’s Premium and the termination of such Successful Purchaser’s or such New Successful Purchaser’s, as the case may be, right to acquire each Property under these Sale Terms and the Memorandum of Sale.**

24. The Successful Purchaser, or the New Successful Purchaser, as the case may be, shall be obligated to close title to the Property and, except as expressly set forth herein, there is no contingency of any kind or nature that will permit such Successful Purchaser, or such New Successful Purchaser (as the case may be) to cancel or avoid its obligation under these Sale Terms and the Memorandum of Sale other than the Trustee’s inability to deliver insurable title to the Property. Further, the Successful Purchaser or the New Successful Purchaser (as the case may be) shall have demonstrated, to the satisfaction of the Trustee evidence of its ability to conclude the transaction upon these Sale Terms and the Memorandum of Sale, without delay. **THE 363 SALE IS NOT SUBJECT TO ANY FINACING CONTINGENCY.**

25. The Trustee reserves the right to reject any Bidder who the Trustee believes is not financially capable of consummating the purchase of the Property. Expenses incurred by the Successful Purchaser, or any other Bidder, concerning any due diligence shall be the sole responsibility of such Successful Purchaser or Bidder and, under no circumstances shall the Broker, the Trustee, his other retained professionals, or the estate be responsible for, or pay, such expenses. The foregoing shall not be deemed to imply a contingency upon the results of any such due diligence.

26. The quality of title shall be that which any reputable title insurance company authorized to do business in the State of New York is willing to approve and insure. If the Successful Purchaser is unable to obtain title insurance than the Trustee, in his sole discretion, shall have the option to obtain title insurance on behalf of the Successful Purchaser at the expense of the Successful Purchaser to be paid at the Closing.

27. The Successful Purchaser shall order an examination of title of the Property ("Title Report") within five (5) days from the Sale Date from a reputable title insurance company or abstract company doing business in the New York area. The Successful Purchaser shall furnish a copy of the Title Report to the Trustee's counsel within four (4) days of the Successful Purchaser's receipt of the Title Report.

28. The Broker, the Trustee, his other retained professionals, or the estate have not made and do not make any representations or warranties as to the physical condition, expenses, operations, value of the land or buildings thereon, or any other matter or thing affecting or related to the Property or this 363 Sale, which might be pertinent to the purchase of the Property, including, without limitation, (i) the current or future real estate tax liability, assessment or valuation of the Property; (ii) the potential qualification of the Property for any and all benefits conferred by or available under federal, state or municipal laws, whether for subsidies, special real estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated; (iii) the compliance or non-compliance of the Property, in its current or any future state, with applicable present or future zoning ordinances or other land use law or regulation, or the ability to obtain a change in the zoning or use, or a variance in respect to the Property; (iv) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Property from any source, including, but not limited to, any state, city or federal government or institutional lender; (v) the current or future use of the Property; (vi) the current or future rents, other operating incomes or expenses; (vii) the presence or absence of any laws, ordinances, rules or regulations issued by any governmental authority, agency or board and any violations thereof; (viii) the compliance or non-compliance with environmental laws and the presence or absence of underground fuel storage tanks, any asbestos, any lead paint or other hazardous materials anywhere on the Property, or notes or notices of violations of law or municipal ordinances, orders or requirements noted or issued by any governmental department, agency or bureau having authority as to but not limited to lands, housing, buildings, fire, health, environment and labor conditions affecting the Property.

29. Each Bidder hereby expressly agrees and acknowledges that no such representations or warranties have been made, and that the Broker, the Trustee, his retained professionals or the estate, shall not be liable or bound in any manner by expressed or implied warranties, guarantees, promises, statements, representations or information pertaining to the Property, made or furnished by the Broker, the Trustee, his retained professionals or any real estate broker, agent, employee, servant or other person or professional representing or purporting to represent the Broker, the Trustee, his retained professionals or the estate unless such warranties, guaranties, promises, statements, representations or information are expressly and specifically set forth in writing within these Sale Terms and the Memorandum of Sale.

30. The Property is being sold "**AS IS**" "**WHERE IS**", "**WITH ALL FAULTS**", pursuant to Bankruptcy Code section 363 and without any representations, covenants, guarantees or warranties of any kind or nature, and free and clear of any monetary liens, claims, interests or encumbrances of whatever kind or nature, with any liens, if any, to attach to the proceeds of the 363 Sale in such order and priority as they existed immediately prior to the actual closing on the 363 Sale of the Property, and the 363 Sale of the Property is subject to, among other things (a) any state of facts that an accurate

survey may show; (b) any covenants, restrictions and easements of record; (c) any state of facts a physical inspection may show; (d) any building or zoning ordinances or other applicable municipal regulations and violations thereof; (e) any leases; and (f) environmental conditions; provided, however, **the Property shall be delivered free and clear of any and all monetary liens.** By delivering their respective Qualifying Deposits, all Bidders acknowledge that they have had the opportunity to review and inspect each Property, the state of title thereof and laws, rules and regulations applicable thereto, and will rely solely thereon and on their own independent investigations and inspections of such Property in making their bids. The Broker, the Trustee or his retained professionals or any of their collective representatives makes any representations or warranties with respect to the permissible uses of any of Property including, but not limited to, the zoning of such Property. All Bidders acknowledge that they have conducted their own due diligence in connection with such Property and do not rely on any information provided by Broker, the Trustee or his retained professionals. The Property will be sold subject to any and all violations requiring corrective action.

31. The Trustee shall convey title to the Property by delivery of a quitclaim or Trustee Deed.

32. Nothing contained in these Sale Terms is intended to supersede or alter any provisions of the Bankruptcy Code, any orders entered in the Debtors' bankruptcy cases or otherwise interfere with the jurisdiction of the Court. All the terms and conditions set forth in these Sale Terms are subject to modification as may be directed by the Trustee, in his sole discretion, or by the Court. The Trustee reserves the right to modify these Sale Terms at any time.

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

34. If the Trustee is unable to deliver the Property in accordance with these Sale Terms for any reason whatsoever, the Trustee's and the Broker's only obligation will be to refund the Deposit, or New Deposit, and Buyer's Premium (if paid to the Trustee), without interest, to the Successful Purchaser, or the New Successful Purchaser, as the case may be, and upon such refund, the Successful Purchaser or the New Successful Purchaser, as the case may be, will have no claim or recourse against the Broker, the Trustee, his retained professionals and/or the estate and shall have no further rights under these Sale Terms or Memorandum of Sale.

35. The 363 Sale of the Property is subject to the entry of an Order confirming the 363 Sale by the Court.

36. The Court retains jurisdiction over the 363 Sale and shall determine any disputes concerning the Sale of the Property. By participating in the 363 Sale, all Bidders, including the Successful Purchaser and the New Successful Purchaser, consent to the jurisdiction of the Court to determine such disputes under the Debtor's pending case.

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

By: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_