

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

146 ROSS LLC,

Debtor.

Chapter 7

Case No.: 22-40818 (NHL)

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TERMS AND CONDITIONS OF SALE

(a) These terms and conditions of sale (“Terms and Conditions of Sale”) are being promulgated in connection with the United States Bankruptcy Court, Eastern District of New York (“Bankruptcy Court”) authorized auction sale (“Sale”) of Debtor’s real property commonly known 146 Ross Street, Brooklyn, New York, identified Block 2187, Lot 17, in the County of Kings (“Property”). The seller of the Property is Debra Kramer, Chapter 7 Trustee (“Trustee” and/or “Seller”) for the estate of 146 Ross LLC, debtor (“Debtor”), a debtor in a Chapter 7 case currently pending in the Bankruptcy Court under the caption and case number set forth above; The Trustee’s retained real estate broker and auctioneer (“Auctioneer”) is MYC & Associates, Inc. (“MYC”), 1110 South Avenue, Suite 22, Staten Island, New York 10314; Telephone (347) 273-1258; Facsimile (347) 273-1358; email: sales@myccorp.com; and website: www.myccorp.com.

(b) The Sale will take place on October 27, 2022 at 2:30 p.m. virtually.

(c) Information regarding Trustee’s sale of the Real Property can be obtained by contacting the Trustee’s counsel or by contacting MYC or on the MYC website set forth in paragraph “A” above.

(d) Trustee, in her sole discretion and under her business judgment authority, has entered into a stalking horse contract with a potential buyer (“Stalking Horse Bidder”) that offers a purchase price that Trustee deems to be a reasonable and valid purchase offer (“Stalking Horse Offer”). The Trustee shall use the Stalking Horse Offer as the reserve sale price at the Sale, such that the Stalking Horse Offer will be the opening bid at the Sale.

(e) In order to be considered by the Court and admissible on the date of the Sale Hearing, any competing offer (“Competing Offer”) must satisfy the following terms and conditions: (i) a Competing Offer shall provide for a Purchase Price of at least \$20,000.00 more than the Purchase Price as provided for in this Agreement; (ii) the Competing Offer shall be substantially similar to the terms and conditions of this Agreement; (iii) a higher or better Competing Offeror must sign on the terms and conditions agreeing to be bound by the terms and conditions of this Agreement;

(iv) the Competing Offer shall have demonstrated, to the sole satisfaction of the Trustee and her counsel, evidence of its ability to conclude the transaction upon the terms and conditions of this Agreement, without delay; (v) the Competing Offer shall not be conditioned upon the outcome of unperformed due diligence by the Competing Offeror with respect to the Assets that are the subject of this Agreement; (vi) the Competing Offeror shall provide, at or before the Sale Hearing, a certified check made payable to Debra Kramer as Trustee, the sum of ten percent (10%) of the proposed purchase price as a down payment; and (vii) in the case of any subsequent competing offer ("Subsequent Competing Offer") received from any party, which may, include, without limitation, the Stalking Horse Bidder (after a prior competing bid has been received) which satisfies the conditions set forth above, such Subsequent Competing Offer shall provide for an aggregate consideration at least \$20,000.00 in excess of that provided by the prior better offer and shall otherwise comply with all conditions of the Agreement.

(f) In order to be permitted to bid on the Property, at least two (2) days prior to the commencement of the Sale, and as a condition to be able to bid at the Sale, each prospective bidder must: (i) register with MYC; (ii) deliver to MYC the original signed Terms and Conditions of Sale; and (iii) tender a bank check in the amount of \$212,000.00 ("Qualifying Deposit") made payable to "Debra Kramer, Chapter 7 Trustee", which amount shall serve as a good faith deposit against payment of the purchase price by such bidder in the event that such bidder is determined to have made the highest or best bid ("Successful Bidder").

(g) Within forty-eight (48) hours after conclusion of the Sale, the Successful Bidder of the Property, other than the Stalking Horse Bidder shall deliver to the Trustee a bank check which amount must be equal to ten (10%) percent of the successful bid, minus the Qualifying Deposit (together with the Qualifying Deposit, the "Deposit"). The Successful Bidder for the Property must execute, and thereby agree to be bound by: (i) these Terms and Conditions of Sale; and (ii) a Memorandum of Sale. At the conclusion of the Sale, the Trustee, or her representative, will return the Qualifying Deposits to all other bidders. The Trustee, however, shall retain the Qualifying Deposit of the second highest bidder ("Second Bidder"), which shall be returned upon the closing of the sale to the Successful Bidder.

(h) The Successful Bidder, or its assigns, must close title ("Closing") to the Property on a date ("Closing Date"), provided title is clear to close, on or about thirty (30) days following the date of entry of a Bankruptcy Court Order approving the Sale. The Closing Date may be extended solely by the Trustee, in her discretion. The Closing shall take place at a location that is to be determined by the Trustee.

(i) Entry of an order of the Bankruptcy Court confirming the sale is required prior to the Closing.

(j) The Successful Bidder, or its assigns, shall be responsible solely and shall pay any and all New York City, New York State, or other applicable real property transfer taxes incurred by the transfer of the Property by Debtor's estate at the Closing and the Buyer's Premium due to MYC

(which shall be paid to the Trustee at closing). The Successful Bidder, or its assigns, acknowledges that he, she, or it, will be responsible for the completion of any ACRIS forms, if required.

(k) In connection with the Closing and Closing Date, the Successful Bidder, or its assigns, is hereby given notice that **Time is of the Essence against the Successful Bidder, or its assigns, and the failure of the Successful Bidder, or its assigns, to close for any reason whatsoever (except as otherwise provided below) including his, her, or its, failure to pay the balance of the Purchase Price on the Closing Date, will result in the Seller retaining the Deposit as liquidating damages and the termination of the Successful Bidder, or its assigns, right to acquire the Property under these Terms and Conditions of Sale.** The Successful Bidder, or its assigns, shall be obligated to close title to the Property and there is no contingency of any kind or nature that will permit the Successful Bidder, or its assigns, to cancel or avoid his, her, or its, obligation under these Terms and Conditions of Sale other than the Trustee's inability to deliver insurable title to the Property. Further, the Successful Bidder, or its assigns, must demonstrate, to the satisfaction of the Trustee or the Bankruptcy Court, as the case may be, evidence of his, her, or its, ability to conclude the transaction upon these Terms and Conditions of Sale, without delay. The Trustee reserves the right to reject any bidder/offeror, who the Trustee, in her sole discretion, believes is not financially capable of consummating the purchase of the Property. **Expenses incurred by the Successful Bidder, or its assigns, or any competing bidder concerning the performance of any due diligence, such as obtaining title reports or environmental inspections, shall be the sole financial responsibility of such bidder and under no circumstances shall the Trustee, or the Debtor's estate, or the Trustee's professionals, be liable or responsible for, or pay, such expenses.**

(l) In the event that the Successful Bidder for the Property, or its assigns, fails to tender the balance of the Purchase Price on the Closing Date, or otherwise perform his, her, or its, obligations under these Terms and Conditions of Sale, the Trustee, at her sole option, shall immediately negotiate the Qualifying Deposit of the Second Bidder and shall be further authorized to sell the Property to the Second Bidder, or its assigns, without any further notice or approval of the Bankruptcy Court, without giving credit to the Second Bidder for the Deposit forfeited by the Successful Bidder, and upon such other terms and conditions as the Trustee deems appropriate. Should the Second Bidder, or its assigns, fail to close on the Property within twenty (20) days of receiving from the Trustee, notice, **TIME BEING OF THE ESSENCE**, (at the address set forth on the bidder registration form) that said Second Bidder is now deemed the Successful Bidder, then the **Sellers shall be: (a) authorized to keep the Qualifying Deposit of the Second Bidder as liquidated damages;** and (b) authorized but not obligated to sell the Property to the next highest bidder, without any further notice or approval of the Court.

(m) The Property is being sold and delivered free and clear of all Liens of whatever kind or nature, excepting any open building permits (which the Trustee has determined do not exist), to the extent the sale of the premises includes items of personal property, the transfer shall be "as is" and without warranty, express, statutory, or implied, as to discretion, title, condition, location, quality, fitness or any particular use or purpose or otherwise.

(n) The Property is being sold and delivered **“AS IS”, “WHERE IS”, “WITH ALL FAULTS”**, without any representations, covenants, guarantees or warranties of any kind or nature whatsoever, and free and clear of all Liens of whatever kind or nature, such Liens, if any, to attach to the proceeds of Sale in such order and priority as they existed immediately prior to the Sale Date, and 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) environmental conditions; and (f) subject to all deed restrictions. By delivering their respective Qualifying Deposits, all bidders acknowledge that they have had the opportunity to review and inspect the Property, the state of title thereof and laws, rules and regulations applicable thereto, and the form of the Trustee’s Deed that the Trustee will execute to convey the Property, and will rely solely thereon and on their own independent investigations and inspections of the Property in making their bids. All bidders acknowledge that they have conducted their own due diligence in connection with the Property, and are not relying on any information provided by the Trustee, MYC or the Trustee’s retained professionals.

(o) The Property shall be delivered subject to any and all existing tenancies and occupancies on the first, second, third and fourth floors.

(p) The Trustee, MYC and Trustee’s retained professionals have not made and do not make any representations or warranties with respect to the permissible uses of the Property, the physical condition, rents, leases, expenses, operations, value of the land or buildings thereon, number of building lots, use or any other matter or thing affecting or related to the Property or the Sale, that might be pertinent to the purchase of the Property, including, without limitation: (a) the current or future real estate tax liability, assessment or valuation of the Property; (b) the potential qualification of the Property for any and all benefits conferred by or available under federal, state or municipal laws, whether for subsidies, special real estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated; (c) the compliance or non-compliance of the Property, in its current or any future state, with applicable current or future zoning ordinances or other land use law or regulation, or the ability of the owner of the Property to obtain a change in the zoning or use, or a variance in respect to the Property; (d) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Property from any source, including, but not limited to, any state, city, local government or federal government or institutional lender; (e) the current or future use of the Property; (f) the present and future condition and operating state of any and all machinery or equipment in the Property and the present or future structural and physical condition of any building thereon or its suitability for rehabilitation or renovation; (g) the ownership or state of title of any personal property in the Property; (h) the presence or absence of any laws, ordinances, rules or regulations issued by any governmental authority, agency or board and any violations thereof; (i) any present or future issues concerning subdivision or non-subdivision of the Property; or (j) the compliance or non-compliance of the Property with environmental laws and the presence or absence of underground fuel storage tanks, any asbestos or other hazardous materials anywhere in the Property. Each bidder hereby expressly agrees and acknowledges that no such representations have been made, except for the

representation as to open permits. The Trustee and her retained professionals shall not be liable or bound in any manner by expressed or implied warranties, guaranties, promises, statements, representations or information pertaining to the Property, made or furnished by the Trustee or any real estate broker, agent, employee, servant or other person or professional representing or purporting to represent the Trustee unless such warranties, guaranties, promises, statements, representations or information are expressly and specifically set forth in a signed writing by the Trustee.

(q) The Trustee shall convey the Property by delivery of a Trustee's quitclaim deed. The quality of title shall be that which a reputable title insurance company doing business in the State of New York is willing to approve and insure. At the Trustee's option, she may arrange for the issuance of a title insurance policy by a reputable title company, if the Successful Bidder is unable to do so, at the sole cost and expense of the Successful Bidder. The Trustee shall provide all documents required by the Successful Bidder's title company for them to 'omit' any exceptions from the Successful Bidder's title policy.

(r) Nothing contained in these Terms and Conditions of Sale shall supersede or alter any provisions of Title 11, United States Code ("Bankruptcy Code") and/or of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") or otherwise interfere with the jurisdiction of the Bankruptcy Court. To the extent of any conflict between the Bankruptcy Code and/or the Bankruptcy Rules and these Terms and Conditions of Sale, the Bankruptcy Code and/or the Bankruptcy Rules shall govern. All of the terms and conditions set forth in these Terms and Conditions of Sale are subject to modification as may be directed by the Trustee, or by the Bankruptcy Court. The Trustee reserves the right to modify these Terms and Conditions of Sale at the Sale, or thereafter, to maintain consistency with the provisions of the Bankruptcy Code, Bankruptcy Rules, and/or orders of the Bankruptcy Court.

(s) Neither the Trustee, MYC, the Trustee's retained professionals, nor Debtor's estate, are liable or responsible for the payment of fees of any broker or agent that has not been retained by an order of the Bankruptcy Court.

(t) These Terms and Conditions of Sale will be read into the record, or specifically incorporated by reference at the Sale of the Property. By making a bid for the Property, all bidders shall be deemed to have acknowledged having read, and understand, these Terms and Conditions of Sale and have agreed to be bound by them.

(u) The Trustee shall be a party to the Sale of the Property exclusively in her capacity as trustee in bankruptcy and not as an individual. If the Trustee is unable to deliver title to the Property in accordance with these Terms and Conditions of Sale for any reason whatsoever, her only obligation will be to refund the Deposit to the Successful Bidder (or Second Bidder) and upon such refund the Successful Bidder (or Second Bidder) will have no recourse or claim against the Trustee, the Trustee's retained professionals, or Debtor's estate.

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

(w) The Sale of the Property is subject to confirmation by the Bankruptcy Court. The Trustee or the Trustee's proposed attorney shall notify the Successful Bidder whether the Sale is confirmed. Any disputes concerning the Sale shall be determined by the Bankruptcy Court. By participating in the Sale, all bidders consent to the jurisdiction of the Bankruptcy Court to determine such disputes arising in the Debtor's pending case.

(x) **By making a bid for the Property, all bidders shall be deemed to have acknowledged having read, and understand, these Terms and Conditions of Sale and have agreed to be bound by them.**

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

By: _____ Date: _____

Print Name: _____