

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

JACOB FETMAN,

Debtor.

Chapter 7

Case No. 15-43716 (NHL)

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TERMS AND CONDITIONS OF SALE

A. These terms and conditions of sale (the “**Terms and Conditions of Sale**”) are being promulgated with the Bankruptcy Court authorized auction sale (the “**Sale**”) of the Debtor’s real property commonly known as 4301 10th Avenue, Brooklyn, N.Y. 11219 (the “**Property**”). The seller of the Property is Robert J. Musso as the trustee in bankruptcy (the “**Trustee**”) of Jacob Fetman, the debtor in a chapter 7 case currently pending in the United States Bankruptcy Court, Eastern District of New York (the “**Court**”) under the caption and case number set forth above. The Trustee’s Auctioneer (the “**Auctioneer**”) is: MYC & Associates, Inc. (“**MYC**”), Victor M. Moneypenny, Auctioneer, 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 of the Property will take place on Thursday, September 7, 2017 at 11:00 a.m. in Room 3554 of the United States Bankruptcy Court, Eastern District of New York (the “**Court**”), 271 Cadman Plaza East, Brooklyn, New York or at such later date and time as shall be chosen by the Trustee.

C. Information regarding the Sale and the Property can be obtained by contacting the Auctioneer, at the address, telephone number and email address set forth in ¶ A, above.

D. In order to be permitted to bid on the Property, prior to the commencement of the Sale, and as a condition to be able to bid at the Sale, each prospective bidder must register with MYC, deliver to MYC the original signed Terms and Conditions of Sale and a bank check in the amount of fifty thousand dollars even (\$50,000.00) (the “**Qualifying Deposit**”) made payable to **Robert J. Musso, 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 (the “**Successful Bidder**”).

E. Within forty-eight (48) hours after conclusion of the Sale, the Successful Bidder of the Property 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 each of the Property must execute, and thereby agree to be bound by: (a) these Terms and Conditions of Sale; and (b) a Memorandum of Sale. At the conclusion of the Sale, the Trustee or his representative will return the Qualifying Deposits to all other bidders; however, the Trustee shall retain the Qualifying Deposit of the second highest bidder (the “**Second Bidder**”).

F. The Successful Bidder must close title (the “**Closing**”) to the Property at a date (the “**Closing Date**”) that is not more than thirty (30) calendar days after the Sale. **TIME BEING OF THE ESSENCE as to the purchaser**, although such date may be extended solely by the Trustee. The Closing shall take place at location that is to be determined by the Trustee.

G. The Court, prior to the Closing, may enter an Order confirming the Sale.

H. The Successful Bidder shall be responsible solely and shall pay any New York City, New York State or other applicable real property transfer taxes incurred by the transfer of the Property by the estate at the Closing. The Successful Bidder acknowledges that he, she or it will be responsible for the completion of any ACRIS forms, if required.

I. In connection with the Closing and Closing Date, the Successful Bidder is hereby given notice that **Time is of the Essence against the Successful Bidder and the failure of the Successful Bidder 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 Trustee retaining the Deposit as liquidating damages and the termination of the Successful Bidder’s right to acquire the Property under these Terms and Conditions of Sale.** The Successful Bidder 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 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 must demonstrate, to the satisfaction of the Trustee or the 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 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 any competing bidder concerning the performance of any due diligence, such as obtaining title reports or environmental inspections, shall be the sole responsibility of such bidder and under no circumstances shall the Trustee or the estate or the Trustee's professionals be liable or responsible for, or pay, such expenses.**

J. In the event that the Successful Bidder for the Property 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 his sole option, shall immediately negotiate the deposit of the Second Bidder and shall be further authorized to sell the Property to the Second Bidder without any further notice or approval of the Court, without giving credit for the Deposit forfeited by the Successful Bidder, and upon such other terms and conditions as the Trustee deems appropriate. Should the Second Bidder fail to close on the Property, within twenty (20) days of receiving from the Trustee, notice, TIME 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 Trustee shall be: (a) authorized to keep the 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.

K. 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 monetary liens, claims and encumbrances of whatever kind or nature, such liens, claims, interests and encumbrances, 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 any of the Trustee's retained professionals.

L. The Property will be delivered subject to any and all existing tenancies and occupancies.

M. The Trustee, MYC and the 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 their 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. The Trustee and his retained professionals are not 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 writing by the Trustee.

N. The Trustee shall convey the Property by delivery of a 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, he may arrange for the issuance of a title insurance policy by such a company, if the Successful Bidder is unable to do so, at the sole cost and expense of the Successful Bidder.

O. Nothing contained in these Terms and Conditions of Sale shall supersede or alter any provisions of title 11 of the United States Code (the "**Bankruptcy Code**") or of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") or otherwise interfere with the jurisdiction of the 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 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 and/or prior orders of the Court.

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

Q. 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 will be deemed to have acknowledged having read these Terms and Conditions of Sale and have agreed to be bound by them.

R. The Trustee shall be a party to the Sale of the Property exclusively in his 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, his 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, MYC or the Trustee's retained professionals.

S. The Trustee reserves his right to withdraw the Property from the Sale, either prior or subsequent to the auction, for any reason whatsoever, as he deems necessary or appropriate.

T. The Sale of the Property is subject to confirmation by the Court. The Trustee or the Trustee's attorney shall notify the Successful Bidder whether the Sale is confirmed. The resolution of any disputes arising from or concerning the Sale of the Property shall be determined by the Court. By participating in the Sale, all bidders consent to the jurisdiction of the Court to resolve such disputes arising in the Debtor's pending case.

U. By making a bid for the Property, all bidders will be deemed to have acknowledged having read 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.

Sign: _____ Date: _____

Print Name: _____

MEMORANDUM OF SALE

The undersigned has this 7th day of September 2017, agreed to purchase real property commonly known as and located at 4301 10th Avenue, Brooklyn, New York 11219 (the "**Property**") which is designated as Block 5602, Lot 9 in Kings County, vested in Robert J. Musso, trustee in bankruptcy of Jacob Fetman, for the sum of _____. The undersigned hereby promises and agrees to comply with the terms and conditions for the sale of the Property as set forth in the annexed Terms and Conditions of Sale.

Sign	Date
Name (Print)	Name of LLC or Corp. (if applicable)
Address	City
State	Zip
E-mail	Telephone (direct)

DEPOSIT VERIFICATION

Robert J. Musso as the trustee in bankruptcy of Jacob Fetman, received the following, non-refundable deposit (except as set forth in the Terms and Conditions of Sale), deposit for the purchase of the Property pursuant to the Terms and Conditions of Sale: _____.

SUCCESSFUL BID VERIFICATION

MYC & Associates, Inc., as the Court appointed real estate broker and/or auctioneer, hereby verifies that the successful bid for the Property was for the sum of _____.

MYC & Associates, Inc. (Sign)	Its
Print	Date

ATTORNEY CONTACT INFORMATION FOR PURCHASER

Name	Firm
Address	City
State	Zip
Telephone	E-mail