



ORDERED in the Southern District of Florida on August 17, 2018.

A handwritten signature in black ink that reads "Raymond B. Ray". The signature is written over a horizontal line.

Raymond B. Ray, Judge
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
Fort Lauderdale Division
www.flsb.uscourts.gov**

In re:

550 SEABREEZE DEVELOPMENT,
LLC,

Case No. 18-12193-RBR

Chapter 11

Debtor.
_____ /

ORDER (I) APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS AND (II) GRANTING RELATED RELIEF

THIS MATTER came before the Court on August 17, 2018 at 10:00 a.m. (the "Sale Hearing"), upon the Motion of 550 Seabreeze Development, LLC (the "Debtor") pursuant to 11 U.S.C. §§105, 363 and 365 and Fed. R. Bankr. P. 2002, 6004 and 9014 and Local Rules 2002-1(C)(2) and 6004-1 for the entry of an Order (1) approving competitive bidding and sale procedures for the sale of substantially all of Debtor's assets, (2) scheduling dates to conduct

auction and hearing to consider final approval of sale, including treatment of executory contracts, (3) approving the form and manner of notices, (4) approving the sale of substantially all of the Debtor's assets free and clear of all liens, claims, encumbrances and interests, including if applicable the assumption and assignment of any executory contracts, and (5) granting related relief (the "Motion") [ECF No. 72], and the Supplement to the Motion seeking the approval of the Stalking Horse APA (as defined in the Supplement) with the Stalking Horse Bidder, MHF Properties VI, LLC [ECF No. 100],¹ together with the Notice of Filing First Amendment to Asset Purchase Agreement [ECF No. 122] and the Notice of Filing Second Amendment to Asset Purchase Agreement [ECF No. 135] (collectively, the "Supplement") (collectively, the Motion and the Supplement are referred to herein as the "Sale Motion").²

This Court (i) having entered an Order, dated July 26, 2018 (the "Sale Procedures Order") [ECF No. 126], approving the Bid Procedures for the sale of substantially all of Debtor's assets to the highest and best bidder, authorizing the Debtor to take any and all action necessary or appropriate to implement the Bid Procedures, establishing a deadline for the submission of Qualified Bids, authorizing the Debtor to conduct an Auction if applicable, and approving, *inter alia*, the form and manner of notice of the Sale; (ii) having jurisdiction over the Sale Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(b)(2) and 1334; (iii) having authorized the Debtor in the Sale Procedures Order to sell the Property free and clear of all liens, claims, encumbrances and interests pursuant to 11 U.S.C. §§ 363 (f)(2), (4) and (5), including but not limited to those interest set forth on Exhibit "A" attached hereto, with all such liens, claims, encumbrances and interests to attach to the proceeds of such sale in and to the same

¹ MHF Properties VI, LLC has assigned its rights under the Stalking Horse APA to its affiliate, MHF Las Olas VI LLC, a Delaware limited liability company.

² All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion and all exhibits thereto.

extent, validity and priority as respectively existed in the Property as of the Petition Date, subject to the approval of the Successful Bid and the Back-Up Bid (as applicable) by the Court at the Sale Hearing, (iv) noting that the Debtor filed a Notice of Cancellation of Auction [ECF No. 132] pursuant to which the Debtor represented that it received only one Qualified Bid prior to the Bid Deadline pursuant to the Sale Procedures Order, (v) noting in the record at the Sale Hearing the appearance of all interested parties and any responses and any objections to the Sale Motion solely in respect of the determination of which Qualified Bid is the Successful Bid or any other aspect of the Auction as provided in the Sale Procedures Order; (vi) considering the record of the Sale Hearing and all other pleadings and proceedings in this Chapter 11 case; (vii) having accepted into evidence without objections the un rebutted proffers of the testimony of Kenneth Bernstein on behalf of the Debtor (the "Bernstein Proffer") and Alexandra Clegg on behalf of MHF Las Olas VI LLC, a Delaware limited liability company, as assignee of MHF Properties VI, LLC (the "Purchaser"); (viii) having considered the Sale Motion, the relief requested therein, and the responses thereto, if any, and determining that such matters are core proceedings in accordance with 28 U.S.C. § 157(b); and (ix) after due deliberation and sufficient cause appearing therefore, hereby

FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. Proper, timely, adequate and sufficient notice of the Sale Motion, the Sale Procedures Order, the Auction and the Sale Hearing has been provided in accordance with sections 102(1) and 363(b) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 9006, 9007, 9008 and 9014, the local rules of this Court and the Sale Procedures Order. No other or further notice of the Sale Motion, the Sale Procedures Order, the Auction, the Sale Hearing, or of the entry of this Order is necessary.

D. A reasonable opportunity to object or be heard regarding the relief requested in the Sale Motion has been afforded to all interested persons and entities, including, without limitation: (i) all entities who claim any interest in or lien upon the Property; (ii) all governmental taxing authorities who have, or as a result of the sale of the Property may have, claims, contingent or otherwise, against the Debtor; (iii) all parties who filed requests for notices under Bankruptcy Rule 9010(b) or were entitled to notice under Bankruptcy Rule 2002; (iv) all creditors of the Debtor; (v) all interested governmental and environmental entities and all utilities serving the Debtor; (vi) the Office of the United States Trustee; and (viii) all entities that heretofore expressed to the Debtor an interest in purchasing the Property. Any and all other parties interested in bidding on the Property were provided, upon request, sufficient information by the Debtor to make an informed judgment on whether to bid on the Property. The process employed by the Debtor and its professionals in connection with the marketing and sale of the Property was fair, adequate and reasonable in order to obtain the highest and best price possible for the Property.

E. Notice of the Sale Motion was duly and properly served on all required persons and entities in accordance with the Bid Procedures Order.

F. The Debtor has demonstrated a sufficient basis to sell the Property under section 363 of the Bankruptcy Code, and such actions are appropriate and reasonable exercises of the Debtor's business judgment and are in the best interests of the Debtor, the estate and its creditors.

G. Through the marketing and sale process employed by the Debtor, as more fully detailed in the Bernstein Proffer, the Debtor fully and fairly marketed the Property for sale and afforded all interested potential purchasers a full, fair and reasonable opportunity to make a higher and better offer to purchase the Property, including without limitation, by establishing a data room populated with substantial due diligence for potential purchasers to review, providing numerous tours of the Property to prospective purchasers and entertaining discussions and negotiations with several potential purchasers.

H. The purchase price of \$39,100,000 (the "Purchase Price") submitted by the Purchaser was the highest and best bid for the Property, and therefore the Purchaser was determined by the Debtor to be the Successful Bidder for the Property. The Court finds that such determination is fair and reasonable. The Purchase Price is fair, is in the best interest of the Debtor's estate and constitutes full and adequate consideration and reasonably equivalent value for the Property.

I. Without an expeditious sale of the Property free and clear of liens, claims, encumbrances and interests, there will be a substantial diminution in the value of the Debtor and its assets to the detriment of their creditors and other parties in interest.

J. The terms of the Asset Purchase Agreement (as assigned) executed by Purchaser, as attached to the Supplement as Exhibit "A," as amended by the First Amendment to Asset Purchase Agreement filed at ECF No. 122, and as amended by the Second Amendment to Asset

Purchase Agreement filed at ECF No. 135 (collectively, the "Purchase Agreement") are fair, reasonable and are approved.

K. The Purchaser is not an insider of the Debtor, as that term is defined in section 101(31) of the Bankruptcy Code and the decisions thereunder. The Purchaser is a purchaser in good faith, as that term is used in the Bankruptcy Code and the decisions appurtenant thereto, and is entitled to the protections of sections 363(m) and (n) of the Bankruptcy Code with respect to the Property and the purchase of the Property. Neither the Debtor nor the Purchaser has engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code or be cause for the application of section 363(n). Specifically, the Purchase Agreement has been negotiated by the Debtor and the Purchaser (and their respective affiliates, professionals and representatives) in good faith, at arm's length and without collusion or fraud. The terms and conditions of the Purchase Agreement are fair and reasonable, and the sale of the Property pursuant to its terms is in the best interest of the Debtor, the estate and its creditors. The Purchaser is deemed a "good faith purchaser" entitled to the full benefits and protections of section 363(m) of the Bankruptcy Code with respect to the sale of the Property. The Debtor and the Purchaser have not engaged in any conduct that would cause or permit the Purchase Agreement to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

L. The Debtor has full corporate power and authority to execute the Purchase Agreements and all other documents contemplated thereby. No consents or approvals, other than as expressly provided for in the Purchase Agreement, are required by the Debtor to consummate such transactions.

M. The Debtor has advanced sound business reasons for seeking to enter into the Purchase Agreement and to sell the Property, as more fully set forth in the Sale Motion and as demonstrated at the Sale Hearing, and it is a reasonable exercise of the Debtor's business judgment to sell the Property and to execute and deliver the Purchase Agreement to the Purchaser.

N. The terms and conditions of the Purchase Agreement are fair and reasonable and the transactions contemplated by the Purchase Agreement are in the best interests of the Debtor's creditors and bankruptcy estate.

O. A valid business purpose exists for approval of the transactions contemplated by the Sale Motion pursuant to section 363(b) of the Bankruptcy Code. The transfer of the Property is a legal, valid and effective transfer of the Property notwithstanding any requirement for approval or consent by any person.

P. Except as expressly set forth in the Purchase Agreement, the Purchaser is not assuming any of the debts, liabilities or obligations of the Debtor. The Debtor and Purchaser do not have any common controlling shareholders or senior management. The Purchase Agreement is being entered into in good faith and not to hinder, delay or defraud any creditors of the Debtor. Neither the Debtor nor its estate shall in any way be liable or responsible for any liabilities, commitments or obligations in any way related to the Property or arising from and after the Closing Date (as defined in the Purchase Agreement). The Purchaser is not a mere continuation of the Debtor or the Debtor's estate. There is no continuity of enterprise between the Debtor and the Purchaser. The Purchaser is not a successor to the Debtor or the Debtor's estate and the transactions contemplated in the Purchase Agreement do not amount to, or otherwise constitute a consolidation, merger or de facto merger of the Purchaser and the Debtor or the Debtor's estate.

Q. In the absence of a stay pending appeal, the Purchaser will be acting in good faith pursuant to section 363(m) of the Bankruptcy Code in closing the transactions contemplated by the Purchase Agreement immediately upon the entry of this Order.

R. Based on the above, the Debtor is not in default under any of its obligations in the Purchase Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The relief requested in the Sale Motion is granted.
2. The Court has jurisdiction to hear and adjudicate the Sale Motion and to grant the relief requested therein pursuant to 28 U.S.C. §§157 (b)(1) and 1334(b). Venue of this case in this district is proper under 28 U.S.C. §§ 1408 and 1409.
3. This proceeding is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (N) and (O).
4. The statutory predicates for the Sale Motion are sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.
5. The Purchase Agreement and the transactions contemplated thereby be, and hereby are, approved and the Debtor is hereby authorized, empowered and directed to enter into, and to perform its obligations under, the Purchase Agreement in accordance therewith or any amendment entered into in accordance with this Order and to execute and perform such agreements or documents and take such other actions as are necessary or desirable to effectuate the terms of the Purchase Agreement.
6. All objections, responses, and requests for continuance concerning the Sale Motion are resolved in accordance with the terms of this Order, the Sale Procedures Order and as set

forth in the record of the Sale Hearing. To the extent any such objections, responses or requests for continuance were not otherwise withdrawn, waived, or settled, they, and all reservations and rights contained therein, are overruled and denied.

7. The Debtor shall be, and hereby is, authorized, empowered and directed, pursuant to sections 105 and 363(b) of the Bankruptcy Code, to sell the Property to the Purchaser upon delivery by the Purchaser of the consideration in accordance with the Purchase Agreement and completing all other deliveries required under the Purchase Agreement. Except as otherwise set forth in the Purchase Agreement, pursuant to section 363(f)(2), (4) and (5) of the Bankruptcy Code, the sale of the Property to the Purchaser shall be free and clear of any and all liens, claims, encumbrances, lis pendens, rights of possession, contracts, covenants, options or other rights to acquire any interest in the Property, interests and other liabilities, whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non contingent, liquidated or unliquidated, matured or unmatured, disputed or undisputed, or known or unknown, whether arising prior to or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity or otherwise, including without limitation, any right of setoff, recoupment, netting or deduction, including but not limited to those items set forth on Exhibit "A" (collectively, the "Liens and Encumbrances"). All such Liens and Encumbrances on and in respect of the Property shall attach to the proceeds of the sale pending further order of this Court in and to the same extent, validity and priority as respectively existed in the Property as of the Petition Date. For avoidance of doubt, the Liens and Encumbrances shall not be deemed to include any recorded parking easements between the Debtor or any of its predecessors and Hall of Fame Associates, including that certain Agreement Re Grant of Easement dated December 2, 1988 recorded in Official Records Book 16011, Page

512 as amended by that First Amendment to Agreement Re Grant of Easement recorded in Official Records Book 16618, Page 284, a Modification of Attendant Off-Street Parking Agreement dated January 28, 1993, and recorded in Official Records Book 20563, Page 0469, and the Amended Parking Use Agreement, recorded in Official Records Book 40438, Page 842, all in the public records of Broward County, Florida (collectively, the "Parking Rights"), which Parking Rights shall not be impaired by the sale of the Property, provided however, that the Property is transferred to Purchaser free and clear of any monetary obligation of the Debtor or the Debtor's estate that became due under the Parking Rights or related agreement prior to the Closing.

8. Subject to and pending further order of this Court upon motion and a hearing, the Debtor shall not disburse the proceeds received from the sale of the Property, provided that the Debtor shall be authorized to pay any normal and customary closing costs that are the obligation of the Debtor under the Purchase Agreement from such proceeds. The rights of all creditors and parties in interest in and to the proceeds from the sale of the Property are hereby reserved and preserved pending further order of the Court.

9. This Order shall be binding upon and govern the acts of all persons or entities, including without limitation, all filing agents, recording agencies, secretaries of state and all other persons and entities who may be required by operation of law to accept, file, register or otherwise record or release any documents or instruments.

10. Subject to the delivery of the consideration in accordance with the Purchase Agreement and completing all other deliveries required under the Purchase Agreement, effective as of the Closing (as defined in the Purchase Agreement), the sale of the Property by the Debtor to the Purchaser shall constitute a legal, valid and effective transfer of the Property

notwithstanding any requirement for approval or consent by any person and shall vest Purchaser with all right, title and interest in and to the Property free and clear of all Liens and Encumbrances pursuant to section 363(f) (2), (4) and (5) of the Bankruptcy Code.

11. The sale of the Property to Purchaser under the Purchase Agreement will constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and all applicable law.

12. The Purchaser is a good faith purchaser of the Property, and is hereby granted and entitled to all of the protections provided to such a good faith purchaser under section 363 of the Bankruptcy Code, and shall be entitled to such protection even before this Order becomes final and non-appealable. Pursuant to section 363(m) of the Bankruptcy Code, if any or all of the provisions of this Order are hereafter reversed, modified, or vacated by a subsequent order of this Court or any other court, such reversal, modification, or vacatur shall not affect the validity and enforceability of the Sale or any sale, transfer or assignment under the Purchase Agreement or obligation or right granted pursuant to the terms of this Order (unless stayed pending appeal prior to the Closing), and notwithstanding any reversal, modification or vacatur, any sale, transfer or assignment shall be governed in all respects by the original provisions of this Order or the Purchase Agreement, as the case may be.

13. This Order and the Purchase Agreement shall be binding upon, and shall inure to the benefit of, the Debtor, the Purchaser, and their respective successors and assigns, including without limitation, any successor Chapter 7 or Chapter 11 trustee.

14. This Court shall retain jurisdiction to enforce the provisions of this Order and the Purchase Agreement and to resolve any dispute concerning this Order, the Purchase Agreement, or the rights and duties of the parties hereunder or thereunder or any issues relating to the

Purchase Agreement and this Order, including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Property and all issues and disputes arising in connection with the relief authorized herein.

15. The provisions of this Order are nonseverable and mutually dependent.

16. Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d), this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing; provided, however, the Purchaser shall have no obligation to proceed with the Closing until all conditions precedent to its obligations to do so have been met, satisfied or waived in accordance with the terms of the Purchase Agreement. The Purchaser will be acting in good faith in consummating the Sale at any time following entry of this Order, and cause has been shown as to why this Order should not be the stay provided by Bankruptcy Rules 6004(h) and 6006(d).

17. The sale approved by this Order is not subject to avoidance pursuant to Section 363(n) of the Bankruptcy Code.

18. Pursuant to sections 105 and 363 of the Bankruptcy Code, any and all creditors of the Debtor shall be forever barred, estopped and enjoined from taking any action of any kind against the Purchaser or the Property on account of any claim against the Debtor or the Property.

19. To the extent any provisions of this Order conflict with the terms and conditions of the Purchase Agreement, this Order shall govern and control.

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Submitted by:

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Copy to: Glenn D. Moses, Esq.

[Attorney Moses is directed to serve a conformed copy of this order on all interested parties]