

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.
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**ORDER: (i) APPROVING TRUSTEE'S SALE OF REAL PROPERTY
LOCATED AT 5036 ONE WORLD WAY, WAKE FOREST, NORTH CAROLINA
FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES,
AND OTHER INTERESTS; AND (ii) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")¹ of Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") of the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the "Debtor"), for entry of an order (this "Sale Order"), pursuant to sections 105, 363, and 503 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004, 9006, and 9007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving and authorizing the sale (the "Sale") of the Debtor's real property known as and located at 5036 One World Way, Wake Forest, North Carolina 27587 (the "Real Property") free and clear of liens, claims, encumbrances and other interests thereon (collectively, "Liens"), pursuant to the purchase and sale agreement (the "Purchase Agreement")² by and between the Trustee and Capital One World Property, LLC (the "Successful Bidder"), and this Court having reviewed the Motion and the Purchase Agreement and upon this Court's prior order, dated July 16, 2024, approving certain bidding procedures and bid protections (ECF Doc. No. 90) (the "Bidding Procedures Order"), and scheduling a hearing (the "Sale Hearing") on the Motion, and a Sale Hearing having been held on September 17, 2024

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

² A copy of the Purchase Agreement is annexed to the Trustee Declaration in Support of Sale (defined herein) as Exhibit A.



at 10:00 a.m.; and upon the Broker's Report in Support of Confirmation of Results of Public Sale (ECF Doc. No. 112) (the "Broker Declaration in Support of Sale"); and upon the Declaration of Kenneth P. Silverman, Esq. in Support of Confirmation of Trustee's Sale of the Debtors' Real Property (ECF Doc No. 111) (the "Trustee Declaration in Support of Sale" and, together with the Broker Declaration in Support of Sale, the "Declarations in Support of Sale"); and due and sufficient notice of the Sale Hearing and relief sought therein having been given under the particular circumstances and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors and other parties in interest; and upon the entire record of the hearing held on September 17, 2024 at 10:00 a.m., including the Court's oral ruling, all proffers and other evidence admitted at the Sale Hearing, and after due deliberation thereon and good cause appearing therefore, it is hereby:

IT IS HEREBY FOUND AND DETERMINED THAT:

A. This Court has jurisdiction over the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue of this case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. Due, sufficient and adequate notice of the Motion and the relief requested therein, the Sale Hearing, and the Sale, as set forth in the Bidding Procedures Order, and the related transactions collectively described in the Purchase Agreement, has been given in accordance with section 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 9006 and 9007 and in compliance with the Bidding Procedures Order. Such notice was good and sufficient in light of the

circumstances and the nature of the relief requested, and no other or further notice thereof is required.

C. The Court duly conducted the hearing on July 15, 2024 at 10:00 a.m. (the “Bidding Procedures Hearing”) and entered the Bidding Procedures Order on July 16, 2024.

D. A reasonable opportunity to object and be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities.

E. As demonstrated by (i) testimony and/or other evidence proffered or adduced at the Bidding Procedures Hearing and/or the Sale Hearing, including the Declarations in Support of Sale, and (ii) the representations of counsel made on the record at the Bidding Procedures Hearing and/or the Sale Hearing, the Trustee marketed the Property and conducted the sale process in compliance with the Bidding Procedures Order.

F. All creditors, parties-in-interest and other entities entitled to notice of the Motion and of the Notice of Sale have been afforded (i) notice of the Motion and the request for entry of this Sale Order; (ii) a reasonable opportunity to bid for the purchase of the Real Property, and (iii) a reasonable opportunity to object or be heard regarding the Motion and the relief requested therein and this Sale Order. Accordingly, due and sufficient notice of the Motion, the relief requested therein and this Sale Order has been given to all interested persons and entities and no further notice is required.

G. The Trustee has demonstrated (i) good, sufficient, and sound business purpose and justification for the Sale pursuant to §§ 363(b) and (f) of the Bankruptcy Code, and (ii) ~~and that~~ approval of the Purchase Agreement and consummation of the Sale are in the best interests of the Debtor's estate, its creditors, and other parties-in-interest. [DSJ 9/19/2024]

H. The Successful Bidder's bid for the purchase of the Real Property of Twelve Million Seven Hundred Thousand (\$12,700,000.00) and 00/100 Dollars, as set forth in the Purchase Agreement is (i) fair and reasonable and (ii) the highest or otherwise best offer received for the Real Property at an auction conducted on September 12, 2024 (the "Auction"). The bid submitted by LREP Acquisitions III LLC (the "Back-Up Bidder") in the amount of Twelve Million Six Hundred Thousand and 00/100 Dollars (\$12,600,000.00) (the "Back-Up Bid") was determined by the trustee to be the second highest offer received and its bid determined to be the back-up bid.

I. The Trustee conducted the Auction in compliance with the Bidding Procedures Order, with competing bids made by the Successful Bidder and the Back-Up Bidder until the Back-Up Bidder declined to continue bidding.

J. The Purchase Agreement was negotiated, proposed and entered into by the Trustee and the Successful Bidder without collusion, in good faith and from arm's-length bargaining positions. The Successful Bidder is not an "insider" of the Debtor, as that term is defined in section 101(31) of the Bankruptcy Code. Neither the Trustee nor the Successful Bidder has engaged in any conduct that would cause or permit the Sale or any part of the transactions contemplated by the Purchase Agreement to be avoidable under section 363(n) of the Bankruptcy Code. Specifically, the Successful Bidder has not acted in a collusive manner with any person and the purchase price was not controlled by any agreement with unrelated third parties.

K. Upon completion of the sale as contemplated by the transaction documents and this Sale Order, the Successful Bidder is a good faith purchaser for value and, as such, is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code. The Successful Bidder will be acting in good faith within the meaning of Section 363(m) of the Bankruptcy Code in connection

with the transactions contemplated by the Purchase Agreement at any time after the entry of this Sale Order.

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

1. The Motion is GRANTED, to the extent set forth herein.
2. All objections to entry of this Sale Order or to the relief provided herein and requested in the Motion that have not been withdrawn, waived, resolved, or settled are hereby denied and overruled in their entirety.
3. This Sale Order shall constitute findings of fact and conclusions of law.

Approval of Sale

4. The Sale, and all of the terms and conditions and transactions contemplated by the Purchase Agreement, are hereby authorized and approved pursuant to §§ 105(a) and 363 of the Bankruptcy Code.
5. Pursuant to § 363 of the Bankruptcy Code, the Trustee is authorized to consummate the Sale, pursuant to and in accordance with the terms and conditions of the Purchase Agreement, and the Trustee shall at all times act in accordance with the terms thereof and this Sale Order.
6. The Trustee is authorized to execute and deliver, and empowered to perform under, and consummate the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary to consummate the Sale and the transactions contemplated by the Purchase Agreement.

Transfer of the Real Property

7. The conditions of § 363(f) of the Bankruptcy Code have been satisfied in full. Therefore, the Trustee may sell the Real Property free and clear of any and all Liens against, in or concerning the Property.

8. Except as expressly provided in the Purchase Agreement, pursuant to §§ 105(a) and 363(f) of the Bankruptcy Code, upon the closing of the Sale (the "Closing"), the Real Property (and good and marketable title to the Real Property) and all of the rights, title and interests of the Trustee, the Debtor and the Debtor's estate therein shall be transferred to the Successful Bidder free and clear of any and all Liens whatsoever, with all such Liens to attach to the net cash proceeds of the Sale in the order of their priority, with the same validity, force and effect which they now have as against the Real Property, subject to any claims and defenses, setoffs or rights of recoupment that the Trustee or the Debtor's estate may possess with respect thereto, if any.

Additional Provisions

9. Successful Bidder is not a successor corporation or successor entity to the Debtor, the Debtor's estate, or the claims or liabilities of either.

10. The Successful Bidder is a good faith purchaser within the meaning of Section 363(m) of the Bankruptcy Code, and is therefore entitled to the protection of that provision. The consideration provided by the Successful Bidder is fair and reasonable, and the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

11. Except as otherwise provided in the Purchase Agreement, this Sale Order (a) shall be effective as a determination that, upon the Closing, all liens existing with respect to the Debtor and/or the Real Property prior to the Closing have been unconditionally released, discharged, and terminated as to the Successful Bidder and the Real Property, and that the conveyances described herein have been effected, and (b) shall be binding upon all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties

of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Real Property.

12. The Purchase Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of this Court, provided that any such modification, amendment or supplement is not material.

13. The failure specifically to include any particular provision of the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Purchase Agreement be authorized and approved in its entirety.

14. Each and every federal, state, and local governmental agency, recording office or department and all other parties, persons or entities is hereby directed to accept this Sale Order and any and all documents and instruments necessary and appropriate for recordation as conclusive evidence of the free and clear and unencumbered transfer of title to the Real Property conveyed to the Successful Bidder.

15. As set forth in the Bidding Procedures Order, if the Successful Bidder fails to consummate the purchase of the Real Property pursuant to the terms of this Order and the Purchase Agreement, the Trustee may deem the Back-Up Bidder to be the new Successful Bidder, and the Trustee is authorized, without further order of the Court, to consummate the sale of the Real Property to the Back-Up Bidder for the Back-Up Bid.

16. In accordance with the Bidding Procedures Order, the Trustee shall hold the deposit of the Back-Up Bidder until the earlier of (i) ninety (90) days following entry of this Order, and

(ii) closing of the sale of the Real Property. Upon the expiration of the foregoing, unless the Successful Bidder defaults under the terms of the Purchase Agreement or this Order, the Trustee shall promptly return the deposit of the Back-Up Bidder.

17. Upon closing of the sale of the Real Property to the Successful Bidder, the Trustee is authorized to pay the Break-Up Fee (as defined in, and approved by, the Bidding Procedures Order), in the amount of Three Hundred Fifty-Five Thousand Seven Hundred Seven and 40/100 (\$355,707.40) Dollars to the Stalking Horse Purchaser (as defined in the Bidding Procedures Order).

18. The provisions of this Sale Order are non-severable and mutually dependent. The failure specifically to include any particular provision of the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Purchase Agreement be authorized and approved in its entirety.

19. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7052, 9014 or otherwise, the terms and conditions of this Bidding Procedures Order shall be immediately effective and enforceable upon its entry.

20. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Sale Order and the Purchase Agreement.

Dated: New York, New York
September 19, 2024

s/ David S. Jones
HONORABLE DAVID S. JONES
UNITED STATES BANKRUPTCY JUDGE