UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
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In re:

SHELTERING ARMS CHILDREN AND FAMILY SERVICES, INC.

Debtor.
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Chapter 11

Case No. 24-41037 (JMM)

ORDER: (A) APPROVING THE DEBTOR'S PRIVATE SALE OF ITS REAL PROPERTY LOCATED AT 2749 UNIVERSITY AVENUE, BRONX, NEW YORK 10468, FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, AND (B) GRANTING RELATED RELIEF

Upon the motion (the "**Motion**")[1] [**ECF 176**], of Sheltering Arms Children and Family Services, Inc., ("**Sheltering Arms**" or the "**Debtor**"), as a debtor and debtor-in-possession in the above referenced chapter 11 case (the "**Chapter 11 Case**"), for entry of an order, pursuant to sections 105(a) and 363 of Title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), Local Rule 6004-1, and the Sale Guidelines: (a) approving the private sale (the "**Sale**") of the Debtor's real property located at 2749 University Avenue, Bronx, New York 10468 (the "**Property**"), free and clear of all liens, claims, encumbrances and other interests, all as provided in the Purchase Agreement by and among the Debtor and Rising Ground, Inc. (the "**Purchaser**"); and (b) grating related relief; all as described more fully in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and due and appropriate notice of the Motion having been provided under the circumstances of this case and as set forth in the Motion, and it appearing that no other or further notice of the

[1] Capitalized terms used herein, unless herein defined, shall be used with the meanings ascribed to such terms in the Motion.

Motion need be provided; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtor, its estate and all parties in interest; and upon the record of the hearing held by the Court on the Motion on December 18, 2024 (the "**Hearing**"); and just cause having been established at the Hearing; and all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor;

NOW, THEREFORE, 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. Consideration of the Motion and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Good and sufficient notice of the relief sought by the Motion has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief requested in the Motion has been afforded to interested persons and entities, including: (i) all parties requiring service pursuant to the *Amended Order Establishing Case Management Procedures* (the "**Case Management Order**"), entered on March 19, 2024 [**ECF 39**]; (ii) all parties who have an ownership interest in the Property or a Lien on the Property; and (iii) any parties previously having viewed the property or contacted the Broker regarding the Property (collectively, the "**Notice Parties**").

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

D. The sale of the Property pursuant to the Purchase Agreement is authorized pursuant to section 363(b)(1) of the Bankruptcy Code and Bankruptcy Rule 6004(f). A sale of the Property outside the ordinary course of business and the use of the sale proceeds by the Debtor represents the sound business judgment of the Debtor and its board of directors, and is appropriate in light of the facts and circumstances surrounding the Sale and this Chapter 11 Case.

E. The sale of the Property by means of a private sale is allowed pursuant to Bankruptcy Rule 6004(f)(1) and is appropriate in light of the facts and circumstances surrounding the Sale and this Chapter 11 Case.

F. The Debtor has full corporate power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and to consummate the transactions contemplated therewith, and no consents or approvals, other than those expressly provided for in the Purchase Agreement, are required for the Debtor to consummate the Sale.

G. Approval of the Purchase Agreement and the consummation of the Sale, including, without limitation, the effectuation of such by private sale, is in the best interests of the Debtor, its estate, creditors, and other parties in interest. The terms and conditions of the Purchase Agreement are fair and reasonable. The Purchaser's offers for the purchase of the Property, as set forth in the Purchase Agreement, is: (i) fair and reasonable, (ii) the highest or otherwise best offer for the Property in light of the charitable mission of the Debtor, (iii) will provide a greater recovery for the Debtor's creditors than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

H. The Purchase Agreement was negotiated, proposed and entered into by and among the Debtor and the Purchaser, and approved by their respective boards, without collusion, in good faith, from arm's-length bargaining positions, and was a proper exercise of the respective board's fiduciary obligations. The Purchaser is not an "insider" of the Debtor, as that term is defined in section 101(31) of the Bankruptcy Code. Neither the Debtor, nor the Purchaser, has engaged in any conduct that would cause or permit the Purchase Agreement to be avoided under section 363(n) of the Bankruptcy Code. Specifically, the Purchaser has not acted in a collusive manner with any person and the purchase price was not controlled by any agreement with unrelated third parties.

I. The Purchaser does not constitute a successor to either of the Debtor or its estate. The sale of the Property does not amount to a consolidation, merger, or *de facto* merger of the Purchaser and the Debtor or its estate. The Debtor has complied with section 363(f) of the Bankruptcy Code because one or more of the standards set forth in sections 363(f)(1)-(5) has been satisfied with regard to each such lien, claim, interest, or other encumbrance. Those non-Debtor parties with liens, claims, or other encumbrances in the Property who did not file a timely objection, or who withdrew such objections, are deemed to have consented to the sale of the Property free and clear of those non-Debtor parties' respective interests in the Property pursuant to section 363(f)(2) of the Bankruptcy Code. Except as provided in the Purchase Agreement, the transfer of the Property will be a legal, valid, and effective transfer of the Property, and will vest the Purchaser with all right, title, and interest of the Debtor in and to the Property, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, free and clear of all liens, claims, interests, obligations, rights, and encumbrances, with all such liens, claims or encumbrances to attach to the proceeds of the Sale in the order of their priority, with the same validity, force and effect which they now have as against the Property, subject to any claims and defenses, setoffs or rights of recoupment the Debtor may possess with respect thereto. Therefore, except as specifically provided in the Purchase Agreement, and consistent with section 363(f) of the Bankruptcy Code, the Purchaser shall have no liability for any claims arising out of or related to the Sale or transfer of the Property or arising from claims against the Debtor or its estate or any liabilities or obligations of the Debtor and/or its estate, under the laws of the United States, any state, territory, possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, in any theory of law or equity including, without limitation, any laws affecting antitrust, successor, transferee or vicarious liability. Except as specifically provided in the Purchase Agreement or herein, all persons and entities asserting or holding any claims against or interests in the Property (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), howsoever arising, shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such claims or interests against the Purchaser.

J. The Sale of the Property is in accordance with applicable non-bankruptcy law as required by section 363(d) of the Bankruptcy Code. Specifically, the Sale of the Property complies with sections 510 and 511 of New York Not-for-Profit Corporation Law.

K. Legal and Factual Bases. The legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

General Provisions

1. The findings of fact set forth above and conclusions of law stated herein shall constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

2. All objections, if any, to the Motion or the relief granted herein that have not been withdrawn, settled, or waived, and all reservations of rights included in such objections, are hereby overruled on the merits with prejudice.

3. The Sale, including, without limitation, the effectuation of such by private sale, and all of the terms and conditions contemplated by the Purchase Agreement, are hereby

authorized and approved pursuant to, *inter alia*, sections 105(a) and 363(b) of the Bankruptcy Code. The Purchaser is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code. The Sale complies with applicable non-bankruptcy law, including sections 510 and 511 of the New York Not-for-Profit Corporation Law. Pursuant to section 363(b) of the Bankruptcy Code, the Debtor is authorized and directed to consummate the Sale pursuant to and in accordance with the terms and conditions of the Purchase Agreement. The Debtor is authorized and directed to execute and deliver, and empowered to perform under, consummate, and implement the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and effectuate the provisions of this Order and the transactions approved hereby.

4. Except as otherwise provided in the Purchase Agreement, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, upon the Closing, the Property shall be transferred to the Purchaser free and clear of all liens, claims or encumbrances in the Property, with all such liens, claims or encumbrances to attach to the net proceeds of the Sale in the order of their priority, with the same validity, force and effect which they now have as against the Property, subject to any claims and defenses, setoffs or rights of recoupment the Debtor may possess with respect thereto. Except as specifically provided in the Purchase Agreement, all persons and entities (and their respective successors and assigns) including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade, and other creditors, asserting or holding any claims against or interests in the Debtor, the Property, or with respect to the transfer of the Property to the Purchaser (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), howsoever arising, hereby are forever barred, estopped, and permanently enjoined from asserting,

prosecuting, or otherwise pursuing such claims or interests against the Purchaser and/or its affiliates, designees, assignees, successors, properties, or assets. Except as otherwise provided in the Purchase Agreement, effective upon the Closing, the Purchaser shall have no liability for any Claims (as defined in section 101(5) of the Bankruptcy Code) against the Debtor or its estate.

Additional Provisions

5. Prior to, or upon the Closing of the Sale, the Debtor's creditors will execute such documents and take all other actions as may be reasonably necessary to release their interests, if any, in the Property as such interests, liens, claims and/or other encumbrances may have been recorded or may otherwise exist.

6. Except as otherwise provided in the Purchase Agreement, this Order: (a) shall be effective as a determination that, upon the Closing, all liens existing with respect to the Debtor and/or the Property prior to the Closing have been unconditionally released, discharged, and terminated solely as to the Purchaser and the 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 the Property.

7. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens,* or other documents or agreements evidencing interests with respect to the Debtor and/or the Property shall not have delivered to the Debtor, prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments

of satisfaction, releases of all interests which the person or entity has with respect to the Debtor, the Property: or otherwise, then: (a) the Debtor or the Purchaser is hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Property, and (b) the Purchaser and/or the Debtor is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all interests and liens in, solely against, and solely with respect to the Property. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, and local governmental agency, department, or office.

8. 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 does not: (a) materially change the terms of the Purchase Agreement, (b) modify the express terms of this Order, or (c) have a material adverse effect on the Debtor's estate, and the Debtor shall provide reasonable advance notice of any such modification to the Office of the United States Trustee.

9. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted with respect to the Debtor to the extent necessary, without further order of the Court to allow the Purchaser to: (a) give the Debtor any notice provided for in the Purchase Agreement, and (b) take any and all actions permitted by the Purchase Agreement and ancillary agreements in accordance with the terms and conditions thereof.

10. Pursuant to section 1146(a) of the Bankruptcy Code, the Sale shall be exempt from all New York State and New York City real estate transfer tax, including, but not limited to, New York City real property transfer tax.

11. 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 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 Property conveyed to the Purchaser.

12. The terms and provisions of the Purchase Agreement and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its estate, creditors, the Purchaser, and any of such parties' respective affiliates, designees, successors, and assigns, and shall be binding in all respects upon all of the Debtor's creditors, and all persons and entities receiving notice of the Motion, notwithstanding any subsequent appointment of any trustee(s), examiner(s), or receiver(s) under any Chapter of the Bankruptcy Code or any other law, and all such provisions and terms shall likewise be binding on such trustee(s), examiner(s), or receiver(s) and shall not be subject to rejection or avoidance by the Debtor, its estate, creditors, or any trustee(s), examiner(s), or receiver(s).

13. The provisions of this Order are non-severable and mutually dependent. The failure specifically to include any particular provision of the Purchase Agreement in this 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 their entirety.

14. As provided by Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon its entry, and the sale approved by this Order may close immediately upon entry of this Order, notwithstanding any otherwise applicable waiting periods.

15. This Court retains jurisdiction on all matters pertaining to the relief granted herein, including to interpret, implement, and enforce the terms and provisions of this Order and the Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects.

Dated: January 5, 2025
Brooklyn, New York

Jil Mazer-Marino
United States Bankruptcy Judge