

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re

SC HEALTHCARE HOLDING, LLC *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-10443 (THM)

Jointly Administered

Ref. Dkt. Nos. 264 & 341

**NOTICE OF FILING OF REVISED BIDDING PROCEDURES**

**PLEASE TAKE NOTICE** that, on May 1, 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion for Entry of (A) an Order (I) Scheduling a Hearing on the Approval of the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures and Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, (III) Authorizing the Debtors to Enter into the Stalking Horse Purchase Agreement, and (IV) Granting Related Relief; and (B) an Order (I) Approving the Asset Purchase Agreement, (II) Authorizing the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [Docket No. 264] (the “Bid Procedures Motion”)<sup>2</sup> with the United States Bankruptcy Court for the District of Delaware (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that, on May 21, 2024, the Court entered an order approving the Bid Procedures Motion [Docket No. 341] (the “Bid Procedures Order”). Attached as Exhibit 1 to the Bid Procedures Order were the bidding procedures (the “Bidding Procedures”).

**PLEASE TAKE FURTHER NOTICE** that the Debtors have made certain corrections to the Bidding Procedures to revise the Bid Deadline and the Auction such that it is consistent with the Bid Procedures Order. Such corrections are memorialized in the revised Bidding Procedures attached hereto as **Exhibit A** (the “Revised Bidding Procedures”). For the convenience of the Court and other interested parties, attached hereto as **Exhibit B** is a blackline comparing the

<sup>1</sup> The last four digits of SC Healthcare Holding, LLC’s tax identification number are 2584. The mailing address for SC Healthcare Holding, LLC is c/o Petersen Health Care Management, LLC 830 West Trailcreek Dr., Peoria, IL 61614. Due to the large number of debtors in these Chapter 11 Cases, whose cases are being jointly administered, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information is available on a website of the Debtors’ claims and noticing agent at <http://www.kccllc.net/Petersen>.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning given to such terms in the Bid Procedures Motion.



Revised Bidding Procedures against the Bidding Procedures. The Revised Bidding Procedures supersede the Bidding Procedures attached to the Bid Procedures Order in all respects.

**PLEASE TAKE FURTHER NOTICE** that the Debtors reserve all rights to further revise or modify the Revised Bidding Procedures in a manner consistent with the Bid Procedures Order.

*[Remainder of page intentionally left blank]*

Dated: May 21, 2024  
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

*/s/ Shella Borovinskaya*

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Debtors in Possession*

**EXHIBIT A**

**Revised Bidding Procedures**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

**In re**

**SC HEALTHCARE HOLDING, LLC *et al.*,**

**Debtors.<sup>1</sup>**

Chapter 11

Case No. 24-10443 (TMH)

Jointly Administered

**BIDDING PROCEDURES**

**Overview**

On March 20, 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”), filed voluntary petitions for relief (the “Chapter 11 Cases”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”). These Chapter 11 Cases have been consolidated for procedural purposes under the lead case: *In re SC Healthcare Holding, LLC*, Case No. 24-10443 (TMH).

On May 21, 2024, the Bankruptcy Court entered an order [Docket No. 341] (the “Bid Procedures Order”), which, among other things, authorized the Debtors to solicit bids and approved these procedures (the “Bidding Procedures”) for the consideration of the highest or otherwise best bids or any combination of Partial Bids (as defined below) comprising one Qualified Bid (as defined below) for all or substantially all of the Debtors’ assets (the “Assets”) on the terms and conditions set forth herein.<sup>2</sup>

The Debtors, in consultation with the Consultation Parties (as defined below), may designate one or more stalking horse bidders (the “Stalking Horse Bidders”) and enter into separate stalking horse agreements (the “Stalking Horse Purchase Agreements”) for the purchase of any of the Assets, or subsets thereof, with such bid protections to be determined by the Debtors, in consultation with the Consultation Parties, in accordance with the Bid Procedures Order, and subject to further Court approval.

For all purposes under these Bidding Procedures, any Stalking Horse Bidder approved as such pursuant to the Bid Procedures Order shall be considered a Qualified Bidder (as defined

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<sup>2</sup> Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Bid Procedures Order.

below), and any Stalking Horse Bid shall be considered a Qualified Bid. Subject to the other provisions of these Bidding Procedures, in the event that a Stalking Horse Bid is the only Qualified Bid received by the Debtors by the Bid Deadline (as defined below), such Stalking Horse Bidder shall be deemed a Successful Bidder (as defined below).

The Bidding Procedures describe, among other things: (i) the procedures for bidders to submit bids for the acquisition of the Assets, subject to an order of the Court approving such potential sale transactions; (ii) the manner in which bidders and bids become Qualified Bidders and Qualified Bids; (iii) the process for negotiating the bids received; (iv) the conduct of the Auction if the Debtors receive Qualified Bids; (v) the procedure for the ultimate selection of any Successful Bidder and any Back-Up Bidder (as defined below); and (vi) the process for approval of the Sale Transactions at the applicable Sale Hearing.

### **Reservation of Rights**

**Except as otherwise set forth herein, the Debtors reserve the right, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, and (except to the extent set forth herein) in consultation with the Consultation Parties, to: (i) modify these Bidding Procedures; (ii) waive terms and conditions set forth herein with respect to all Potential Bidders (as defined below); (iii) extend the deadlines set forth herein; (iv) announce at the Auction modified or additional procedures for conducting the Auction; or (v) alter the assumptions set forth herein; *provided, that*, the Debtors shall not be authorized to make material modifications to these Bidding Procedures without further order of the Court. The Debtors may, in consultation with the Consultation Parties, provide reasonable accommodations to any Potential Bidder(s) with respect to such terms, conditions, and deadlines of the bidding and Auction process to promote further bids on the Assets, in each case, to the extent not materially inconsistent with these Bidding Procedures and the Bid Procedures Order, as applicable. All parties reserve their rights to seek relief from the Court regarding the Auction, these Bidding Procedures, and any related items (including, if necessary, to seek an extension of the Bid Deadline).**

**In addition, the Debtors reserve their right, in consultation with the Consultation Parties, to cancel the Bidding Procedures and the Auction with respect to any of the Assets if the Debtors determine, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, and in consultation with the Consultation Parties, to proceed with a private sale of such Assets. If the Debtors receive a bid for a private sale of Assets and intend to cancel the Bidding Procedures and the Auction with respect to such Assets, the Debtors shall first notify and consult with the advisors to the Creditors' Committee (as defined below) and then notify and consult with the Debtors' prepetition secured lenders (the "Prepetition Secured Parties") and their respective counsel and JMB Capital Partners Lending, LLC (the "DIP Lender") and its counsel, Norton Rose Fulbright US LLP ("Norton Rose Fulbright").**

### **Fiduciary Out**

Nothing in these Bidding Procedures will require the board of directors, board of managers, or such similar governing body of any Debtor to take any action, or to refrain from taking any

action, with respect to these Bidding Procedures, to the extent such board of directors, board of managers, or such similar governing body reasonably determines in good faith, in consultation with outside counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law.

### **Summary of Important Dates**

<b>Key Event</b>	<b>Deadline</b>
Deadline to file the Notice of Assumption, Assignment, and Sale with the Court and serve on the Counterparties	<b>June 14, 2024</b>
Deadline by which Stalking Horse Bidders are Designated	<b>June 14, 2024</b>
Bid Deadline	<b>June 23, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)</b>
Auction (if necessary)	<b>June 25, 2024 at 10:00 a.m.(ET)/9:00 a.m. (CT)</b>
Deadline to File Notice of (a) Successful Bid(s) and Back-Up Bid(s) and (b) Identity of Successful Bidder(s) and Back-Up Bidder(s)	<b>July 2, 2024 at 12:00 p.m. (ET)/11:00 a.m. (CT)</b>
Deadline to File Contract Objections and Objections to the Sale Transactions, Including to Conduct at Auction and Matters Unique to Successful Bid(s) and Successful Bidder(s) (the “ <u>Contract and Sale Objection Deadline</u> ”)	<b>July 2, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)</b>
Sale Hearing	<b>July 10, 2024 at 10:00 a.m. (ET)</b>

### **Designation of Stalking Horse Bidders**

The Debtors shall promptly provide copies of any Stalking Horse Bids received by the Debtors to the Consultation Parties. The Debtors, in the exercise of their reasonable business judgment and in consultation with the Consultation Parties, may designate one or more Stalking Horse Bidders, for some or all of the Assets, or subsets thereof, and enter into purchase agreements with Stalking Horse Bidders, for the sale of such Assets, in each case, in accordance with the terms of the Bid Procedures Order and these Bidding Procedures, as applicable. The Debtors will designate Stalking Horse Bidders, if any, by June 14, 2024 (the “Stalking Horse Deadline”). If the Debtors, in consultation with the Consultation Parties, designate a Stalking Horse Bidder, the Debtors shall file with the Court and serve on the parties that received the Motion, (a) a notice setting forth the identity of the Stalking Horse Bidder and the material terms of such Stalking Horse Purchase Agreement, including the terms of the applicable Bid Protections, as required by

Local Rule 6004-1 (each, a “Notice of Additional Stalking Horse”), (b) a copy of the Stalking Horse Purchase Agreement, and (c) a motion (the “Stalking Horse Motion”) seeking authority to enter into the Stalking Horse Purchase Agreement and to offer applicable Bid Protections, with a motion to shorten notice, which shall be considered by the Court on not less than three (3) business days’ notice, subject to the Court’s availability; *provided, however, that* Bid Protections, if any, shall be subject to the liens and super-priority claims granted in favor of the DIP Lender under the interim order authorizing the Debtor to obtain postpetition financing and related relief [Docket No. 91] and the final order thereon [Docket No. 313] (the “Final DIP Order”) in an amount not to exceed the amount of the DIP Obligation (as defined in the Final DIP Order).

Bid Protections. The Debtors may offer each Stalking Horse Bidder a break-up fee and reimbursement of reasonable and documented expenses (the “Bid Protections”); *provided, that*, (i) any break-up fee shall not exceed three percent (3%) of the Purchase Price, and (ii) all Bid Protections must be negotiated by the Debtors, in consultation with the Consultation Parties, subject to notice and an opportunity for parties in interest to object solely with respect to Bid Protections offered by a Debtor; and (iii) such Bid Protections shall not be offered after the Stalking Horse Deadline. The amount and calculation of such Bid Protections shall be described in the notice designating any Stalking Horse Bidder; *provided further, that*, any Bid Protections shall not be inconsistent with the Bid Procedures Order or the Bidding Procedures. For the avoidance of doubt, to the extent the Debtors offer Bid Protections to a Stalking Horse Bidder, which shall be done no later than the Stalking Horse Deadline, the Debtors shall seek approval of the Bid Protections on not less than three (3) business days’ notice.

Objections to and Approval of Designation of Stalking Horse Bidder. Any objections (each, a “Stalking Horse Objection”) to the designation of a Stalking Horse Bidder must (a) be in writing; (b) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules; (c) state, with specificity, the legal and factual bases thereof; and (d) be filed with the Court within three (3) calendar days after service of the applicable Notice of Stalking Horse. For the avoidance of doubt, any objections to the Debtors’ entry into a Stalking Horse Purchase Agreement and to offer Bid Protections in connection therewith will be governed by the Stalking Horse Motion and will be resolved at a hearing scheduled to consider the Stalking Horse Motion.

If a timely Stalking Horse Objection is filed and served in accordance with the preceding paragraph, the proposed designation of a Stalking Horse Bidder will not be approved until either the Stalking Horse Objection is resolved by agreement of the objecting party and the Debtors or by order of the Court.

### **Due Diligence**

The Debtors have posted copies of all material documents related to the Assets to the Debtors’ confidential electronic data room (the “Data Room”). To access the Data Room, a party, other than the Consultation Parties or any Stalking Horse Bidder has been deemed to be a Qualified Bidder (as defined below), must submit to the Debtors’ advisors the following documents:

- (A) an executed confidentiality agreement in a form and substance that is satisfactory to the Debtors (unless such party is already a party to an existing customary confidentiality agreement with the Debtors that is acceptable to the Debtors for this



due diligence process, in which case such agreement shall govern);

- (B) documentation identifying the interested party, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- (C) sufficient information, as reasonably determined by the Debtors, to allow the Debtors to determine, in their reasonable business judgment whether the interested party (i) has the financial wherewithal to consummate the Sale Transactions, and (ii) intends to access the Data Room for a bona fide purpose consistent with these Bidding Procedures.

An interested party that meets the aforementioned requirements to the reasonable satisfaction of the Debtors shall be a “Potential Bidder” and such Bid (as defined below) shall be a “Potential Bid”. As soon as practicable, the Debtors will provide such Potential Bidder access to the Data Room; *provided, that*, such access may be terminated by the Debtors in their reasonable discretion and in consultation with the Consultation Parties at any time for any reason whatsoever, including that a Potential Bidder does not become a Qualified Bidder, these Bidding Procedures are terminated, the Potential Bidder breaches any obligations under its confidentiality agreement, or the Debtors become aware that information submitted by the Potential Bidder for requesting access to the Data Room is inaccurate or misleading. The Debtors shall provide prompt notice to counsel to the Consultation Parties if access to the Data Room is terminated for any Qualified Bidder as set forth herein. The Debtors may restrict or limit access of a Potential Bidder to the Data Room if the Debtors determine, based on their reasonable business judgment and in consultation with the Consultation Parties that certain information in the Data Room is sensitive, proprietary, or otherwise not appropriate for disclosure to such Potential Bidder.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtors or their advisors regarding the ability of such Potential Bidder to consummate the Sale Transactions.

Until the Bid Deadline, and except as otherwise provided herein, the Debtors will provide any Potential Bidder with reasonable access to the Data Room and any additional information requested by Potential Bidders (subject to any restrictions pursuant to applicable law or these Bidding Procedures) that the Debtors believe in their reasonable business judgment to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to the Debtors’ proposed investment banker, Walker & Dunlop Investment Sales, LLC (Attn: Mark Myers (mmyers@walkerdunlop.com)). In the event that any such additional information is in written form and provided to a Potential Bidder, the Debtors shall simultaneously provide such additional information to all other Potential Bidders by posting it in the Data Room. Unless prohibited by law or otherwise determined by the Debtors, in consultation with the Consultation Parties, the availability of additional due diligence to a Potential Bidder may be terminated, with prompt notice to the Consultation Parties’ counsel, if (i) the Potential Bidder does not become a Qualified Bidder, (ii) these Bidding Procedures are terminated, (iii) the Potential Bidder breaches any obligations under its confidentiality agreement, or (iv) the Debtors become aware that information submitted by the Potential Bidder for requesting access to the Data Room is inaccurate or misleading.

Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets to any person or entity, other than the Consultation Parties, who: (i) is not a Potential Bidder, (ii) does not comply with the participation requirements set forth herein, or (iii) in the case of competitively sensitive information, is a competitor of the Debtors, in the reasonable business judgment of the Debtors.

Each Qualified Bidder shall be deemed to acknowledge and represent (i) that it has had an opportunity to (x) conduct any and all due diligence regarding the applicable assets prior to making a bid and (y) investigate and/or inspect any documents and the applicable assets in making its bid; (ii) that it has relied solely upon its own independent review in making its bid; and (iii) that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise regarding the applicable assets, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures. The Debtors and their respective estates are not responsible for, and will have no liability with respect to, any information obtained by, or provided to, any Potential Bidders in connection with these Bidding Procedures and the Sale Transactions.

### **Bid Deadline**

A Potential Bidder that desires to make a bid shall deliver electronic copies of its bid so as to be received no later than **June 23, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)** (the “Bid Deadline”); *provided, that*, the Debtors may, in consultation with the Consultation Parties, extend the Bid Deadline without further order of the Court subject to providing notice to all Potential Bidders and any Stalking Horse Bidders. **The submission of a bid by the Bid Deadline shall constitute a binding and irrevocable offer to acquire the Assets specified in such bid.** Any party that does not submit a bid by the Bid Deadline will not be allowed to (i) submit any offer after the Bid Deadline or (ii) participate in any Auction.

Bids should be submitted by email to the following representatives of the Debtors and the official committee of unsecured creditors (the “Creditors’ Committee”):

Winston & Strawn LLP  
Gregory M. Gartland: ggartland@winston.com  
Daniel J. McGuire: dmcguire@winston.com

Walker & Dunlop Investment Sales, LLC  
Mark Myers : mmyers@walkerdunlop.com

Greenberg Traurig, LLP  
Nancy A. Peterman: PetermanN@gtlaw.com  
Shari L. Heyen: Shari.Heyen@gtlaw.com  
Danny Duerdoth: DuerdothD@gtlaw.com

Province, LLC  
Paul Navid: PNavid@provincefirm.com  
Tanner James: tjames@provincefirm.com  
Garo Khachikian: gkhachikian@provincefirm.com

### **Consultation Parties**

Throughout the bidding process, the Debtors and their advisors will regularly and timely consult with (i) the Prepetition Secured Parties and their respective counsel, (ii) the DIP Lender and Norton Rose Fulbright, and (iii) the advisors to the Creditors’ Committee (each, a “Consultation Party,” and collectively, the “Consultation Parties”); *provided, that*, the Debtors

shall not provide a Consultation Party copies of any term sheets or documentation relating to a Potential Bid, or information regarding the amount of any Potential Bids or the financial terms of any Potential Bids during the bidding process unless and until such Consultation Party confirms in writing that it will not bid or withdraws any Bid that it has submitted; *and provided, further, that* the foregoing requirements shall not apply to the Creditors' Committee. In the event that a Consultation Party submits a Bid in the Auction, such party shall not be a Consultation Party with respect to the bidding and any Auction relating to the Assets subject to such Bid until such time as such party withdraws such Bid.

The Debtors shall promptly provide copies of all Bids (as defined below) received by the Debtors to the Consultation Parties, but in no event later than the next business day after such Bid is received; *provided, that*, the Consultation Parties must treat such Bids and any related information as confidential and shall not publicly disclose such information without the written consent of the Debtors and the applicable Bidder. For the avoidance of doubt, if Consultation Party submits a Bid or a credit Bid (a "Credit Bid") on or prior to the Bid Deadline, the Debtors shall not provide copies of the Bids to such Consultation Party.

For the avoidance of doubt, any consultation rights afforded to the Consultation Parties by these Bidding Procedures shall not limit the Debtors' discretion in any way and shall not include the right to veto any decision made by the Debtors in the exercise of their reasonable business judgment. Further, for the avoidance of doubt, any rights that the Consultation Parties may have pursuant to the terms of other agreements, any orders of the Court, or the Bankruptcy Code are hereby reserved and shall not be affected by these Bidding Procedures or the Bid Procedures Order. All rights of the Consultation Parties with respect to the proposed Sale Transactions are fully reserved.

In the event that any Consultation Party or an affiliate of the foregoing submits a bid that is a Qualified Bid, any obligation of the Debtors to consult with the bidding party or its affiliates established under these Bidding Procedures will be waived, discharged, and released without further action; *provided, that*, the bidding party will have the same rights as any other Qualified Bidder set forth in the Bidding Procedures and *provided further, that* the obligation of the Debtors to consult with the relevant Consultation Party shall be restored should the Bid or Qualified Bid of such Consultation Party be withdrawn or terminated.

Notwithstanding anything to the contrary herein, the Consultation Parties shall not share any inside information received from the Debtors related to these Bidding Procedures with any of their respective members unless and until such member (a) affirmatively declares to the Debtors in writing via email that it will not submit a Bid, (b) does not submit a Bid by the Bid Deadline, or (c) affirmatively withdraws its Bid (collectively, the "Bid Declaration Date"); *provided, that*, prior to the applicable Bid Declaration Date, the Debtors may provide information to the Consultation Parties in accordance with these Bidding Procedures on a professional eyes' only basis; and *and provided, further, that* the foregoing requirements regarding "inside information" shall not apply to the Creditors' Committee or its members.

#### **Form and Content of Qualified Bid**

A bid is a signed document from a Potential Bidder received by the Bid Deadline that

identifies the purchaser by its legal name and any other party that will be participating in connection with the bid (a “Bid”). To constitute a “Qualified Bid” a Bid must include, at a minimum, the following:<sup>3</sup>

- i. Proposed Agreement. Each Bid must include an executed agreement (the “Proposed Agreement”) for the acquisition of all or some of the assets of the Debtors, together with a redline comparing the Proposed Agreement to any applicable Stalking Horse Purchase Agreement or, if there is no applicable Stalking Horse Purchase Agreement, a form of asset purchase agreement, in each case distributed by the Debtors to Potential Bidders. The Proposed Agreement shall:
  - (a) include a complete set of all disclosure schedules and exhibits thereto marked to show the specific changes to the disclosure schedules and exhibits to the applicable Stalking Horse Purchase Agreement (if any) distributed by the Debtors to Potential Bidders; and
  - (b) not condition the closing of the proposed Sale Transaction on the receipt of any third party approvals (excluding such approvals required by the Court or governmental and/or regulatory approvals).
- ii. Purchase Price; Form of Consideration; Cash Requirements; Assets; Assumed Liabilities; Credit Bid. Each Bid must clearly set forth, as applicable:
  - (a) Purchase Price. Each Bid must clearly identify the purchase price to be paid (the “Purchase Price”) and specify the aggregate amount of cash and other consideration being offered.
  - (b) Cash Requirements. Each Bid, including any Credit Bid (as defined below), must provide cash consideration sufficient to satisfy in full the payment of any applicable Bid Protections and any broker commissions in cash (the “Cash Consideration Amount”) and, with respect to any Credit Bid, must also pay all obligations secured by senior or *pari passu* liens on the applicable assets.
  - (c) Assets Purchased: Each Bid must, in the Proposed Agreement, clearly identify the particular Assets the Potential Bidder seeks to acquire from the Debtors. The Bid must clearly state the allocation of Purchase Price among particular Assets, as applicable. For the avoidance of doubt, any such allocation of the Purchase Price among Assets shall not be binding on the Debtors or any third-party and

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<sup>3</sup> The Debtors may, in consultation with the Consultation Parties, waive any of the following requirements for a Bid to constitute a Qualified Bid to the extent reasonably necessary to promote bids and a robust auction so long as any such waiver is not materially inconsistent with these Bidding Procedures.

shall remain subject to determination by the Court.

- (d) Assumed Liabilities: Each Bid must clearly identify, in writing and as applicable, the particular liabilities, if any, the Bidder seeks to assume.
  - (e) Credit Bid: Persons or entities holding a valid and perfected security interest in the Assets may submit a credit bid (a “Credit Bid”) on such assets, to the extent permitted by applicable law or any Court order, and the documentation governing the Debtors’ secured credit facilities.
- iii. Unconditional Offer / Contingencies. A statement that the Bid is formal, binding, and unconditional, is not subject to any further due diligence or financing contingency, and is irrevocable until the Debtors notify the Potential Bidder that such Bid is not a Successful Bid or a Back-Up Bid, or with respect to a Back-Up Bid until the earlier of (a) the first business day after the close of the Sale Transaction with the Successful Bidder for the Assets bid upon by such Back-up Bidder or (b) 90 days after entry of an order approving the Sale Transaction with the Successful Bidder for the Assets bid upon by such Back-up Bidder; *provided that* for the avoidance of doubt, for any Stalking Horse Bidder, the Stalking Horse Bid shall be irrevocable as set forth in the Stalking Horse Purchase Agreement.
- iv. Timeline to Close. The Bid must provide a commitment to close no later than the deadline for the Stalking Horse Bidder to close in the Stalking Horse Purchase Agreement.
- v. Proof of Financial Ability to Perform. Each Bid must contain such financial and other information that allows the Debtors, in consultation with the Consultation Parties, to make a reasonable determination, in their reasonable business judgment as to the Potential Bidder’s financial and other capabilities to consummate the Sale Transactions including, without limitation, ability to post replacement letters of credit, as applicable, and such financial and other information setting forth adequate assurance of future performance in satisfaction of the requirements under section 365(f)(2)(B) of the Bankruptcy Code, and the Potential Bidder’s willingness to perform under any contracts that are assumed and assigned to such party. Without limiting the foregoing, such information must include current financial statements or similar financial information certified to be true and correct as of the date thereof, proof of financing commitments if needed to consummate the transaction (not subject to, in the Debtors’ reasonable business judgment, any unreasonable conditions), contact information for verification of such information, including any financing sources, and any other information reasonably requested by the Debtors or the Consultation Parties necessary to demonstrate adequate assurance of future performance and to demonstrate that such Potential Bidder has the ability to consummate

the Sale Transactions in a timely manner.

- v. Designation of Contracts and Leases. Each Bid must identify with particularity (i) each and every executory contract and unexpired lease that the Potential Bidder seeks to assume and receive an assignment of; and (ii) each and every other contract and lease of the Debtors that the Potential Bidder seeks to assume and receive an assignment of.
- vi. Required Approvals. A statement or evidence (i) that the Potential Bidder has not conditioned their Bid on (a) obtaining financing, (b) any internal approval, (c) the outcome or review of unperformed due diligence, or (d) regulatory contingencies (except as otherwise provided in this section, (ii) that the Potential Bidder has made or will make in a timely manner all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, or other antitrust laws, as applicable, and pay the fees associated with such filings; (iii) identifying each governmental and regulatory third-party approvals required for the Potential Bidder to consummate the applicable Sales Transaction, if any, and the Potential Bidder's plan and ability to obtain all requisite governmental, regulatory, or other third-party approvals and the proposed timing for the Potential Bidder to undertake the actions required to obtain such approvals; and (iv) that the Bid is reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid or as the Back-Up Bid, within a time frame acceptable to the Debtors. A Potential Bidder further agrees that its legal counsel will coordinate in good faith with the Debtors' legal counsel to discuss and explain such Potential Bidder's regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable.
- vii. Disclosure of Identity and Corporate Authorization. Each Bid must (i) fully disclose the identity of the Potential Bidder of each entity that will be bidding or otherwise participating in such Bid (including any equity owners or sponsors, if the Potential Bidder is an entity formed for the purpose of consummating the Sale Transactions), and the complete terms of any such participation, and (ii) include evidence of corporate authorization and approval from the Potential Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of a Bid, participation in the Auction, and closing of the transactions contemplated by the Potential Bidder's Proposed Agreement in accordance with the terms of the Bid and these Bidding Procedures.
- viii. No Entitlement to Expense Reimbursement or Other Amounts. With the exception of any Stalking Horse Bid, expressly state that the Bid does not entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment or reimbursement, and a waiver of any substantial contribution administrative expense claims under section 503(b) of the Bankruptcy Code related to the bidding process.

- ix. Disclosure of Connections. Each Bid must fully disclose any connections or agreements with the Debtors, the Debtors' prepetition secured creditors, DIP lender, other known Potential Bidders, and/or any officer or director of the Debtors.
- x. Joint Bids. The Debtors may, in consultation with the Consultation Parties, approve joint Bids in their sole and reasonable business judgment on a case-by-case basis.
- xi. Representations and Warranties. Each Bid must include the following representations and warranties.
  - a. a statement that the Potential Bidder has had an opportunity to conduct, and has completed, any and all due diligence regarding the applicable asset prior to submitting its Bid;
  - b. a statement that the Potential Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the assets in making its Bid and did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the assets or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Potential Bidder's Proposed Agreement ultimately accepted and executed by the Debtors;
  - c. a statement that the Potential Bidder agrees to serve as Back-Up Bidder, if its Bid is selected as the next highest or next best bid (or any combination of Partial Bids comprising one Qualified Bid) after the Successful Bid with respect to the applicable asset;
  - d. a statement that the Potential Bidder has not (i) engaged in any collusion with respect to the submission of any bid or the Auction, (ii) coordinated or joined with any other party on a bid or bids, or (iii) took any other action to prevent a transparent and competitive auction process; *provided, that*, certain joint bids may be permitted as set forth herein;
  - e. a statement that all proof of financial ability to consummate the Sale Transaction in a timely manner and all information provided to support adequate assurance of future performance is true and correct; and
  - f. a statement that the Potential Bidder agrees to be bound by the terms of the Bidding Procedures.

A Potential Bidder must also accompany its Bid with:

- xii. a cash deposit in the amount of 5% of the proposed purchase price (a “Good Faith Deposit”), unless otherwise agreed to by the Debtors, in consultation with the Consultation Parties, and a Potential Bidder; *provided, that*, a Potential Bidder submitting a Credit Bid will not be required to accompany its Bid with a Good Faith Deposit for any portion of the Purchase Price that is a Credit Bid;
- xiii. the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the Bid submitted by the Potential Bidder; and
- xiv. a covenant to cooperate with the Debtors and the Consultation Parties to provide pertinent factual information regarding the Potential Bidder’s operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements.

For the avoidance of doubt, (i) the Stalking Horse Bidder is a Qualified Bidder, (ii) the Stalking Horse Purchase Agreement is a Qualified Bid, and (iii) the Stalking Horse Bidder is authorized to submit any Overbids (as defined below), including in the form of a credit bid, during the Auction, in each instance without further qualification required of the Stalking Horse Bidder.

#### **Good Faith Deposit**

A Good Faith Deposit must be deposited, prior to the Bid Deadline, with an escrow agent selected by the Debtors (the “Escrow Agent”) pursuant to a customary and reasonable escrow agreement to be provided by the Debtors. To the extent a Qualified Bid is modified before, during, or after the Auction, the Debtors reserve the right to require that such Qualified Bidder increase its Good Faith Deposit so that it equals five percent (5%) of the Purchase Price. If a Qualified Bidder is required to increase its Good Faith Deposit, its status as a Qualified Bidder shall be suspended pending satisfaction of such adjustment. For the avoidance of doubt, and notwithstanding anything to the contrary in these Bidding Procedures or any Court order to the contrary, any Good Faith Deposit by any Stalking Horse Bidders or other Qualified Bidders shall only be for purposes of this process. No party, including any lenders, shall have any lien, claim, or right with respect to the Good Faith Deposit, and such funds shall not be available for distribution to the Debtors’ creditors, unless and until such funds become property of the Debtors’ estates in accordance with the terms of these Bidding Procedures. For the avoidance of doubt, if the Good Faith Deposit becomes property of the Debtors’ estates, it is subject to the Final DIP Order until all DIP Obligations are paid in full.

#### **Review of Bids; Designation of Qualified Bids**

The Debtors, in consultation with the Consultation Parties, will evaluate Bids that are timely submitted and may engage in negotiations with Potential Bidders who submitted Bids as the Debtors deem appropriate in the exercise of their reasonable business judgment, based upon the Debtors’ evaluation of the content of each Bid.

A Bid that is reasonably determined by the Debtors, in consultation with the Consultation



Parties, to meet the requirements set forth herein will be considered a “Qualified Bid” and any bidder that submits a Qualified Bid (including any Stalking Horse Bids) will be considered a “Qualified Bidder.”

By no later than **one (1) business day prior to the Auction** (the “Qualified Bid Deadline”), the Debtors shall determine, in their reasonable business judgment, and in consultation with the Consultation Parties, which of the Bids received by the Bid Deadline qualifies as a Qualified Bid. The Debtors shall notify each Bidder who submits a Qualified Bid of its status as a Qualified Bidder by the Qualified Bid Deadline.

In evaluating the Bids, the Debtors may take into consideration the following non-exhaustive factors:

1. the amount of the purchase price and Credit Bid, as applicable, set forth in the Bid (*provided, that*, for purposes of evaluating competing bids, and except with respect to the requirement that each Bid must provide the Cash Consideration Amount, every dollar of a Credit Bid shall be treated the same as a dollar from a cash or other non-cash Bid, and a Credit Bid shall not be considered inferior to a comparable cash or other non-cash Bid because it is a Credit Bid);
2. the assets and liabilities excluded from the Bid and any executory contracts or leases or other liabilities proposed to be assumed;
3. the value to be provided to the Debtors under the Bid, including the net economic effect upon the Debtors’ estates, taking into account any Stalking Horse Bidder’s rights to any Bid Protections;
4. any benefit to the Debtors’ estates from any assumption of liabilities or waiver of liabilities, including replacement letters of credit;
5. the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; tax leakage; and required governmental or other approvals;
6. the impact on employees and employee claims against the Debtors;
7. the impact on trade creditors; and
8. any other factors the Debtors may deem relevant, consistent with their fiduciary duties.

A Bid that contemplates the liquidation of some or all the Assets shall not be disqualified from being a Qualified Bid solely for that reason. The Debtors reserve the right, in consultation with the Consultation Parties, to work with any Potential Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid.

Without the written consent of the Debtors, in consultation with the Consultation Parties,

a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the Purchase Price or otherwise improve the terms of the Qualified Bid for the Debtors during the period that such Qualified Bid remains binding as specified herein; *provided, that*, any Qualified Bid may be improved at the Auction as set forth in these Bidding Procedures. For the avoidance of doubt, any amendment to any Stalking Horse Purchase Agreement, shall be shared with the Consultation Parties' respective counsel as promptly as possible and filed with the Bankruptcy Court within one (1) business day of such amendment, or as soon as reasonably practicable thereafter, and the Debtors will take into account all such amendments or modifications at the Auction.

Subject to the terms of the Bid Procedures Order and these Bidding Procedures, any Qualified Bidder who has a valid and perfected lien on any of the Assets and the right under applicable law to credit bid claims secured by such liens, including, for the avoidance of doubt, the DIP Lender, shall have the right to submit a Credit Bid all or a portion of the value of such Qualified Bidder's claims pursuant to section 363(k) of the Bankruptcy Code with respect to the collateral by which such Qualified Bidder's claim is secured. For the avoidance of doubt, any Credit Bid for the Assets shall be subject to any lien challenge rights of the Creditors' Committee set forth in any Court order. Any Qualified Bidder intending to submit a Credit Bid all or a portion of the value of such Qualified Bidder's claim shall provide notice thereof to the Debtors and any Stalking Horse Bidders by the Bid Deadline. For the avoidance of doubt, such Qualified Bidder that provides notice of intent to submit a Credit Bid will no longer be a Consultation Party with respect to the bidding and auction relating to the assets subject to such Bid until such time as such party withdraws such Bid.

#### **Selection of Successful Bid**

The Back-Up Bid, if any, will remain open and binding on the Back-Up Bidder until consummation of the Successful Bid with the Successful Bidder. If the Successful Bidder fails to consummate the Successful Bid within the time set forth therein, the Debtors will be authorized, but not required, in consultation with the Consultation Parties, to select the Back-Up Bidder, if any, as the new Successful Bidder, in which case the Debtors shall proceed to consummate the Successful Bid of the new Successful Bidder.

Within one (1) business day after conclusion of the Auction, the Debtors shall file a notice with the Court identifying the Successful Bidder and the Back-Up Bidder, if any.

#### **Failure to Receive Qualified Bids Other Than Stalking Horse Bid**

If no Qualified Bid (other than a Stalking Horse Bid) is received by the Qualified Bid Deadline, the Debtors will not conduct the Auction with respect to the Assets subject to such Stalking Horse Bid, and shall file a notice with the Court indicating that no Auction will be held and the Stalking Horse Bidder will be named the Successful Bidder.

#### **Auction Procedures**

If the Debtors receive two or more Qualified Bids with respect to the applicable assets, the Debtors shall conduct the Auction on **June 25, 2024 beginning at 10:00 a.m. (prevailing Central Time) at (i) the offices of Winston & Strawn LLP, 25 W. Wacker Drive, Chicago, IL 60601**

**or (ii) virtually, pursuant to procedures to be announced to bidders, or such other later date as may be determined by the Debtors in consultation with the Consultation Parties and upon notice to all parties in interest.** Only Qualified Bidders will be eligible to participate at the Auction, subject to such limitations as the Debtors may impose in good faith and in consultation with the Consultation Parties. In addition, only the professionals and/or other representatives of the Qualified Bidders, the Debtors, and the Consultation Parties, including in-house counsel and outside counsel for members of the Creditors' Committee, shall be permitted to attend and observe the Auction.

Before commencement of the Auction, the Debtors will notify all Qualified Bidders, the Stalking Horse Bidder, and the Notice Parties (as defined below) in writing of the highest or otherwise best Qualified Bid, as determined in the Debtors' business judgment, in consultation with the Consultation Parties (the "Baseline Bid"), and (ii) provide copies (to the extent not previously provided) of the documents supporting the Baseline Bid to all Qualified Bidders and Notice Parties. The determination of which Qualified Bid constitutes the Baseline Bid, and which Qualified Bid constitutes the highest or otherwise best bid such that it is the Successful Bid (as defined below), may take into account, among other things: (a) the type and amount of Assets sought to be purchased in the Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof; and (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Qualified Bid.

The following auction rules shall apply to the Auction to promote a spirited and robust auction (the "Auction Rules").

- (a) At least one (1) business day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction and all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder in attendance at the Auction in person; *provided that*, in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder. All other creditors of the Debtors who desire to attend the Auction (including their counsel) and provide no less than two (2) business days advance written notice of their intent to attend the Auction no later than 5:00 p.m. (ET) to Debtors' counsel, Winston & Strawn LLP by email, to Kenneth Perkins, kperkins@winston.com, and Carrie Hardman, chardman@winston.com, will be permitted to attend the Auction.
- (b) The Auction shall be transcribed or video recorded. All bids in the Auction will be made and received on an open basis, and all other Qualified Bidders participating in the Auction will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Bidder placing a bid at the Auction will be fully disclosed to all other bidders participating in the Auction and that all material terms of a bid submitted in response to any successive bids made at the Auction (each, an "Overbid") will be disclosed to all other Qualified Bidders participating in the Auction. Each Qualified Bidder will be permitted what the Debtors reasonably determine, in consultation with the Consultation Parties, to be an

appropriate amount of time to respond to the previous bid at the Auction. The Auction will be conducted openly and shall be transcribed or recorded. The starting bid (the “Starting Bid”) shall be the highest or best Qualified Bid, as determined by the Debtors in consultation with the Consultation Parties. If a Stalking Horse Bid is selected as the Starting Bid, any Overbid shall include the amount provided for in the Stalking Horse Bid(s), *plus* the Bid Protections, plus a minimum overbid to be determined by the Debtors in their business judgment, in consultation with the Consultation Parties, prior to the Auction.

- (c) Any Overbid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtors accept a Bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such prior Overbid is not selected as the Back-Up Bid. To the extent not previously provided (which will be determined by the Debtors in consultation with the Consultation Parties), a Qualified Bidder submitting an Overbid must submit at the Debtors’ request (in consultation with the Consultation Parties), as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors in consultation with the Consultation Parties) demonstrating such Qualified Bidder’s ability to close the transaction at the purchase price contemplated by such Overbid.
- (d) Bidders and their representatives may not communicate with one another, collude, or otherwise coordinate for purposes of participating in the Auction. All parties are prohibited from (i) engaging in any collusion with respect to the submission of any bid or the Auction, (ii) coordinating or joining with any other party on a bid or bids, or (iii) taking any other action to prevent a transparent and competitive auction process; *provided, that*, certain joint bids may be permitted as set forth herein. Each Qualified Bidder participating in the Auction shall confirm in writing and on the record at the Auction that (i) it has not engaged in any of the foregoing prohibited actions and (ii) its Qualified Bid is a good faith bona fide offer that it intends to consummate if selected as a Successful Bidder.

All parties attending the Auction must keep the proceedings and results of the Auction confidential until the Debtors have closed the Auction; *provided, that*, parties may speak with clients or parties necessary to place their bid or increase it so long as such individuals are advised of the confidentiality restriction.

The Debtors shall conduct an Auction for the Assets on a consolidated or semi-consolidated basis pursuant to the Auction Rules. To the extent the Debtors conduct multiple auctions for different subgroupings of the Assets (each, a “Sub-Auction”) at any Auction and a Qualified Bidder declines to participate in any specific Sub-Auction or Sub-Auctions, or any round of bidding for such specific Sub-Auctions, such Qualified Bidder shall still be permitted to offer a Bid in subsequent Sub-Auctions, including bids that include assets subject to a prior Sub-Auction, which includes the right to bid on groupings of assets that may include specific assets which were the subject of an earlier Sub-Auction. The Debtors may, in the exercise of their reasonable business judgment and in consultation with the other Consultation Parties, identify the highest or otherwise best Qualified Bid as the reserve bid for each Sub-Auction (each, a “Reserve

Sub-Auction Bid” and the bidder submitting such bid, a “Reserve Sub-Auction Bidder”). The Debtors may also identify, in consultation with the Consultation Parties, a Qualified Bidder that submitted the next highest or otherwise best Qualified Bid in each Sub-Auction as a back-up bid (each, a “Back-Up Sub-Auction Bid” and the bidder submitting such bid, a “Back-Up Sub-Auction Bidder”). The Debtors, upon consultation with the Consultation Parties, shall have the right to establish different Overbids with respect to any Sub-Auction.

If the Debtors, in the exercise of their reasonable business judgment and in consultation with the Consultation Parties, determine that pursuing a Sale Transaction pursuant to the Reserve Sub-Auctions Bid(s) will result in a higher or otherwise better value of the Assets than pursuing a Sale Transaction pursuant to the highest or otherwise best Bid received in the Auction of the Assets on a consolidated or semi-consolidated basis, then the Debtors may declare the Reserve Sub-Auction Bid(s) as Successful Bid(s) (and the Reserve Sub-Auction Bidder(s) as Successful Bidders) and the Back-Up Sub-Auction Bid(s) as the Back-Up Bid(s) (and the Back-up Sub-Auction Bidder(s) as Back-Up Bidder(s)).

The Debtors may, in the exercise of their business judgment and in consultation with the Consultation Parties, identify the highest or otherwise best Qualified Bid (or any combination of Partial Bids comprising one Qualified Bid, as specified above) as the successful bid for the respective Assets to be acquired (each, a “Successful Bid” and the bidder submitting such bid, a “Successful Bidder”). The Debtors may also identify a Qualified Bidder, in consultation with the Consultation Parties, that submitted the next highest or otherwise best Qualified Bid (or any combination of Partial Bids comprising one Qualified Bid, as specified above) as a back-up bid (a “Back-Up Bid” and the bidder submitting such bid, a “Back-Up Bidder”).

Within one (1) business day after the Auction, or as soon as reasonably practicable thereafter, each Successful Bidder shall (i) submit to the Debtors fully executed documentation memorializing the terms of the Successful Bid such Successful Bidder submitted and (ii) unless otherwise agreed in the purchase agreement between the Debtors and a Successful Bidder, submit by transfer of immediately available funds to an account identified by the Debtors any amount required to increase the Successful Bidder’s Good Faith Deposit to an amount equal to five percent (5%) of the Purchase Price contained in the Successful Bid, if the amount of the Good Faith Deposit previously delivered by the Successful Bidder is less than such amount. For the avoidance of doubt, and notwithstanding anything to the contrary in these Bidding Procedures or any Court order to the contrary, any such increase to the Good Faith Deposit by any Stalking Horse Bidders or other Qualified Bidders to such designated account shall only be for purposes of this process. No party, including any of the Debtors’ lenders, have or shall have any lien, claim, or right with respect to such funds which shall not be available for distribution to the Debtors’ creditors, unless and until such funds become property of the Debtors’ estates in accordance with the terms of these Bidding Procedures. A Successful Bid may not be assigned to any party without the consent of the Debtors, in consultation with the Consultation Parties.

At any time before the designation of a Successful Bid and Back-Up Bid, if any, the Debtors, in consultation with the Consultation Parties, reserve the right to and may reject such Qualified Bid(s) (other than any Stalking Horse Bids) if such Qualified Bid(s), in the Debtors’ reasonable business judgment, in consultation with the Consultation Parties, is/are: (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding

Procedures, or the terms and conditions of the Sale; (iii) contrary to the best interests of the Debtors, their estates, their creditors, and other stakeholders.

As set forth above, the Debtors reserve their right, in their reasonable business judgment and in consultation with the Consultation Parties, to announce at the Auction modified or additional procedures for conducting the Auction. In addition, the Debtors reserve the right, at or before the conclusion of the Auction, to impose additional terms and conditions upon Qualified Bidders as the Debtors, in consultation with the Consultation Parties, determine to be in the best interests of the Debtors' estates in these Chapter 11 Cases.

The Debtors (in consultation with the Consultation Parties) reserve the right to make one or more adjournments in the Auction to, among other things (i) facilitate private discussions with individual Qualified Bidders and negotiate the terms of their Overbids, (ii) allow individual Qualified Bidders to consider how they wish to proceed, and (iii) give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors may require in their reasonable discretion (and in consultation with the Consultation Parties) to determine that the Qualified Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount.

#### **Post-Auction Process**

Within one (1) business day after the conclusion of the Auction, or as soon as reasonably practicable thereafter, in any event no later than July 2, 2024 at 12:00 p.m. ET (11:00 a.m. CT), the Debtors shall file with the Court a notice of the Successful Bid(s), Successful Bidder(s), Back-Up Bid(s), and Back-Up Bidder(s).

The Good Faith Deposits for each Qualified Bidder (other than the Successful Bidder and the Back-Up Bidder) shall be returned on the date that is five (5) business days after the Auction, or as soon as is reasonably practicable thereafter. The Debtors shall return the Good Faith Deposit of the Back-Up Bidder by the earlier of (i) thirty (30) days after the conclusion of the Auction and (ii) five (5) business days after the consummation of the Successful Bid, unless by such date the Debtors have selected the Back-Up Bidder as the new Successful Bidder.

Each Successful Bidder's Good Faith Deposit shall be applied against the cash portion of the purchase price of such bidder's Successful Bid upon the consummation of the Sale Transactions. Notwithstanding the foregoing, if a Successful Bidder fails to consummate a proposed transaction because of a breach by such Successful Bidder, the Debtors will not have any obligation to return the Deposit deposited by such Successful Bidder, which may be retained by the Debtors as damages, in addition to any and all other rights, remedies, or causes of action that may be available to the Debtors, and the Debtors shall be free to consummate the proposed transaction with the applicable Back-Up Bidder subject to Court approval, which may be sought on an expedited basis.

Notwithstanding the foregoing, the Good Faith Deposit, including the amount thereof, and any remedies against a Stalking Horse Bidder shall be governed by the applicable Stalking Horse Purchase Agreement, if any.

### **Notices Regarding Assumption and Assignment**

The Debtors shall provide all notices regarding the proposed assumption and assignment of contracts and leases of the Debtors in accordance with the Assumption and Assignment Procedures included in the Bid Procedures Order.

### **Sale Objections and Hearing**

The hearing (the “Sale Hearing”) to consider approval of the sale of Assets will be held before the Court on **July 10, 2024 at 10:00 a.m.** and otherwise in accordance with any scheduling order entered by the Court; *provided* that if no Auction is held, the Debtors shall schedule the Sale Hearing before such time and as expeditiously as possible, subject to Court approval. Prior to the Sale Hearing, the Successful Bidder (unless the Successful Bidder is the Stalking Horse Bidder) shall complete and execute all documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

Objections to the Sale Transactions (each, a “Sale Objection”), shall: (i) be in writing; (ii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (iii) state with particularity the basis and nature of any objection, and if applicable, provide proposed language that, if accepted and incorporated by the Debtors (in consultation with the Consultation Parties), would obviate such objection; (iv) conform to the Bankruptcy Rules and the Local Rules; (v) be filed with the Court; and (vi) be served upon (a) the Debtors, Winston & Strawn LLP, 35 West Wacker Drive, Chicago, IL 60601 (Attn.: Greg Gartland, Dan McGuire and Joel Mudd) and 200 Park Avenue, New York, New York 10166 (Attn.: Carrie Hardman) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn.: Andrew L. Magaziner, Shella Borovinskaya, and Carol E. Cox); (b) the Office of the United States Trustee for the District of Delaware (Attn: Linda Richenderfer and Jon Lipshie); (c) proposed counsel to the Creditors’ Committee, Greenberg Traurig, LLP, 222 Delaware Avenue, Suite 1600, Wilmington, Delaware 19801 (Attn: Anthony W. Clark and Dennis A. Meloro) and 77 West Wacker Drive, Suite 3100, Chicago, IL 60601 (Attn: Nancy A. Peterman and Danny Duerdoth); (d) counsel for the DIP Lender, Norton Rose Fulbright US LLP, 1301 Avenue of the Americas, New York, NY 10019 (Attn: Robert Hirsh and Francisco Vazquez) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801 (Attn: Eric J. Monzo); (e) counsel for Column Financial, Inc., Holland & Knight, LLP, 511 Union Street, Ste. 2700, Nashville, Tennessee 37219 (Attn: Tyler Layne) and Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, P.O. Box 2087, Wilmington, DE 19899 (Attn: Adam Landis and Rick Cobb); and (f) counsel for all other Prepetition Secured Parties (collectively, the “Notice Parties”), *provided, that*, the Debtors, with notice to the Consultation Parties, may extend the Contract and Sale Objection Deadline as the Debtors deem appropriate in the exercise of their reasonable business judgment. If a timely Sale Objection cannot otherwise be resolved by the parties, such objection shall be heard by the Court at the applicable Sale Hearing.

An appropriate representative of each Successful Bidder shall appear at the applicable Sale Hearing and be prepared, if necessary, to have such representative(s) testify in support of a Successful Bid and the Successful Bidder’s ability to close in a timely manner and provide adequate assurance of its future performance under any and all executory contracts and unexpired leases to be assumed and assigned to the Successful Bidder as part of the proposed transaction, or

otherwise submit such testimony in writing in the form of a sworn declaration to be filed with the Court in advance of the Sale Hearing and appear at the Sale Hearing, all in accordance with and consistent with the rules of Chambers for the Honorable Thomas M. Horan.

Any party who fails to timely file with the Court a Sale Objection will be forever barred from asserting any objection to the applicable sale of the Assets, or to the consummation and performance of a sale transaction contemplated by a purchase agreement with a Debtor and a Successful Bidder, including the transfer of the Assets to a Successful Bidder, free and clear of all claims and interests pursuant to section 363(f) of the Bankruptcy Code. Failure to object shall constitute consent for the purposes of section 363(f) of the Bankruptcy Code. Any objection filed after the Contract and Sale Objection Deadline will not be considered by the Court.

The Sale Hearing may be adjourned or rescheduled by the Debtors upon consultation with the Consultation Parties and any Stalking Horse Bidder to a time and date consistent with the Court's calendar, as set forth in a notice on the docket of these Chapter 11 Cases, a notice of agenda, or stated orally at the Hearing.

**Consent to Jurisdiction and Authority as Condition to Bidding**

All Potential Bidders (including any Stalking Horse Bidders) that participate in the bidding process with respect to the Assets shall be deemed to have (i) consented to the core jurisdiction of the Court to enter any order or orders, which shall be binding in all respects, in any way related to these Bidding Procedures, the bid process, the Auction, the applicable Sale Hearing, or the construction and enforcement of any agreement or any other document relating to the Sale Transactions; (ii) waived any right to a jury trial in connection with any disputes relating to these Bidding Procedures, the bid process, the Auction, the applicable Sale Hearing, or the construction and enforcement of any agreement or any other document relating to the Sale Transactions; and (iii) consented to the entry of a final order or judgment in any way related to these Bidding Procedures, the bid process, the Auction, the applicable Sale Hearing, or the construction and enforcement of any agreement or any other document relating to the Sale Transactions if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.



**EXHIBIT B**

**Blackline of Bidding Procedures**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

**In re**

**SC HEALTHCARE HOLDING, LLC *et al.*,**

**Debtors.<sup>1</sup>**

Chapter 11

Case No. 24-10443 (TMH)

Jointly Administered

**BIDDING PROCEDURES**

**Overview**

On March 20, 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”), filed voluntary petitions for relief (the “Chapter 11 Cases”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”). These Chapter 11 Cases have been consolidated for procedural purposes under the lead case: *In re SC Healthcare Holding, LLC*, Case No. 24-10443 (TMH).

On ~~February 21~~ May 21, 2024, the Bankruptcy Court entered an order [Docket No. ~~340~~ 341] (the “Bid Procedures Order”), which, among other things, authorized the Debtors to solicit bids and approved these procedures (the “Bidding Procedures”) for the consideration of the highest or otherwise best bids or any combination of Partial Bids (as defined below) comprising one Qualified Bid (as defined below) for all or substantially all of the Debtors’ assets (the “Assets”) on the terms and conditions set forth herein.<sup>2</sup>

The Debtors, in consultation with the Consultation Parties (as defined below), may designate one or more stalking horse bidders (the “Stalking Horse Bidders”) and enter into separate stalking horse agreements (the “Stalking Horse Purchase Agreements”) for the purchase of any of the Assets, or subsets thereof, with such bid protections to be determined by the Debtors, in consultation with the Consultation Parties, in accordance with the Bid Procedures Order, and subject to further Court approval.

For all purposes under these Bidding Procedures, any Stalking Horse Bidder approved as such pursuant to the Bid Procedures Order shall be considered a Qualified Bidder (as defined

<sup>1</sup> The last four digits of SC Healthcare Holding, LLC’s tax identification number are 2584. The mailing address for SC Healthcare Holding, LLC is c/o Petersen Health Care Management, LLC 830 West Trailcreek Dr., Peoria, IL 61614. Due to the large number of debtors in these Chapter 11 Cases, whose cases are being jointly administered, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information is available on a website of the Debtors’ claims and noticing agent at [www.kccllc.net/Petersen](http://www.kccllc.net/Petersen).

<sup>2</sup> Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Bid Procedures Order.

below), and any Stalking Horse Bid shall be considered a Qualified Bid. Subject to the other provisions of these Bidding Procedures, in the event that a Stalking Horse Bid is the only Qualified Bid received by the Debtors by the Bid Deadline (as defined below), such Stalking Horse Bidder shall be deemed a Successful Bidder (as defined below).

The Bidding Procedures describe, among other things: (i) the procedures for bidders to submit bids for the acquisition of the Assets, subject to an order of the Court approving such potential sale transactions; (ii) the manner in which bidders and bids become Qualified Bidders and Qualified Bids; (iii) the process for negotiating the bids received; (iv) the conduct of the Auction if the Debtors receive Qualified Bids; (v) the procedure for the ultimate selection of any Successful Bidder and any Back-Up Bidder (as defined below); and (vi) the process for approval of the Sale Transactions at the applicable Sale Hearing.

### **Reservation of Rights**

**Except as otherwise set forth herein, the Debtors reserve the right, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, and (except to the extent set forth herein) in consultation with the Consultation Parties, to: (i) modify these Bidding Procedures; (ii) waive terms and conditions set forth herein with respect to all Potential Bidders (as defined below); (iii) extend the deadlines set forth herein; (iv) announce at the Auction modified or additional procedures for conducting the Auction; or (v) alter the assumptions set forth herein; *provided, that*, the Debtors shall not be authorized to make material modifications to these Bidding Procedures without further order of the Court. The Debtors may, in consultation with the Consultation Parties, provide reasonable accommodations to any Potential Bidder(s) with respect to such terms, conditions, and deadlines of the bidding and Auction process to promote further bids on the Assets, in each case, to the extent not materially inconsistent with these Bidding Procedures and the Bid Procedures Order, as applicable. All parties reserve their rights to seek relief from the Court regarding the Auction, these Bidding Procedures, and any related items (including, if necessary, to seek an extension of the Bid Deadline).**

**In addition, the Debtors reserve their right, in consultation with the Consultation Parties, to cancel the Bidding Procedures and the Auction with respect to any of the Assets if the Debtors determine, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, and in consultation with the Consultation Parties, to proceed with a private sale of such Assets. If the Debtors receive a bid for a private sale of Assets and intend to cancel the Bidding Procedures and the Auction with respect to such Assets, the Debtors shall first notify and consult with the advisors to the Creditors' Committee (as defined below) and then notify and consult with the Debtors' prepetition secured lenders (the "Prepetition Secured Parties") and their respective counsel and JMB Capital Partners Lending, LLC (the "DIP Lender") and its counsel, Norton Rose Fulbright US LLP ("Norton Rose Fulbright").**

### **Fiduciary Out**

Nothing in these Bidding Procedures will require the board of directors, board of

managers, or such similar governing body of any Debtor to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent such board of directors, board of managers, or such similar governing body reasonably determines in good faith, in consultation with outside counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law.

### Summary of Important Dates

Key Event	Deadline
<del>Deadline to file the Cure Notice with the Court and serve the Cure Notice on the Contract Counterparties</del>	<del>June 18, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)</del>
Deadline to file the Notice of Assumption, Assignment, and Sale with the Court and serve on the Counterparties	June 14, 2024
Deadline by which Stalking Horse Bidders are Designated	June 14, 2024
Bid Deadline	June <del>25</del> <sup>23</sup> , 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)
Auction (if necessary)	June <del>27</del> <sup>25</sup> , 2024 at 10:00 a.m. (ET)/9:00 a.m. (CT)
Deadline to File Notice of (a) Successful Bid(s) and Back-Up Bid(s) and (b) Identity of Successful Bidder(s) and Back-Up Bidder(s)	July 2, 2024 at 12:00 p.m. (ET)/11:00 a.m. (CT)
Deadline to File Contract Objections and Objections to the Sale Transactions, Including to Conduct at Auction and Matters Unique to Successful Bid(s) and Successful Bidder(s) (the " <u>Contract and Sale Objection Deadline</u> ")	July 2, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)
Sale Hearing	July 10, 2024 at 10:00 a.m. (ET)

### Designation of Stalking Horse Bidders

The Debtors shall promptly provide copies of any Stalking Horse Bids received by the Debtors to the Consultation Parties. The Debtors, in the exercise of their reasonable business judgment and in consultation with the Consultation Parties, may designate one or more Stalking Horse Bidders, for some or all of the Assets, or subsets thereof, and enter into purchase

agreements with Stalking Horse Bidders, for the sale of such Assets, in each case, in accordance with the terms of the Bid Procedures Order and these Bidding Procedures, as applicable. The Debtors will designate Stalking Horse Bidders, if any, by June 14, 2024 (the “Stalking Horse Deadline”). If the Debtors, in consultation with the Consultation Parties, designate a Stalking Horse Bidder, the Debtors shall file with the Court and serve on the parties that received the Motion, (a) a notice setting forth the identity of the Stalking Horse Bidder and the material terms of such Stalking Horse Purchase Agreement, including the terms of the applicable Bid Protections, as required by Local Rule 6004-1 (each, a “Notice of Additional Stalking Horse”), (b) a copy of the Stalking Horse Purchase Agreement, and (c) a motion (the “Stalking Horse Motion”) seeking authority to enter into the Stalking Horse Purchase Agreement and to offer applicable Bid Protections, with a motion to shorten notice, which shall be considered by the Court on not less than three (3) business days’ notice, subject to the Court’s availability; *provided, however, that* Bid Protections, if any, shall be subject to the liens and super-priority claims granted in favor of the DIP Lender under the interim order authorizing the Debtor to obtain postpetition financing and related relief [Docket No. 91] and the final order thereon [Docket No. 313] (the “Final DIP Order”) in an amount not to exceed the amount of the DIP Obligation (as defined in the Final DIP Order).

Bid Protections. The Debtors may offer each Stalking Horse Bidder a break-up fee and reimbursement of reasonable and documented expenses (the “Bid Protections”); *provided, that*, (i) any break-up fee shall not exceed three percent (3%) of the Purchase Price, and (ii) all Bid Protections must be negotiated by the Debtors, in consultation with the Consultation Parties, subject to notice and an opportunity for parties in interest to object solely with respect to Bid Protections offered by a Debtor; and (iii) such Bid Protections shall not be offered after the Stalking Horse Deadline. The amount and calculation of such Bid Protections shall be described in the notice designating any Stalking Horse Bidder; *provided further, that*, any Bid Protections shall not be inconsistent with the Bid Procedures Order or the Bidding Procedures. For the avoidance of doubt, to the extent the Debtors offer Bid Protections to a Stalking Horse Bidder, which shall be done no later than the Stalking Horse Deadline, the Debtors shall seek approval of the Bid Protections on not less than three (3) business days’ notice.

Objections to and Approval of Designation of Stalking Horse Bidder. Any objections (each, a “Stalking Horse Objection”) to the designation of a Stalking Horse Bidder must (a) be in writing; (b) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules; (c) state, with specificity, the legal and factual bases thereof; and (d) be filed with the Court within three (3) calendar days after service of the applicable Notice of Stalking Horse. For the avoidance of doubt, any objections to the Debtors’ entry into a Stalking Horse Purchase Agreement and to offer Bid Protections in connection therewith will be governed by the Stalking Horse Motion and will be resolved at a hearing scheduled to consider the Stalking Horse Motion.

If a timely Stalking Horse Objection is filed and served in accordance with the preceding paragraph, the proposed designation of a Stalking Horse Bidder will not be approved until either the Stalking Horse Objection is resolved by agreement of the objecting party and the Debtors or by order of the Court.

#### **Due Diligence**

The Debtors have posted copies of all material documents related to the Assets to the Debtors' confidential electronic data room (the "Data Room"). To access the Data Room, a party, other than the Consultation Parties or any Stalking Horse Bidder has been deemed to be a Qualified Bidder (as defined below), must submit to the Debtors' advisors the following documents:

- (A) an executed confidentiality agreement in a form and substance that is satisfactory to the Debtors (unless such party is already a party to an existing customary confidentiality agreement with the Debtors that is acceptable to the Debtors for this due diligence process, in which case such agreement shall govern);
- (B) documentation identifying the interested party, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- (C) sufficient information, as reasonably determined by the Debtors, to allow the Debtors to determine, in their reasonable business judgment whether the interested party (i) has the financial wherewithal to consummate the Sale Transactions, and (ii) intends to access the Data Room for a bona fide purpose consistent with these Bidding Procedures.

An interested party that meets the aforementioned requirements to the reasonable satisfaction of the Debtors shall be a "Potential Bidder" and such Bid (as defined below) shall be a "Potential Bid". As soon as practicable, the Debtors will provide such Potential Bidder access to the Data Room; *provided, that*, such access may be terminated by the Debtors in their reasonable discretion and in consultation with the Consultation Parties at any time for any reason whatsoever, including that a Potential Bidder does not become a Qualified Bidder, these Bidding Procedures are terminated, the Potential Bidder breaches any obligations under its confidentiality agreement, or the Debtors become aware that information submitted by the Potential Bidder for requesting access to the Data Room is inaccurate or misleading. The Debtors shall provide prompt notice to counsel to the Consultation Parties if access to the Data Room is terminated for any Qualified Bidder as set forth herein. The Debtors may restrict or limit access of a Potential Bidder to the Data Room if the Debtors determine, based on their reasonable business judgment and in consultation with the Consultation Parties that certain information in the Data Room is sensitive, proprietary, or otherwise not appropriate for disclosure to such Potential Bidder.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtors or their advisors regarding the ability of such Potential Bidder to consummate the Sale Transactions.

Until the Bid Deadline, and except as otherwise provided herein, the Debtors will provide any Potential Bidder with reasonable access to the Data Room and any additional information requested by Potential Bidders (subject to any restrictions pursuant to applicable law or these Bidding Procedures) that the Debtors believe in their reasonable business judgment to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to the Debtors' proposed investment banker, Walker & Dunlop Investment Sales,

LLC (Attn: Mark Myers (mmyers@walkerdunlop.com)). In the event that any such additional information is in written form and provided to a Potential Bidder, the Debtors shall simultaneously provide such additional information to all other Potential Bidders by posting it in the Data Room. Unless prohibited by law or otherwise determined by the Debtors, in consultation with the Consultation Parties, the availability of additional due diligence to a Potential Bidder may be terminated, with prompt notice to the Consultation Parties' counsel, if (i) the Potential Bidder does not become a Qualified Bidder, (ii) these Bidding Procedures are terminated, (iii) the Potential Bidder breaches any obligations under its confidentiality agreement, or (iv) the Debtors become aware that information submitted by the Potential Bidder for requesting access to the Data Room is inaccurate or misleading.

Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets to any person or entity, other than the Consultation Parties, who: (i) is not a Potential Bidder, (ii) does not comply with the participation requirements set forth herein, or (iii) in the case of competitively sensitive information, is a competitor of the Debtors, in the reasonable business judgment of the Debtors.

Each Qualified Bidder shall be deemed to acknowledge and represent (i) that it has had an opportunity to (x) conduct any and all due diligence regarding the applicable assets prior to making a bid and (y) investigate and/or inspect any documents and the applicable assets in making its bid; (ii) that it has relied solely upon its own independent review in making its bid; and (iii) that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise regarding the applicable assets, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures. The Debtors and their respective estates are not responsible for, and will have no liability with respect to, any information obtained by, or provided to, any Potential Bidders in connection with these Bidding Procedures and the Sale Transactions.

### **Bid Deadline**

A Potential Bidder that desires to make a bid shall deliver electronic copies of its bid so as to be received no later than **June 25~~23~~, 2024 at 6:00 p.m. (ET)/5:00 p.m. (CT)** (the "**Bid Deadline**"); *provided, that*, the Debtors may, in consultation with the Consultation Parties, extend the Bid Deadline without further order of the Court subject to providing notice to all Potential Bidders and any Stalking Horse Bidders. **The submission of a bid by the Bid Deadline shall constitute a binding and irrevocable offer to acquire the Assets specified in such bid.** Any party that does not submit a bid by the Bid Deadline will not be allowed to (i) submit any offer after the Bid Deadline or (ii) participate in any Auction.

Bids should be submitted by email to the following representatives of the Debtors and the official committee of unsecured creditors (the "**Creditors' Committee**"):

Winston & Strawn LLP  
Gregory M. Gartland: ggartland@winston.com  
Daniel J. McGuire: dmcguire@winston.com

Walker & Dunlop Investment Sales, LLC  
Mark Myers : mmyers@walkerdunlop.com

Greenberg Traurig, LLP

Nancy A. Peterman: PetermanN@gtlaw.com  
Shari L. Heyen: Shari.Heyen@gtlaw.com  
Danny Duerdoth: DuerdothD@gtlaw.com

Province, LLC

Paul Navid: PNavid@provincefirm.com  
Tanner James: tjames@provincefirm.com  
Garo Khachikian: gkhachikian@provincefirm.com

**Consultation Parties**

Throughout the bidding process, the Debtors and their advisors will regularly and timely consult with (i) the Prepetition Secured Parties and their respective counsel, (ii) the DIP Lender and Norton Rose Fulbright, and (iii) the advisors to the Creditors' Committee (each, a "Consultation Party," and collectively, the "Consultation Parties"); *provided, that*, the Debtors shall not provide a Consultation Party copies of any term sheets or documentation relating to a Potential Bid, or information regarding the amount of any Potential Bids or the financial terms of any Potential Bids during the bidding process unless and until such Consultation Party confirms in writing that it will not bid or withdraws any Bid that it has submitted; *and provided, further, that* the foregoing requirements shall not apply to the Creditors' Committee. In the event that a Consultation Party submits a Bid in the Auction, such party shall not be a Consultation Party with respect to the bidding and any Auction relating to the Assets subject to such Bid until such time as such party withdraws such Bid.

The Debtors shall promptly provide copies of all Bids (as defined below) received by the Debtors to the Consultation Parties, but in no event later than the next business day after such Bid is received; *provided, that*, the Consultation Parties must treat such Bids and any related information as confidential and shall not publicly disclose such information without the written consent of the Debtors and the applicable Bidder. For the avoidance of doubt, if Consultation Party submits a Bid or a credit Bid (a "Credit Bid") on or prior to the Bid Deadline, the Debtors shall not provide copies of the Bids to such Consultation Party.

For the avoidance of doubt, any consultation rights afforded to the Consultation Parties by these Bidding Procedures shall not limit the Debtors' discretion in any way and shall not include the right to veto any decision made by the Debtors in the exercise of their reasonable business judgment. Further, for the avoidance of doubt, any rights that the Consultation Parties may have pursuant to the terms of other agreements, any orders of the Court, or the Bankruptcy Code are hereby reserved and shall not be affected by these Bidding Procedures or the Bid Procedures Order. All rights of the Consultation Parties with respect to the proposed Sale Transactions are fully reserved.

In the event that any Consultation Party or an affiliate of the foregoing submits a bid that is a Qualified Bid, any obligation of the Debtors to consult with the bidding party or its affiliates established under these Bidding Procedures will be waived, discharged, and released without further action; *provided, that*, the bidding party will have the same rights as any other Qualified Bidder set forth in the Bidding Procedures and *provided further, that* the obligation of the Debtors to consult with the relevant Consultation Party shall be restored should the Bid or Qualified Bid of such Consultation Party be withdrawn or terminated.



Notwithstanding anything to the contrary herein, the Consultation Parties shall not share any inside information received from the Debtors related to these Bidding Procedures with any of their respective members unless and until such member (a) affirmatively declares to the Debtors in writing via email that it will not submit a Bid, (b) does not submit a Bid by the Bid Deadline, or (c) affirmatively withdraws its Bid (collectively, the “Bid Declaration Date”); *provided, that*, prior to the applicable Bid Declaration Date, the Debtors may provide information to the Consultation Parties in accordance with these Bidding Procedures on a professional eyes’ only basis; and *and provided, further, that* the foregoing requirements regarding “inside information” shall not apply to the Creditors’ Committee or its members.

### **Form and Content of Qualified Bid**

A bid is a signed document from a Potential Bidder received by the Bid Deadline that identifies the purchaser by its legal name and any other party that will be participating in connection with the bid (a “Bid”). To constitute a “Qualified Bid” a Bid must include, at a minimum, the following:<sup>3</sup>

- i. Proposed Agreement. Each Bid must include an executed agreement (the “Proposed Agreement”) for the acquisition of all or some of the assets of the Debtors, together with a redline comparing the Proposed Agreement to any applicable Stalking Horse Purchase Agreement or, if there is no applicable Stalking Horse Purchase Agreement, a form of asset purchase agreement, in each case distributed by the Debtors to Potential Bidders. The Proposed Agreement shall:
  - (a) include a complete set of all disclosure schedules and exhibits thereto marked to show the specific changes to the disclosure schedules and exhibits to the applicable Stalking Horse Purchase Agreement (if any) distributed by the Debtors to Potential Bidders; and
  - (b) not condition the closing of the proposed Sale Transaction on the receipt of any third party approvals (excluding such approvals required by the Court or governmental and/or regulatory approvals).
- ii. Purchase Price; Form of Consideration; Cash Requirements; Assets; Assumed Liabilities; Credit Bid. Each Bid must clearly set forth, as applicable:
  - (a) Purchase Price. Each Bid must clearly identify the purchase price to be paid (the “Purchase Price”) and specify the aggregate amount of cash and other consideration being offered.

<sup>3</sup> The Debtors may, in consultation with the Consultation Parties, waive any of the following requirements for a Bid to constitute a Qualified Bid to the extent reasonably necessary to promote bids and a robust auction so long as any such waiver is not materially inconsistent with these Bidding Procedures.

- (b) Cash Requirements. Each Bid, including any Credit Bid (as defined below), must provide cash consideration sufficient to satisfy in full the payment of any applicable Bid Protections and any broker commissions in cash (the “Cash Consideration Amount”) and, with respect to any Credit Bid, must also pay all obligations secured by senior or *pari passu* liens on the applicable assets.
  - (c) Assets Purchased: Each Bid must, in the Proposed Agreement, clearly identify the particular Assets the Potential Bidder seeks to acquire from the Debtors. The Bid must clearly state the allocation of Purchase Price among particular Assets, as applicable. For the avoidance of doubt, any such allocation of the Purchase Price among Assets shall not be binding on the Debtors or any third-party and shall remain subject to determination by the Court.
  - (d) Assumed Liabilities: Each Bid must clearly identify, in writing and as applicable, the particular liabilities, if any, the Bidder seeks to assume.
  - (e) Credit Bid: Persons or entities holding a valid and perfected security interest in the Assets may submit a credit bid (a “Credit Bid”) on such assets, to the extent permitted by applicable law or any Court order, and the documentation governing the Debtors’ secured credit facilities.
- iii. Unconditional Offer / Contingencies. A statement that the Bid is formal, binding, and unconditional, is not subject to any further due diligence or financing contingency, and is irrevocable until the Debtors notify the Potential Bidder that such Bid is not a Successful Bid or a Back-Up Bid, or with respect to a Back-Up Bid until the earlier of (a) the first business day after the close of the Sale Transaction with the Successful Bidder for the Assets bid upon by such Back-up Bidder or (b) 90 days after entry of an order approving the Sale Transaction with the Successful Bidder for the Assets bid upon by such Back-up Bidder; *provided that* for the avoidance of doubt, for any Stalking Horse Bidder, the Stalking Horse Bid shall be irrevocable as set forth in the Stalking Horse Purchase Agreement.
- iv. Timeline to Close. The Bid must provide a commitment to close no later than the deadline for the Stalking Horse Bidder to close in the Stalking Horse Purchase Agreement.
- v. Proof of Financial Ability to Perform. Each Bid must contain such financial and other information that allows the Debtors, in consultation with the Consultation Parties, to make a reasonable determination, in their reasonable business judgment as to the Potential Bidder’s financial and other capabilities to consummate the Sale Transactions including, without

limitation, ability to post replacement letters of credit, as applicable, and such financial and other information setting forth adequate assurance of future performance in satisfaction of the requirements under section 365(f)(2)(B) of the Bankruptcy Code, and the Potential Bidder's willingness to perform under any contracts that are assumed and assigned to such party. Without limiting the foregoing, such information must include current financial statements or similar financial information certified to be true and correct as of the date thereof, proof of financing commitments if needed to consummate the transaction (not subject to, in the Debtors' reasonable business judgment, any unreasonable conditions), contact information for verification of such information, including any financing sources, and any other information reasonably requested by the Debtors or the Consultation Parties necessary to demonstrate adequate assurance of future performance and to demonstrate that such Potential Bidder has the ability to consummate the Sale Transactions in a timely manner.

- v. Designation of Contracts and Leases. Each Bid must identify with particularity (i) each and every executory contract and unexpired lease that the Potential Bidder seeks to assume and receive an assignment of; and (ii) each and every other contract and lease of the Debtors that the Potential Bidder seeks to assume and receive an assignment of.
- vi. Required Approvals. A statement or evidence (i) that the Potential Bidder has not conditioned their Bid on (a) obtaining financing, (b) any internal approval, (c) the outcome or review of unperformed due diligence, or (d) regulatory contingencies (except as otherwise provided in this section, (ii) that the Potential Bidder has made or will make in a timely manner all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, or other antitrust laws, as applicable, and pay the fees associated with such filings; (iii) identifying each governmental and regulatory third-party approvals required for the Potential Bidder to consummate the applicable Sales Transaction, if any, and the Potential Bidder's plan and ability to obtain all requisite governmental, regulatory, or other third-party approvals and the proposed timing for the Potential Bidder to undertake the actions required to obtain such approvals; and (iv) that the Bid is reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid or as the Back-Up Bid, within a time frame acceptable to the Debtors. A Potential Bidder further agrees that its legal counsel will coordinate in good faith with the Debtors' legal counsel to discuss and explain such Potential Bidder's regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable.
- vii. Disclosure of Identity and Corporate Authorization. Each Bid must (i) fully disclose the identity of the Potential Bidder of each entity that will be

bidding or otherwise participating in such Bid (including any equity owners or sponsors, if the Potential Bidder is an entity formed for the purpose of consummating the Sale Transactions), and the complete terms of any such participation, and (ii) include evidence of corporate authorization and approval from the Potential Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of a Bid, participation in the Auction, and closing of the transactions contemplated by the Potential Bidder's Proposed Agreement in accordance with the terms of the Bid and these Bidding Procedures.

- viii. No Entitlement to Expense Reimbursement or Other Amounts. With the exception of any Stalking Horse Bid, expressly state that the Bid does not entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment or reimbursement, and a waiver of any substantial contribution administrative expense claims under section 503(b) of the Bankruptcy Code related to the bidding process.
- ix. Disclosure of Connections. Each Bid must fully disclose any connections or agreements with the Debtors, the Debtors' prepetition secured creditors, DIP lender, other known Potential Bidders, and/or any officer or director of the Debtors.
- x. Joint Bids. The Debtors may, in consultation with the Consultation Parties, approve joint Bids in their sole and reasonable business judgment on a case-by- case basis.
- xi. Representations and Warranties. Each Bid must include the following representations and warranties.
  - a. a statement that the Potential Bidder has had an opportunity to conduct, and has completed, any and all due diligence regarding the applicable asset prior to submitting its Bid;
  - b. a statement that the Potential Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the assets in making its Bid and did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the assets or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Potential Bidder's Proposed Agreement ultimately accepted and executed by the Debtors;
  - c. a statement that the Potential Bidder agrees to serve as Back-Up Bidder, if its Bid is selected as the next highest or next best bid (or

any combination of Partial Bids comprising one Qualified Bid) after the Successful Bid with respect to the applicable asset;

- d. a statement that the Potential Bidder has not (i) engaged in any collusion with respect to the submission of any bid or the Auction, (ii) coordinated or joined with any other party on a bid or bids, or (iii) took any other action to prevent a transparent and competitive auction process; *provided, that*, certain joint bids may be permitted as set forth herein;
- e. a statement that all proof of financial ability to consummate the Sale Transaction in a timely manner and all information provided to support adequate assurance of future performance is true and correct; and
- f. a statement that the Potential Bidder agrees to be bound by the terms of the Bidding Procedures.

A Potential Bidder must also accompany its Bid with:

- xii. a cash deposit in the amount of 5% of the proposed purchase price (a “Good Faith Deposit”), unless otherwise agreed to by the Debtors, in consultation with the Consultation Parties, and a Potential Bidder; *provided, that*, a Potential Bidder submitting a Credit Bid will not be required to accompany its Bid with a Good Faith Deposit for any portion of the Purchase Price that is a Credit Bid;
- xiii. the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the Bid submitted by the Potential Bidder; and
- xiv. a covenant to cooperate with the Debtors and the Consultation Parties to provide pertinent factual information regarding the Potential Bidder’s operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements.

For the avoidance of doubt, (i) the Stalking Horse Bidder is a Qualified Bidder, (ii) the Stalking Horse Purchase Agreement is a Qualified Bid, and (iii) the Stalking Horse Bidder is authorized to submit any Overbids (as defined below), including in the form of a credit bid, during the Auction, in each instance without further qualification required of the Stalking Horse Bidder.

### **Good Faith Deposit**

A Good Faith Deposit must be deposited, prior to the Bid Deadline, with an escrow agent selected by the Debtors (the “Escrow Agent”) pursuant to a customary and reasonable escrow agreement to be provided by the Debtors. To the extent a Qualified Bid is modified before,

during, or after the Auction, the Debtors reserve the right to require that such Qualified Bidder increase its Good Faith Deposit so that it equals five percent (5%) of the Purchase Price. If a Qualified Bidder is required to increase its Good Faith Deposit, its status as a Qualified Bidder shall be suspended pending satisfaction of such adjustment. For the avoidance of doubt, and notwithstanding anything to the contrary in these Bidding Procedures or any Court order to the contrary, any Good Faith Deposit by any Stalking Horse Bidders or other Qualified Bidders shall only be for purposes of this process. No party, including any lenders, shall have any lien, claim, or right with respect to the Good Faith Deposit, and such funds shall not be available for distribution to the Debtors' creditors, unless and until such funds become property of the Debtors' estates in accordance with the terms of these Bidding Procedures. For the avoidance of doubt, if the Good Faith Deposit becomes property of the Debtors' estates, it is subject to the Final DIP Order until all DIP Obligations are paid in full.

### **Review of Bids; Designation of Qualified Bids**

The Debtors, in consultation with the Consultation Parties, will evaluate Bids that are timely submitted and may engage in negotiations with Potential Bidders who submitted Bids as the Debtors deem appropriate in the exercise of their reasonable business judgment, based upon the Debtors' evaluation of the content of each Bid.

A Bid that is reasonably determined by the Debtors, in consultation with the Consultation Parties, to meet the requirements set forth herein will be considered a "Qualified Bid" and any bidder that submits a Qualified Bid (including any Stalking Horse Bids) will be considered a "Qualified Bidder."

By no later than **one (1) business day prior to the Auction** (the "Qualified Bid Deadline"), the Debtors shall determine, in their reasonable business judgment, and in consultation with the Consultation Parties, which of the Bids received by the Bid Deadline qualifies as a Qualified Bid. The Debtors shall notify each Bidder who submits a Qualified Bid of its status as a Qualified Bidder by the Qualified Bid Deadline.

In evaluating the Bids, the Debtors may take into consideration the following non-exhaustive factors:

1. the amount of the purchase price and Credit Bid, as applicable, set forth in the Bid (*provided, that*, for purposes of evaluating competing bids, and except with respect to the requirement that each Bid must provide the Cash Consideration Amount, every dollar of a Credit Bid shall be treated the same as a dollar from a cash or other non-cash Bid, and a Credit Bid shall not be considered inferior to a comparable cash or other non-cash Bid because it is a Credit Bid);
2. the assets and liabilities excluded from the Bid and any executory contracts or leases or other liabilities proposed to be assumed;
3. the value to be provided to the Debtors under the Bid, including the net economic effect upon the Debtors' estates, taking into account any Stalking Horse Bidder's rights to any Bid Protections;

4. any benefit to the Debtors' estates from any assumption of liabilities or waiver of liabilities, including replacement letters of credit;
5. the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; tax leakage; and required governmental or other approvals;
6. the impact on employees and employee claims against the Debtors;
7. the impact on trade creditors; and
8. any other factors the Debtors may deem relevant, consistent with their fiduciary duties.

A Bid that contemplates the liquidation of some or all the Assets shall not be disqualified from being a Qualified Bid solely for that reason. The Debtors reserve the right, in consultation with the Consultation Parties, to work with any Potential Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid.

Without the written consent of the Debtors, in consultation with the Consultation Parties, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the Purchase Price or otherwise improve the terms of the Qualified Bid for the Debtors during the period that such Qualified Bid remains binding as specified herein; *provided, that*, any Qualified Bid may be improved at the Auction as set forth in these Bidding Procedures. For the avoidance of doubt, any amendment to any Stalking Horse Purchase Agreement, shall be shared with the Consultation Parties' respective counsel as promptly as possible and filed with the Bankruptcy Court within one (1) business day of such amendment, or as soon as reasonably practicable thereafter, and the Debtors will take into account all such amendments or modifications at the Auction.

Subject to the terms of the Bid Procedures Order and these Bidding Procedures, any Qualified Bidder who has a valid and perfected lien on any of the Assets and the right under applicable law to credit bid claims secured by such liens, including, for the avoidance of doubt, the DIP Lender, shall have the right to submit a Credit Bid all or a portion of the value of such Qualified Bidder's claims pursuant to section 363(k) of the Bankruptcy Code with respect to the collateral by which such Qualified Bidder's claim is secured. For the avoidance of doubt, any Credit Bid for the Assets shall be subject to any lien challenge rights of the Creditors' Committee set forth in any Court order. Any Qualified Bidder intending to submit a Credit Bid all or a portion of the value of such Qualified Bidder's claim shall provide notice thereof to the Debtors and any Stalking Horse Bidders by the Bid Deadline. For the avoidance of doubt, such Qualified Bidder that provides notice of intent to submit a Credit Bid will no longer be a Consultation Party with respect to the bidding and auction relating to the assets subject to such Bid until such time as such party withdraws such Bid.

#### **Selection of Successful Bid**

The Back-Up Bid, if any, will remain open and binding on the Back-Up Bidder until

consummation of the Successful Bid with the Successful Bidder. If the Successful Bidder fails to consummate the Successful Bid within the time set forth therein, the Debtors will be authorized, but not required, in consultation with the Consultation Parties, to select the Back-Up Bidder, if any, as the new Successful Bidder, in which case the Debtors shall proceed to consummate the Successful Bid of the new Successful Bidder.

Within one (1) business day after conclusion of the Auction, the Debtors shall file a notice with the Court identifying the Successful Bidder and the Back-Up Bidder, if any.

### **Failure to Receive Qualified Bids Other Than Stalking Horse Bid**

If no Qualified Bid (other than a Stalking Horse Bid) is received by the Qualified Bid Deadline, the Debtors will not conduct the Auction with respect to the Assets subject to such Stalking Horse Bid, and shall file a notice with the Court indicating that no Auction will be held and the Stalking Horse Bidder will be named the Successful Bidder.

### **Auction Procedures**

If the Debtors receive two or more Qualified Bids with respect to the applicable assets, the Debtors shall conduct the Auction on **June 27<sup>th</sup>, 2024 beginning at 10:00 a.m. (prevailing Central Time) at (i) the offices of Winston & Strawn LLP, 25 W. Wacker Drive, Chicago, IL 60601 or (ii) virtually, pursuant to procedures to be announced to bidders, or such other later date as may be determined by the Debtors in consultation with the Consultation Parties and upon notice to all parties in interest.** Only Qualified Bidders will be eligible to participate at the Auction, subject to such limitations as the Debtors may impose in good faith and in consultation with the Consultation Parties. In addition, only the professionals and/or other representatives of the Qualified Bidders, the Debtors, and the Consultation Parties, including in-house counsel and outside counsel for members of the Creditors' Committee, shall be permitted to attend and observe the Auction.

Before commencement of the Auction, the Debtors will notify all Qualified Bidders, the Stalking Horse Bidder, and the Notice Parties (as defined below) in writing of the highest or otherwise best Qualified Bid, as determined in the Debtors' business judgment, in consultation with the Consultation Parties (the "Baseline Bid"), and (ii) provide copies (to the extent not previously provided) of the documents supporting the Baseline Bid to all Qualified Bidders and Notice Parties. The determination of which Qualified Bid constitutes the Baseline Bid, and which Qualified Bid constitutes the highest or otherwise best bid such that it is the Successful Bid (as defined below), may take into account, among other things: (a) the type and amount of Assets sought to be purchased in the Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof; and (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Qualified Bid.

The following auction rules shall apply to the Auction to promote a spirited and robust auction (the "Auction Rules").

- (a) At least one (1) business day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtors whether it intends to



attend the Auction and all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder in attendance at the Auction in person; *provided that*, in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder. All other creditors of the Debtors who desire to attend the Auction (including their counsel) and provide no less than two (2) business days advance written notice of their intent to attend the Auction no later than 5:00 p.m. (ET) to Debtors' counsel, Winston & Strawn LLP by email, to Kenneth Perkins, kperkins@winston.com, and Carrie Hardman, chardman@winston.com, will be permitted to attend the Auction.

- (b) The Auction shall be transcribed or video recorded. All bids in the Auction will be made and received on an open basis, and all other Qualified Bidders participating in the Auction will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Bidder placing a bid at the Auction will be fully disclosed to all other bidders participating in the Auction and that all material terms of a bid submitted in response to any successive bids made at the Auction (each, an "Overbid") will be disclosed to all other Qualified Bidders participating in the Auction. Each Qualified Bidder will be permitted what the Debtors reasonably determine, in consultation with the Consultation Parties, to be an appropriate amount of time to respond to the previous bid at the Auction. The Auction will be conducted openly and shall be transcribed or recorded. The starting bid (the "Starting Bid") shall be the highest or best Qualified Bid, as determined by the Debtors in consultation with the Consultation Parties. If a Stalking Horse Bid is selected as the Starting Bid, any Overbid shall include the amount provided for in the Stalking Horse Bid(s), *plus* the Bid Protections, plus a minimum overbid to be determined by the Debtors in their business judgment, in consultation with the Consultation Parties, prior to the Auction.
- (c) Any Overbid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtors accept a Bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such prior Overbid is not selected as the Back-Up Bid. To the extent not previously provided (which will be determined by the Debtors in consultation with the Consultation Parties), a Qualified Bidder submitting an Overbid must submit at the Debtors' request (in consultation with the Consultation Parties), as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors in consultation with the Consultation Parties) demonstrating such Qualified Bidder's ability to close the transaction at the purchase price contemplated by such Overbid.
- (d) Bidders and their representatives may not communicate with one another, collude, or otherwise coordinate for purposes of participating in the Auction. All parties are prohibited from (i) engaging in any collusion with respect to the submission

of any bid or the Auction, (ii) coordinating or joining with any other party on a bid or bids, or (iii) taking any other action to prevent a transparent and competitive auction process; *provided, that*, certain joint bids may be permitted as set forth herein. Each Qualified Bidder participating in the Auction shall confirm in writing and on the record at the Auction that (i) it has not engaged in any of the foregoing prohibited actions and (ii) its Qualified Bid is a good faith bona fide offer that it intends to consummate if selected as a Successful Bidder.

All parties attending the Auction must keep the proceedings and results of the Auction confidential until the Debtors have closed the Auction; *provided, that*, parties may speak with clients or parties necessary to place their bid or increase it so long as such individuals are advised of the confidentiality restriction.

The Debtors shall conduct an Auction for the Assets on a consolidated or semi-consolidated basis pursuant to the Auction Rules. To the extent the Debtors conduct multiple auctions for different subgroupings of the Assets (each, a “Sub-Auction”) at any Auction and a Qualified Bidder declines to participate in any specific Sub-Auction or Sub-Auctions, or any round of bidding for such specific Sub-Auctions, such Qualified Bidder shall still be permitted to offer a Bid in subsequent Sub-Auctions, including bids that include assets subject to a prior Sub-Auction, which includes the right to bid on groupings of assets that may include specific assets which were the subject of an earlier Sub-Auction. The Debtors may, in the exercise of their reasonable business judgment and in consultation with the other Consultation Parties, identify the highest or otherwise best Qualified Bid as the reserve bid for each Sub-Auction (each, a “Reserve Sub-Auction Bid” and the bidder submitting such bid, a “Reserve Sub-Auction Bidder”). The Debtors may also identify, in consultation with the Consultation Parties, a Qualified Bidder that submitted the next highest or otherwise best Qualified Bid in each Sub-Auction as a back-up bid (each, a “Back-Up Sub-Auction Bid” and the bidder submitting such bid, a “Back-Up Sub-Auction Bidder”). The Debtors, upon consultation with the Consultation Parties, shall have the right to establish different Overbids with respect to any Sub-Auction.

If the Debtors, in the exercise of their reasonable business judgment and in consultation with the Consultation Parties, determine that pursuing a Sale Transaction pursuant to the Reserve Sub-Auctions Bid(s) will result in a higher or otherwise better value of the Assets than pursuing a Sale Transaction pursuant to the highest or otherwise best Bid received in the Auction of the Assets on a consolidated or semi-consolidated basis, then the Debtors may declare the Reserve Sub-Auction Bid(s) as Successful Bid(s) (and the Reserve Sub-Auction Bidder(s) as Successful Bidders) and the Back-Up Sub-Auction Bid(s) as the Back-Up Bid(s) (and the Back-up Sub-Auction Bidder(s) as Back-Up Bidder(s)).

The Debtors may, in the exercise of their business judgment and in consultation with the Consultation Parties, identify the highest or otherwise best Qualified Bid (or any combination of Partial Bids comprising one Qualified Bid, as specified above) as the successful bid for the respective Assets to be acquired (each, a “Successful Bid” and the bidder submitting such bid, a “Successful Bidder”). The Debtors may also identify a Qualified Bidder, in consultation with the Consultation Parties, that submitted the next highest or otherwise best Qualified Bid (or any combination of Partial Bids comprising one Qualified Bid, as specified above) as a back-up bid

(a “Back- Up Bid” and the bidder submitting such bid, a “Back-Up Bidder”).

Within one (1) business day after the Auction, or as soon as reasonably practicable thereafter, each Successful Bidder shall (i) submit to the Debtors fully executed documentation memorializing the terms of the Successful Bid such Successful Bidder submitted and (ii) unless otherwise agreed in the purchase agreement between the Debtors and a Successful Bidder, submit by transfer of immediately available funds to an account identified by the Debtors any amount required to increase the Successful Bidder’s Good Faith Deposit to an amount equal to five percent (5%) of the Purchase Price contained in the Successful Bid, if the amount of the Good Faith Deposit previously delivered by the Successful Bidder is less than such amount. For the avoidance of doubt, and notwithstanding anything to the contrary in these Bidding Procedures or any Court order to the contrary, any such increase to the Good Faith Deposit by any Stalking Horse Bidders or other Qualified Bidders to such designated account shall only be for purposes of this process. No party, including any of the Debtors’ lenders, have or shall have any lien, claim, or right with respect to such funds which shall not be available for distribution to the Debtors’ creditors, unless and until such funds become property of the Debtors’ estates in accordance with the terms of these Bidding Procedures. A Successful Bid may not be assigned to any party without the consent of the Debtors, in consultation with the Consultation Parties.

At any time before the designation of a Successful Bid and Back-Up Bid, if any, the Debtors, in consultation with the Consultation Parties, reserve the right to and may reject such Qualified Bid(s) (other than any Stalking Horse Bids) if such Qualified Bid(s), in the Debtors’ reasonable business judgment, in consultation with the Consultation Parties, is/are: (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Sale; (iii) contrary to the best interests of the Debtors, their estates, their creditors, and other stakeholders.

As set forth above, the Debtors reserve their right, in their reasonable business judgment and in consultation with the Consultation Parties, to announce at the Auction modified or additional procedures for conducting the Auction. In addition, the Debtors reserve the right, at or before the conclusion of the Auction, to impose additional terms and conditions upon Qualified Bidders as the Debtors, in consultation with the Consultation Parties, determine to be in the best interests of the Debtors’ estates in these Chapter 11 Cases.

The Debtors (in consultation with the Consultation Parties) reserve the right to make one or more adjournments in the Auction to, among other things (i) facilitate private discussions with individual Qualified Bidders and negotiate the terms of their Overbids, (ii) allow individual Qualified Bidders to consider how they wish to proceed, and (iii) give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors may require in their reasonable discretion (and in consultation with the Consultation Parties) to determine that the Qualified Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount.

#### **Post-Auction Process**

Within one (1) business day after the conclusion of the Auction, or as soon as reasonably

practicable thereafter, in any event no later than July 2, 2024 at 12:00 p.m. ET (11:00 a.m. CT), the Debtors shall file with the Court a notice of the Successful Bid(s), Successful Bidder(s), Back-Up Bid(s), and Back-Up Bidder(s).

The Good Faith Deposits for each Qualified Bidder (other than the Successful Bidder and the Back-Up Bidder) shall be returned on the date that is five (5) business days after the Auction, or as soon as is reasonably practicable thereafter. The Debtors shall return the Good Faith Deposit of the Back-Up Bidder by the earlier of (i) thirty (30) days after the conclusion of the Auction and (ii) five (5) business days after the consummation of the Successful Bid, unless by such date the Debtors have selected the Back-Up Bidder as the new Successful Bidder.

Each Successful Bidder's Good Faith Deposit shall be applied against the cash portion of the purchase price of such bidder's Successful Bid upon the consummation of the Sale Transactions. Notwithstanding the foregoing, if a Successful Bidder fails to consummate a proposed transaction because of a breach by such Successful Bidder, the Debtors will not have any obligation to return the Deposit deposited by such Successful Bidder, which may be retained by the Debtors as damages, in addition to any and all other rights, remedies, or causes of action that may be available to the Debtors, and the Debtors shall be free to consummate the proposed transaction with the applicable Back-Up Bidder subject to Court approval, which may be sought on an expedited basis.

Notwithstanding the foregoing, the Good Faith Deposit, including the amount thereof, and any remedies against a Stalking Horse Bidder shall be governed by the applicable Stalking Horse Purchase Agreement, if any.

#### **Notices Regarding Assumption and Assignment**

The Debtors shall provide all notices regarding the proposed assumption and assignment of contracts and leases of the Debtors in accordance with the Assumption and Assignment Procedures included in the Bid Procedures Order.

#### **Sale Objections and Hearing**

The hearing (the "Sale Hearing") to consider approval of the sale of Assets will be held before the Court on **July 10, 2024 at 10:00 a.m.** and otherwise in accordance with any scheduling order entered by the Court; *provided* that if no Auction is held, the Debtors shall schedule the Sale Hearing before such time and as expeditiously as possible, subject to Court approval. Prior to the Sale Hearing, the Successful Bidder (unless the Successful Bidder is the Stalking Horse Bidder) shall complete and execute all documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

Objections to the Sale Transactions (each, a "Sale Objection"), shall: (i) be in writing; (ii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (iii) state with particularity the basis and nature of any objection, and if applicable, provide proposed language that, if accepted and incorporated by the Debtors (in consultation with the Consultation Parties), would obviate such objection; (iv) conform to the Bankruptcy Rules and the Local Rules; (v) be filed with the Court; and (vi) be served upon (a) the Debtors, Winston & Strawn LLP, 35 West Wacker Drive, Chicago, IL 60601 (Attn.: Greg

Gartland, Dan McGuire and Joel Mudd) and 200 Park Avenue, New York, New York 10166 (Attn.: Carrie Hardman) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn.: Andrew L. Magaziner, Shella Borovinskaya, and Carol E. Cox); (b) the Office of the United States Trustee for the District of Delaware (Attn: Linda Richenderfer and Jon Lipshie); (c) proposed counsel to the Creditors' Committee, Greenberg Traurig, LLP, 222 Delaware Avenue, Suite 1600, Wilmington, Delaware 19801 (Attn: Anthony W. Clark and Dennis A. Meloro) and 77 West Wacker Drive, Suite 3100, Chicago, IL 60601 (Attn: Nancy A. Peterman and Danny Duerdoth); (d) counsel for the DIP Lender, Norton Rose Fulbright US LLP, 1301 Avenue of the Americas, New York, NY 10019 (Attn: Robert Hirsh and Francisco Vazquez) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801 (Attn: Eric J. Monzo); (e) counsel for Column Financial, Inc., Holland & Knight, LLP, 511 Union Street, Ste. 2700, Nashville, Tennessee 37219 (Attn: Tyler Layne) and Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, P.O. Box 2087, Wilmington, DE 19899 (Attn: Adam Landis and Rick Cobb); and (f) counsel for all other Prepetition Secured Parties (collectively, the "Notice Parties"), *provided, that*, the Debtors, with notice to the Consultation Parties, may extend the Contract and Sale Objection Deadline as the Debtors deem appropriate in the exercise of their reasonable business judgment. If a timely Sale Objection cannot otherwise be resolved by the parties, such objection shall be heard by the Court at the applicable Sale Hearing.

An appropriate representative of each Successful Bidder shall appear at the applicable Sale Hearing and be prepared, if necessary, to have such representative(s) testify in support of a Successful Bid and the Successful Bidder's ability to close in a timely manner and provide adequate assurance of its future performance under any and all executory contracts and unexpired leases to be assumed and assigned to the Successful Bidder as part of the proposed transaction, or otherwise submit such testimony in writing in the form of a sworn declaration to be filed with the Court in advance of the Sale Hearing and appear at the Sale Hearing, all in accordance with and consistent with the rules of Chambers for the Honorable Thomas M. Horan.

Any party who fails to timely file with the Court a Sale Objection will be forever barred from asserting any objection to the applicable sale of the Assets, or to the consummation and performance of a sale transaction contemplated by a purchase agreement with a Debtor and a Successful Bidder, including the transfer of the Assets to a Successful Bidder, free and clear of all claims and interests pursuant to section 363(f) of the Bankruptcy Code. Failure to object shall constitute consent for the purposes of section 363(f) of the Bankruptcy Code. Any objection filed after the Contract and Sale Objection Deadline will not be considered by the Court.

The Sale Hearing may be adjourned or rescheduled by the Debtors upon consultation with the Consultation Parties and any Stalking Horse Bidder to a time and date consistent with the Court's calendar, as set forth in a notice on the docket of these Chapter 11 Cases, a notice of agenda, or stated orally at the Hearing.

### **Consent to Jurisdiction and Authority as Condition to Bidding**

All Potential Bidders (including any Stalking Horse Bidders) that participate in the bidding process with respect to the Assets shall be deemed to have (i) consented to the core jurisdiction of the Court to enter any order or orders, which shall be binding in all respects, in

any way related to these Bidding Procedures, the bid process, the Auction, the applicable Sale Hearing, or the construction and enforcement of any agreement or any other document relating to the Sale Transactions; (ii) waived any right to a jury trial in connection with any disputes relating to these Bidding Procedures, the bid process, the Auction, the applicable Sale Hearing, or the construction and enforcement of any agreement or any other document relating to the Sale Transactions; and (iii) consented to the entry of a final order or judgment in any way related to these Bidding Procedures, the bid process, the Auction, the applicable Sale Hearing, or the construction and enforcement of any agreement or any other document relating to the Sale Transactions if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.