

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.
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**ORDER (I) (A) APPROVING BIDDING PROCEDURES FOR
THE SALE OF THE REAL PROPERTY; (B) APPROVING THE
FORM OF PURCHASE AGREEMENT; (C) APPROVING BID PROTECTIONS
IN FAVOR OF THE STALKING HORSE PURCHASER; (D) APPROVING THE
FORM AND MANNER OF SERVICE OF THE AUCTION NOTICE; AND
(E) SCHEDULING AN AUCTION; AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)¹ filed by Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”) for entry of an order (this “Bidding Procedures Order”), pursuant to sections 105, 363, and 503 of chapter 11 of title 11, United States Code (the “Bankruptcy Code”), and Rules 2002, 6004, 9006 and 9007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (a) approving bidding procedures (“Bidding Procedures”), substantially in the form annexed hereto as **Exhibit 1** related to the sale and proposed auction of the real property known as and located at 5036 One World Way, Wake Forest, North Carolina 27587 (the “Real Property”) pursuant to Bankruptcy Code §§ 363(b), (f), and (m); (b) approving the proposed asset purchase agreement (the “Form Purchase Agreement”), a copy of which is annexed to the Motion as Exhibit B, solely to the extent of its use as a form which all bidders for the Real Property must follow; (c) approving proposed asset purchase agreement (the “Stalking Horse Purchase Agreement”), a copy of which is annexed to the Motion as Exhibit C, and related bid protections in favor of LREP Acquisition III LLC, the proposed stalking horse purchaser (the “Stalking Horse Purchaser”); and (d) scheduling an auction (the “Auction”) and a hearing (the “Sale Confirmation Hearing”) to approve the sale of the Real Property; and upon

¹ A copy of the Motion and all supporting documentation can be found free of charge, the Trustee’s appointed claims agent, located at <https://veritaglobal.net/thebodyshop>.



the declaration of Kenneth P. Silverman filed in support of the Motion; and due and sufficient notice of the hearing on the Motion (the “Bidding Procedures Hearing”) and the relief sought therein having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and no objections to the relief requested in the Motion having been filed or interposed at the Bidding Procedures Hearing; and it appearing that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors and other parties in interest; and after due deliberation thereon and good cause appearing therefore, it is hereby:

FOUND, CONCLUDED AND DETERMINED THAT:

1. This Court has jurisdiction over the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The relief granted herein is in the best interests of the Debtor’s estate and creditors, and other parties in interest.

3. Due, sufficient and adequate notice of the Motion and the Bidding Procedures Hearing and the relief granted in this Bidding Procedures Order has been given, and such notice is appropriate in light of the circumstances and the nature of the relief requested, and no other or further notice thereof is required.

4. Service of this Bidding Procedures Order shall constitute good and sufficient notice of the Auction and the proposed sale if served, pursuant to the terms of this Bidding Procedures Order, by electronic mail or, if no electronic mail address is available, via first-class mail, upon (i) the Office of the United States Trustee; (ii) the Debtor’s counsel; (iii) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002; (vi) all parties who are known to assert a lien, claim, encumbrance or other interest on the Real Property, if any; and (vii) all parties identified by

the Trustee and his professionals as potentially having an interest in acquiring the Real Property (collectively, the “Notice Parties”).

5. The Trustee has articulated good and sufficient reasons for this Court to grant the relief requested in the Motion, including this Court’s (i) approval of the Bidding Procedures, attached hereto as Exhibit 1, (ii) approval of the Form Purchase Agreement, and (iii) approval of the Stalking Horse Purchase Agreement and payment to the Stalking Horse Purchaser of the Break-Up Fee (as defined in the Stalking Horse Purchase Agreement) in the event that the Stalking Horse Purchaser is not the successful bidder at the Auction.

6. The Trustee has articulated good and sufficient reasons for, and the best interests of the Debtor’s estate will be served by, this Court scheduling a Sale Hearing to consider whether to grant the remainder of the relief requested in the Motion, including approving and authorizing the sale of the Real Property, free and clear of any liens, security interests, encumbrances, claims, charges, options and interests thereon, pursuant to the purchase agreement executed by the successful bidder at the Auction.

7. The Break-Up Fee, to the extent payable under certain circumstances set forth in the Stalking Horse Agreement, is (i) an actual and necessary cost and expense of preserving the Debtor’s estate within the meaning of section 503(b) of the Bankruptcy Code, (ii) provides a material benefit to the estate by enabling the Trustee to obtain a commitment from the Stalking Horse Purchaser which will expend money, time and effort formulating and negotiating an offer for the Real Property, (iii) fair and reasonable when considering the potential amount of time, effort, cost, and expense that the Stalking Horse Purchaser incurred in negotiating the Stalking Horse Agreement, and (iv) necessary to induce the Stalking Horse Bidder to pursue the Sale.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. The Motion is GRANTED, to the extent set forth herein.
2. Any objections to entry of this Bidding Procedures Order or to the relief provided herein and requested in the Motion that have been withdrawn, waived, resolved, or settled are hereby denied and overruled in their entirety.
3. The Form Purchase Agreement attached to the Motion as Exhibit B is hereby approved as for the purposes of serving as the form which all bidders of the Real Property must follow, other than the Stalking Horse Purchaser.
4. The Trustee is authorized to enter into the Stalking Horse Agreement with the Stalking Horse Purchaser, and the provisions of the Stalking Horse Agreement are approved as set forth herein.
5. In addition to the requirements set forth in Section 12.02(b) of the Stalking Horse Agreement, the Stalking Horse Purchaser shall provide to the Office of the United States Trustee copies of all expense documentation for which the Stalking Horse Purchaser is requesting reimbursement simultaneously with providing same to the Trustee.

The Bidding Procedures

6. The Bidding Procedures, as set forth in Exhibit 1 hereto and incorporated herein by reference, are hereby APPROVED in all respects and shall govern all bids and bid proceedings relating to the Real Property, and the Trustee is authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures. The failure to specifically include or reference any particular provision of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such procedures, it being the intent of this Court that the Bidding Procedures be authorized and approved in their entirety.
7. As further described in the Bidding Procedures, each Bid must be delivered on or

before **September 9, 2024 at 5:00 p.m. (EST)** (the “Bid Deadline”).

8. The Trustee is authorized to extend the deadlines set forth in this Bidding Procedures Order and/or adjourn, continue or suspend the Auction and/or the Sale Hearing as it may reasonably determine to be in the best interest of its estate.

The Auction

9. The Auction, if necessary, shall commence at 10:00 a.m. (prevailing Eastern Time) **September 12, 2024 at 10:00 a.m.** via Zoom or similar platform with instructions to be provided by the Trustee to all qualified bidders or such other place and time as the Trustee shall notify all Qualified Bidders; provided, however, in the event that the only Qualified Bid is the Bid of the Stalking Horse Purchaser, then the Stalking Horse Agreement shall be the Successful Bid for the Real Property and the Trustee shall not be required to conduct an Auction, and in such event the Trustee shall proceed with the approval of the Stalking Horse Agreement with the Stalking Horse Purchaser as the Successful Bidder.

The Break-Up Fee

10. The Trustee is authorized and directed to pay the Break-Up Fee, to the extent incurred and solely in the event of the consummation of an Alternate Transaction for the Real Property, from the first proceeds of such transaction or as otherwise set forth in the Stalking Horse Purchase Agreement, without further order of the Court.

11. The terms of the Stalking Horse Purchase Agreement shall govern (i) the conditions under which the bid of the Stalking Horse Purchaser is terminable and (ii) the Break-Up Fee payable in the event of an Alternate Transaction for the Real Property.

Notice of the Bidding Procedures and Auction

12. Not later than three (3) days after the entry of this Bidding Procedures Order, the Trustee will cause a copy of this Bidding Procedures Order, including the annexed Bidding

Procedures, to be sent by electronic mail or, if no electronic mail address is available, via first-class mail, to the Notice Parties.

Objections to Confirmation of the Sale

13. Objections, if any, to the entry of an order approving the sale, shall be in writing, must be filed with the Court electronically in accordance with General Order M-399 **and Local Rule 5005-2** by registered users of the Court's electronic case filing system, and by all other parties in interest, mailed to the Clerk of the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton U.S. Custom House, One Bowling Green, Courtroom 701, New York, New York 10004-1408, with a hard copy delivered directly to the Chambers of the Honorable David S. Jones, and served in accordance with General Order M-399 **and Local Rule 5005-2** or other form upon: (i) attorneys for the Trustee, Rimon P.C., 100 Jericho Quadrangle, Suite 300, Jericho, New York, 11753, Attention: Brian Powers, Esq., and (ii) the U.S. Department of Justice, Office of the United States Trustee, Alexander Hamilton Custom House, One Bowling Green, Room 534, New York, New York 10004, Attn: Mark Bruh, Esq., so as to be received no later than **September 10, 2024 at 12:00 p.m. [DSJ 7/16/2024]**

The Sale Hearing

14. The Sale Hearing shall be held before the Honorable David S. Jones, the United States Bankruptcy Judge on September 17, 2024 at 10:00 a.m. via Zoom for the Government. All parties wishing to appear at the Hearing is required to register their appearance by 4:00 p.m. one (1) business day in advance of the Hearing using the Court's eCourt Appearances platform: <https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl>.

15. The Sale Hearing may be adjourned by the Court upon request of the Trustee without further order of this Court, in which event a notice of adjournment will be filed with this Court and served on all Qualified Bidders or by announcing such adjournment on the record of the Sale

Hearing.

Additional Provisions

16. The Trustee is authorized and empowered to take such steps, incur and pay such costs and expenses, and do such things as may be reasonably necessary to fulfill the requirements established by this Bidding Procedures Order.

17. Nothing contained in this Bidding Procedures Order precludes any party in interest from objecting to the confirmation of the Sale in accordance with the objection procedures set forth herein and no party shall be deemed to have consented to the confirmation of the Sale by virtue of not having objected to the entry of the Bidding Procedures Order.

18. In the event of any conflict between this Bidding Procedures Order and the Form Purchase Agreement or the Stalking Horse Purchase Agreement, this Bidding Procedures Order shall control.

19. The Trustee is hereby authorized and empowered to take such actions as may be reasonably necessary to implement and effect the terms and requirements established by this Bidding Procedures Order.

20. This Bidding Procedures Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof.

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

22. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Bidding Procedures Order.

Dated: July 16, 2024
New York, New York

s/ David S. Jones
United States Bankruptcy Judge
Judge David S. Jones

BIDDING PROCEDURES AND TERMS AND CONDITIONS OF SALE

These bidding procedures (the “Bidding Procedures”) set forth the process by Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee” or the “Seller”) for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”) shall conduct a sale (the “Sale”) by auction (the “Auction”) of certain real property consisting of an estimated 145,800 square foot warehouse located at 5036 One World Way, Wake Forest, North Carolina 27587 (the “Real Property”), free and clear of liens, claims and encumbrances.

The Court presides over the Debtor’s chapter 7 bankruptcy case (the “Chapter 7 Case”) captioned *In re Buth-Na-Bodhaige, Inc.*, Ch. 7 Case No. 24-10392 (Bankr. S.D.N.Y.).

On _____, 2024, the United States Bankruptcy Court for the Southern District of New York (the “Court”) entered an order (the “Bidding Procedures Order”) granting the Trustee’s motion (the “Bidding Procedures Motion”)¹ insofar as it sought approval of the Bidding Procedures and the availability of Bid Protections (as hereinafter defined) to be offered in connection with the Stalking Horse Purchaser (as hereinafter defined). The Bidding Procedures Order and the order approving the Sale are referred to herein, collectively, as the “Sale Orders.”

As referenced in the Bidding Procedures Motion, the Trustee has been in active negotiations with numerous prospective buyers that may submit, or already have submitted, letters of intent and/or indications of interest to become a stalking horse purchaser for the Real Property (collectively, the “Prospective Purchasers”). The Trustee has selected LREP Acquisition III LLC as the stalking horse purchaser (the “Stalking Horse Purchaser”).

I. PROPERTY TO BE SOLD

The Bidding Procedures Motion contemplates that a party may participate in the bidding process by submitting a Bid (as defined below) for the Real Property.

Subject to the terms of the Sale Orders, all of the Debtor’s right, title and interest in and to the Real Property shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon (collectively, the “Liens”), with such Liens to attach to the proceeds of the Sale(s) with the same validity and priority as such Liens applied against the Real Property, except as otherwise specifically provided in a Stalking Horse Agreement (as defined below) or a Modified Asset Purchase Agreement (as defined below) submitted by a Successful Bidder (as defined below) (including any exhibits or schedules thereto) and reflected in the Sale Orders.

¹ Capitalized terms used but not defined herein have the meaning ascribed to them in the Bidding Procedures Motion.

II. BIDDING PROCESS

A. Overview

The Trustee and his advisors will, subject to the other provisions of these Bidding Procedures:

1. coordinate the efforts of Potential Bidders (as defined below) in conducting their due diligence investigations;
2. receive offers from Bidders (as defined below);
3. determine whether any person is a Qualified Bidder (as defined below); and
4. conduct the Auction and further negotiate any offers made to purchase the Real Property.

B. Key Dates for Potential Competing Bidders

The Bidding Procedures provide interested parties with the opportunity to qualify for and participate in the Auction to be conducted by the Trustee and to submit competing bids for the Real Property. The Trustee will assist Potential Bidders in conducting their respective due diligence investigations and may accept Bids until **September 9, 2024 at 5:00** (the “Bid Deadline”), or such later date or time as determined by the Trustee in his sole discretion.

The key dates for the Sale process are as follows:

September 9, 2024 at 5:00 p.m. EST	<u>Bid Deadline</u> : Due date to submit a Qualified Bid and Good Faith Deposit (each as defined below)
September 12, 2024 at 10:00 a.m. EST	<u>Auction</u> : To be held via Zoom or similar platform with instructions to be provided by the Trustee to all qualified bidders.
September 17, 2024, at 10:00 a.m. EST, or as soon thereafter as is convenient for the Court	<u>Sale Hearing</u> : To be held via Zoom for the Government.

C. Access to Diligence Materials

To participate in the bidding process in an effort to effectuate an alternate sale transaction for the Real Property (an “Alternate Transaction”) and to receive access to due diligence materials (the “Diligence Materials”), a party must submit to the Trustee an executed confidentiality agreement in form and substance satisfactory to the Trustee (a “Confidentiality Agreement”).

A party who executes such a Confidentiality Agreement for access to Diligence Materials shall be a "Potential Bidder." The Trustee will afford any Potential Bidder the time and opportunity to conduct reasonable due diligence in accordance with a diligence protocol determined by the Trustee and his advisors; provided, however, that the Trustee shall not be obligated to furnish any due diligence information after the Bid Deadline to any party that has not submitted a Qualified Bid (as defined below) on or before the Bid Deadline and may limit the amount of further due diligence available to Qualified Bidders after the Bid Deadline.

Neither the Trustee nor his representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Potential Bidder.

All due diligence requests must be directed to the Trustee's real estate brokers, Cushman & Wakefield, Attention: David Finger (david.finger@cushwake.com).

D. Due Diligence from Bidders

Each Potential Bidder and each Bidder shall comply with all reasonable requests for additional information and due diligence access by the Trustee or his advisors regarding such Potential Bidder or Bidder, as applicable, and its contemplated transaction. Failure by a Potential Bidder or Bidder (other than the Stalking Horse Purchaser) to comply with requests for additional information and due diligence access may be a basis for the Trustee to determine that such Bidder is not a Qualified Bidder.

III. AUCTION QUALIFICATION PROCESS

A. Qualifying Bids

To be eligible to participate in the Auction, each offer, solicitation or proposal (each, a "Bid"), and each party submitting such a Bid (other than any party designated as the Stalking Horse Purchaser) (each, a "Bidder"), must be reasonably determined by the Trustee to satisfy each of the following conditions:

1. Good Faith Deposit: Each Bid must be accompanied by a cash deposit, paid by wire transfer of immediately available funds or a bank check, in the amount of five percent (5%) of the purchase price contained in the Modified Asset Purchase Agreement (as defined below), which deposit shall be held in the Trustee's earnest monies account for the Debtor's estate (the "Good Faith Deposit").
2. Higher and Better Terms: In connection with any Bid for the Real Property, such Bid must be on terms that the Trustee, in his business judgment, determines is higher and better for the Trustee on a cash (or cash equivalent) basis than the terms of the stalking horse asset purchase agreement (including all exhibits, schedules and ancillary agreements related thereto, and as amended and in effect, the "Stalking Horse Agreement").
3. Executed Agreement: Each Bid must be based on the form asset purchase agreement attached hereto (the "Form Purchase Agreement") or the Stalking Horse Agreement for the Real Property, and such Bid must include binding, executed, irrevocable transaction documents, signed by an

authorized representative of such Bidder, pursuant to which the Bidder proposes to effectuate an Alternate Transaction (a “Modified Asset Purchase Agreement”). A Bid must also include a copy of the Modified Asset Purchase Agreement (including all exhibits thereto) marked against the Form Purchase Agreement to show all changes requested by the Bidder (including those related to purchase price). Both the Modified Asset Purchase Agreement and the marked copy thereof must be provided in both Microsoft Word and PDF format.

4. Minimum Bid: A Bid must have a purchase price that exceeds the purchase price in the Stalking Horse Purchase Agreement by at least the amount of the Bid Protections and Minimum Overbid Increment (each as hereinafter defined).
5. Corporate Authority: A Bid must include written evidence reasonably acceptable to the Trustee demonstrating appropriate corporate authorization to consummate the proposed Alternate Transaction; provided that, if the Bidder is an entity specially formed for the purpose of effectuating the Alternate Transaction then the Bidder must furnish written evidence reasonably acceptable to the Trustee of the approval of the Alternate Transaction by the equity holder(s) of such Bidder.
6. Disclosure of Identity of Bidder: A Bid must fully disclose the identity of each entity and principal that will be bidding for or purchasing the Real Property, including any equity holders in the case of a Bidder which is an entity specially formed for the purpose of effectuating the contemplated transaction, or otherwise participating in connection with such Bid, and the complete terms of any such participation. A Bid must also fully disclose any connections or agreements with the Trustee, the Stalking Horse Purchaser, or any other known, potential, prospective Bidder or Qualified Bidder.
7. Proof of Financial Ability to Perform: A Bid must include detailed, written evidence from which the Trustee and his advisors may conclude that the Bidder has and will continue to have the necessary financial ability to close the Alternate Transaction. Such information must include, *inter alia*, the following:
 - (a) contact names and telephone numbers for verification of financing sources;
 - (b) evidence of the Bidder’s internal resources and proof of funding commitments in an aggregate amount equal to the cash portion of such Bid as are needed to close the Alternate Transaction;
 - (c) the Bidder’s current financial statements (audited if they exist) or other similar financial information reasonably acceptable to the Trustee;

- (d) a description of the Bidder's pro forma capital structure; and
 - (e) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Trustee, demonstrating that such Bidder has the ability to close the Alternate Transaction.
- 8. Contact Information and Affiliates: A Bid must provide the identity and contact information for the Bidder and full disclosure of any affiliates of the Bidder.
- 9. Contingencies: Each Bid (a) may not contain representations and warranties, covenants, or termination rights of any kind except and solely to the extent expressly set forth in the Stalking Horse Agreement, and (b) may not be conditioned on (i) obtaining financing, (ii) any internal approvals or credit committee approvals, or (iii) the outcome or review of due diligence.
- 10. Irrevocable: Each Bid must be irrevocable until the earlier of (i) sixty (60) days following entry of the final Sale Order, (ii) closing of the Sale with the Successful Bidder(s), or (iii) the date the Bid is otherwise rejected under these Bidding Procedures.
- 11. Compliance with Diligence Requests: The Bidder submitting the Bid must have complied with reasonable requests for additional information and due diligence access from the Trustee to the reasonable satisfaction of the Trustee.
- 12. As-Is, Where-Is: Each Bid must include a written acknowledgement and representation that the Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Real Property prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Real Property in making its Bid; and (iii) 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 Real Property or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Stalking Horse Agreement.
- 13. Termination Fees: The Bid (other than a Bid pursuant to the Stalking Horse Agreement) must not entitle the Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment or reimbursement and, by submitting the Bid, the Bidder waives the right to pursue a substantial contribution claim under 11 U S C § 503 related in any way to the submission of its Bid or participation in any Auction.
- 14. Adherence to Bid Procedures: By submitting its Bid, each Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction.
- 15. No Late Bids: Unless otherwise ordered by the Court, the Trustee shall not consider any Bids submitted after the conclusion of the Auction, and any and all such bids shall be deemed untimely and shall under no circumstances constitute

a Qualified Bid.

16. Bid Notice: The following parties (the “Bid Notice Parties”) must receive a Bid in writing, on or before the Bid Deadline:

The Trustee	Counsel to the Trustee
Kenneth P. Silverman, Esq. 100 Jericho Quadrangle, Suite 300 Jericho, New York 11753 Kenneth.Silverman@rimonlaw.com	Rimon P.C 100 Jericho Quadrangle, Suite 300 Jericho, New York 11753 Attn: Brian Powers Brian.Powers@rimonlaw.com And Attn: Courtney Roman Courtney.Roman@rimonlaw.com
Office of the United States Trustee	Real Estate Broker to the Trustee
United States Trustee U.S. Department of Justice Office of the United States Trustee – NY Office Alexander Hamilton Custom House One Bowling Green, Room 534 New York, New York 10004-1408 Attn: Mark Bruh Mark.Bruh@usdoj.gov	Cushman & Wakefield Attn: David Finger david.finger@cushwake.com

A Bid received from a Bidder before the Bid Deadline that meets all of the above requirements for the Real Property shall constitute a “Qualified Bid” and such Bidder shall constitute a “Qualified Bidder”; provided that if the Trustee receives a Bid prior to the Bid Deadline that is not a Qualified Bid, the Trustee may provide the Bidder with the opportunity to remedy any deficiencies prior to the Auction; provided, further, that, for the avoidance of doubt, if any Qualified Bidder fails to comply with reasonable requests for additional information and due diligence access from the Trustee to its satisfaction, the Trustee may disqualify any Qualified Bidder and Qualified Bid, in the Trustee’s discretion, and such Bidder shall not be entitled to attend or participate in the Auction.

Any amendments, supplements or other modifications to any Bids (including pursuant to this paragraph) shall be delivered to the Bid Notice Parties. All Qualified Bids will be considered, but the Trustee reserves the right to reject any or all Bids. Bids that are unconditional

and contemplate sales that may be consummated on or soon after the Sale Hearing are preferred. Additionally, notwithstanding anything herein to the contrary, the Stalking Horse Agreement submitted by the Stalking Horse Purchaser shall be deemed a Qualified Bid, and the Stalking Horse Purchaser shall be deemed a Qualified Bidder. The Trustee will inform any Qualified Bidders whether the Trustee considers any Bid to be a Qualified Bid as soon as practicable but in no event later than one (1) day before the Auction.

Each Qualified Bidder, by submitting a Bid, shall be deemed to acknowledge and agree that it is not relying upon any written or oral statements, representations, promises, warranties or guarantees of any kind whether expressed or implied, by operation of law or otherwise, made by any person or party, including the Trustee and his agents and representatives (other than as may be set forth in a definitive agreement executed by the Trustee), regarding the Trustee, the Real Property, the Auction, these Bidding Procedures or any information provided in connection therewith.

During the period that such Bid is required to remain irrevocable and binding, absent the consent of the Trustee a Qualified Bidder may not amend, modify or withdraw its Bid, except for proposed amendments to increase the amount or otherwise improve the terms of the Bid.

IV. AUCTION

A. Auction

If multiple Qualified Bids (including the Stalking Horse Agreement) with respect to the Real Property are submitted by the Bid Deadline, the Trustee will conduct the Auction to determine the highest and otherwise best Qualified Bid with respect to the Real Property.

B. Assessment Criteria

The Trustee's determination of the highest and otherwise best Qualified Bid with respect to the Real Property will take into account any factors the Trustee reasonably deems relevant to the value of the Qualified Bid to the estate and may include, but are not limited to, the following:

1. the amount and nature of the consideration;
2. the type and nature of any modifications to the Form Purchase Agreement or Stalking Horse Agreement, as applicable, requested by each Bidder in such Bidder's Modified Asset Purchase Agreement;
3. the extent to which such modifications are likely to delay closing of the sale of the Real Property and the cost to the Trustee of such modifications or delay;
4. the likelihood of the Bidder's ability to close a transaction and the timing thereof, including the ability to obtain, or waive, as applicable, regulatory and Court approvals;
5. the net benefit to the Debtor's estate (collectively, the "Bid Assessment Criteria").

C. Cancellation of the Auction

If multiple Qualified Bids for the Real Property have not been timely received, then the Auction will be cancelled. If the only Qualified Bid is the Bid of the Stalking Horse Purchaser, then the Stalking Horse Agreement shall be the Successful Bid for the Real Property, and the Stalking Horse Purchaser shall be the Successful Bidder.

V. PROCEDURES FOR THE AUCTION

If multiple Qualified Bids for the Real Property have been timely received by the Bid Deadline, then the Trustee may commence the Auction on **September 12, 2024 at 10:00 a.m.** (prevailing Eastern Time) via Zoom or similar platform with instructions to be provided by the Trustee to all qualified bidders or via such other means at such other place and time as the Trustee shall notify all Qualified Bidders.

The Auction will be conducted according to the following procedures:

A. Participation

Only the Trustee, the United States Trustee, the Stalking Horse Purchaser and any other Qualified Bidder, in each case, along with their respective representatives and counsel, may attend the Auction and only the Stalking Horse Purchaser and any such other Qualified Bidders will be entitled to make any Bids at the Auction.

B. The Trustee Shall Conduct the Auction

The Trustee and his advisors shall direct and preside over the Auction. The Trustee may conduct the Auction and may augment or modify the procedures described herein in any manner he reasonably determines will result in the highest and otherwise best Qualified Bid(s), including, without limitation, by establishing rules at any Auction that include, without limitation, a single or multiple rounds of bidding, the use of sealed bidding, open outcry, or any other form of Bid submission. Any rules developed by the Trustee will provide that each Qualified Bidder will be permitted what the Trustee determines to be an appropriate amount of time to respond to the previous bid at the Auction.

C. Auction Baseline Bids

Prior to commencement of the Auction, the Trustee may provide each Qualified Bidder participating in the Auction with a copy of the Modified Asset Purchase Agreement(s) that are the highest and otherwise best Qualified Bid for the Real Property as determined by the Trustee (such highest and otherwise best Qualified Bid(s), the "Auction Baseline Bid"). In addition, at the start of the Auction, the Trustee may describe the terms of the Auction Baseline Bids.

D. Anti-Collusion Representations

Each Qualified Bidder participating in the Auction must confirm that it (1) has not engaged in any collusion with respect to the bidding or Sale, (2) has reviewed, understands and accepts the Bidding Procedures and (3) has consented to the core jurisdiction of the Court.

E. Terms of Overbids

The Trustee will accept Overbids, as further described below. An “Overbid” is any bid made at the Auction subsequent to the Trustee’s announcement of the Auction Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

1. Initial Overbid: The initial Overbid after and above the Auction Baseline Bid (the “Initial Overbid”) shall be in an amount of: (a) if the Auction Baseline Bid is that of the Stalking Horse Purchaser, then not less than \$100,000 in excess of the Auction Baseline Bid plus the amount of any Bid Protections, or (b) if the Auction Baseline Bid is that of any other Qualified Bidder, not less than \$50,000 in excess of the Auction Baseline Bid.
2. Minimum Overbid Increments: Any Overbid after and above the Initial Overbid shall be made in increments (the “Minimum Overbid Increment”) valued at not less than \$50,000, in cash or in cash equivalents or, once the cash (or cash equivalent) amount of such Overbid exceeds the cash (or cash equivalent) amount of the next highest Bid, other forms of consideration acceptable to the Trustee. The Trustee reserves the right to modify the Minimum Overbid Increment during the Auction.
3. Remaining Terms Are the Same as for Qualified Bids: Except as modified herein, an Overbid at the Auction must comply with the conditions for a Qualified Bid set forth above, provided, however, that the Bid Deadline shall not apply. Any Overbid must include, in addition to the amount and the form of consideration of the Overbid, a description of all changes requested by the Bidder to the Stalking Horse Agreement or Modified Asset Purchase Agreement, as the case may be, in connection therewith. Any Overbid must remain open and binding on the Bidder as provided herein.
4. Overbid by Stalking Horse Purchaser: To the extent the Stalking Horse Purchaser submits an Overbid, the Stalking Horse Purchaser shall receive a credit on such Overbid in the amount of the Bid Protections (defined below).

At the Trustee’s discretion to the extent not previously provided, a Qualified Bidder submitting an Overbid at the Auction must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Trustee), reasonably demonstrating such Bidder’s ability to close the Alternate Transaction proposed by such Overbid.

F. Other Procedures

1. Jurisdiction of the Court: All Qualified Bidders (including the Stalking Horse Purchaser) at the Auction shall be deemed to have consented to the core jurisdiction of the Court and waive any right to a jury trial in connection with any disputes relating to the marketing process, the determination of what constitutes a Qualified Bid and the procedures used to make that determination, the Auction, and the construction and enforcement of the Qualified Bidder’s fully executed sale and transaction documents, as applicable.

2. Additional Bids; Modifications: All Qualified Bidders, including the Stalking Horse Purchaser, shall have the right to submit additional Bids and make additional modifications to the Stalking Horse Agreement or Modified Asset Purchase Agreement at the Auction, as applicable, provided that any such modifications to such Stalking Horse Agreement or Modified Asset Purchase Agreement on an aggregate basis and viewed in whole, shall not, in the Trustee's business judgment be less favorable to the Trustee than the terms of such original agreement.
3. Continuance/Adjournment of Auction: Subject to the deadlines set forth herein, the Trustee reserves the right, in his reasonable business judgment to make one or more continuances of the Auction to, among other things: facilitate discussions between the Trustee and individual Qualified Bidders, allow individual Qualified Bidders to consider how they wish to proceed, modify or supplement any or all of the Auction procedures or rules, or give Qualified Bidders the opportunity to provide the Trustee with such additional evidence as the Trustee, in his reasonable business judgment, may require that the Qualified Bidder has sufficient internal resources, or has received sufficient funding commitments, to consummate the proposed Alternate Transaction at the prevailing Overbid amount.

G. Additional Procedures

The Trustee may announce at the Auction other or additional procedural rules for conducting the Auction or may modify the rules specified in these Bidding Procedures in any manner the Trustee reasonably determines will result in the highest and otherwise best Qualified Bid(s). Any Auction rules adopted by the Trustee that would modify any of the terms of the Stalking Horse Agreement or the rights of the Stalking Horse Purchaser to Bid Protections (as may be consensually modified at the Auction) requires the consent of the Stalking Horse Purchaser.

H. Sale As Is/Where Is

Except as otherwise may be provided in any Stalking Horse Agreement, any Modified Asset Purchase Agreement, or any order by the Court approving any Sale as contemplated hereunder, the property sold pursuant to the Bidding Procedures shall be conveyed at the closing of the purchase and sale in its then-present condition, **"AS IS, WHERE IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED."**

I. Closing the Auction

The Auction will continue until the Trustee selects the Bid(s) that represent the highest and otherwise best offer(s) for the Real Property (a "Successful Bid," and the Bidder(s) submitting such Successful Bid(s), a "Successful Bidder"). The Successful Bidder(s) shall have the rights and responsibilities of the purchaser as set forth in the Stalking Horse Agreement or Modified Asset Purchase Agreement. In selecting each Successful Bid, the Trustee will consider the Bid Assessment Criteria.

The Trustee will announce that the Auction is closed upon receipt of fully executed sale and transaction documents memorializing the terms of the Successful Bid from the Successful Bidder. Within one (1) business day after the conclusion of the Auction, the Successful Bidder shall supplement

its Good Faith Deposit by wire transfer or other immediately available funds so that, to the extent necessary, such Good Faith Deposit equals ten (10%) percent of the Successful Bid.

The Trustee shall not consider any Bids submitted after the conclusion of the Auction.

J. Backup Bidder

Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next highest and otherwise best Bid at the Auction as determined by the Trustee, in the exercise of his business judgment will be designated as a backup bidder (a “Backup Bidder”). A Backup Bidder shall be required to keep its last submitted Bid (the “Backup Bid”) open and irrevocable until the earlier of (i) ninety (90) days following entry of the final Sale Order, and (ii) closing of the Sale.

Following the Sale Hearing, if a Successful Bidder fails to consummate the purchase of the Real Property, the Trustee may deem the Backup Bidder to have the new Successful Bid, and the Trustee will be authorized, without further order of the Court, to consummate the transaction with such Backup Bidder at the price of its last bid. Such Backup Bidder will be deemed to be the Successful Bidder and the Trustee will be authorized, but not directed, to effectuate a sale to such Backup Bidder subject to the terms of the Backup Bid without further order of the Court. All Qualified Bids (other than the Successful Bid and the Backup Bid) shall be deemed rejected by the Trustee on and as of the date that the Court approves the Successful Bid. The Trustee, on behalf of the Debtor’s estate, specifically reserves the right to seek all available damages, including specific performance, from any defaulting Successful Bidder (including any Backup Bidder designated as a Successful Bidder) in accordance with the terms of the Bidding Procedures.

For the avoidance of doubt, in the event that there is a Successful Bidder (other than a Stalking Horse Purchaser), and the Stalking Horse Purchaser is the Backup Bidder, the Stalking Horse Purchaser will be deemed to be the Backup Bidder at the price of its last overbid with respect to such property and will be subject to the terms contained in the immediately preceding paragraph.

VI. BID PROTECTIONS

Pursuant to the Bidding Procedures Order, the Stalking Horse Purchaser is entitled to a breakup fee in an amount equal to \$300,000 plus a reimbursement of certain expenses in an amount not to exceed \$100,000 (the “Bid Protections”) as further set forth in, and in accordance with the terms of, any Stalking Horse Agreement and the Bidding Procedures Order. Prior to the commencement of the Auction, the Trustee shall inform all Qualified Bidders of the total amount of the Bid Protections.

Pursuant to the Bidding Procedures Order, except for the Stalking Horse Purchaser, no party submitting an offer, Bid, or Qualified Bid shall be entitled to any expense reimbursement, breakup fee, termination or similar fee or payment unless Trustee agrees in writing to provide any such bid protections.

VII. SALE HEARING

The Successful Bid and Backup Bid (or, if no Qualified Bid other than that of the Stalking Horse Purchasers is received, then the Stalking Horse Agreement) will be subject to approval by the Court. The sale hearing to approve the Successful Bids and any Backup Bids shall take place on **September 17, 2024** at 10:00 a.m. (EST) before the Court (the “Sale Hearing”).

Nothing herein or contemplated hereby constitutes, or will be deemed to constitute or otherwise result in, the consent or approval of any other party in interest to the Sale, any Sale Order, or any Bid, or to any agreement or motion or other pleading relating thereto, or the waiver or modification of any of the terms of, or any rights under, any existing agreement, instrument or document, or any default arising thereunder or relating thereto. Any and all rights of such parties and parties in interest to object or otherwise oppose any Sale, Sale Order, or Bid, or any agreement or pleading related thereto are hereby expressly preserved and reserved.

VIII. RETURN OF GOOD FAITH DEPOSITS

The Good Faith Deposits of all Qualified Bidders shall be held in the Trustee's earnest monies account for the Debtor's estate, but shall not become property of the Debtor's estate absent further order of the Court or as expressly provided below. The Good Faith Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Backup Bidder shall be returned to such Qualified Bidder not later than five (5) business days after entry of the Sale Order. The Good Faith Deposit of a Backup Bidder, if any, shall be returned to such Backup Bidder no later than five (5) business days after the closing of the transaction with the Successful Bidder or as otherwise provided in these Bidding Procedures. If the Successful Bidder (or Backup Bidder, if applicable) timely closes on the winning transaction, its Good Faith Deposit shall be credited towards the applicable purchase price. Subject to the terms of the Stalking Horse Agreement with respect to the Stalking Horse Purchaser. If the Successful Bidder (or Backup Bidder, if applicable) fails to consummate an Alternate Transaction because of a breach or failure to perform on the part of such Successful Bidder (or Backup Bidder, if applicable), the Successful Bidder (or Backup Bidder, if applicable), shall forfeit the Good Faith Deposit as liquidated damages, Trustee will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder (or Backup Bidder, if applicable), and such Good Faith Deposit shall irrevocably become property of the Trustee.

IX. RESERVATION OF RIGHTS OF THE TRUSTEE

The Trustee further reserves the right as it may reasonably determine to be in the best interest of its estate to: determine which Bidder(s) is a Qualified Bidder(s);

- A. determine which Bid(s) is a Qualified Bid(s);
- B. determine which Qualified Bid is the highest or best proposal for the Real Property and which is the next highest or best proposal for the Real Property;
- C. reject any Bid that is (1) inadequate or insufficient, (2) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code or (3) contrary to the best interests of the Trustee and its estate;
- D. impose additional terms and conditions with respect to all potential Bidders;
- E. extend the deadlines set forth herein; and
- F. modify the Bidding Procedures and implement additional procedural rules that the Trustee determines, in its business judgment, will better promote the goals of the bidding process and discharge the Trustee's fiduciary duties.