

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

In re:

CBC RESTAURANT CORP., et al.,¹

Debtors.

Chapter 11

Case No. 23-10245 (KBO)

(Jointly Administered)

Dkt. No. 361

BIDDING PROCEDURES

PLEASE TAKE NOTICE THAT:

On April 7, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion for Entry of Orders: (I)(A) Approving Bidding Procedures of the Sale of All or Substantially All of the Debtors’ Assets; (B) Authorizing the Debtors to Enter Into Stalking Horse Agreement; (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof; (D) Approving the Assumption and Assignment Procedures; and (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief*, [Docket No. 289] (the “Sale/Bidding Procedures Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).²

On April 19, 2023, the Court entered the *Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of Debtors’ Assets, (II) Scheduling Bid Deadlines and the Auction, (III) Approving Form and Manner of Notice Thereof, and (IV) Granted Related Relief*, [Docket No. 361] (the “Bidding Procedures Order”), with respect to the procedures contemplated herein (the “Bidding Procedures”). The Bidding Procedures set forth the process by which the Debtors are authorized to solicit bids and conduct an auction (the “Auction”) to determine the Successful Bidder for the Acquired Assets (collectively, the “Sale”).

To facilitate the Sale, the Debtors may enter into an asset purchase agreement with a Stalking Horse Bidder, if any (the “Stalking Horse Agreement”), pursuant to which the Debtors may agree to sell substantially all of the Acquired Assets to a Stalking Horse Bidder free and clear of all liens, claims, encumbrances, and interests, subject to higher or better bids for the Acquired

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include CBC Restaurant Corp. (0801), Corner Bakery Holding Company (3981), and CBC Cardco, Inc. (1938). The Debtors’ service address is 121 Friends Lane, Suite 301, Newtown PA 18940.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Sale/Bidding Procedures Motion.



Assets to be determined at the Auction. The Debtors are conducting an ongoing marketing process intend to obtain the highest or otherwise best bid for the Assets.

Marketing Process

I. Contact Parties.

As part of the marketing process, the Debtors have and continue to assemble materials in order to streamline potential purchasers' diligence requests, and develop a list of parties who may be interested in, and who the Debtors reasonably believe have the financial resources to consummate, a Transaction (each, a "Contact Party", and collectively, the "Contact Parties"). Parties interested in becoming Contact Parties should contact: (a) proposed Chief Restructuring Officer for the Debtors, CR3 Partners, LLC, 13355 Noel Road, Suite 2005, Dallas, TX 75240, Attn: Greg Baracato (greg.baracato@cr3partners.com) and Winston Mar (winston.mar@cr3partners.com); (b) proposed counsel for the Debtors, Culhane Meadows PLLC, 3411 Silverside Road, Baynard Building, Suite 104-13, Wilmington DE 19810, Attn: Mette H. Kurth (MKurth@cm.law) and Lynnette R. Warman (LWarman@cm.law); and (c) proposed investment banker for the Debtors, Hilco Corporate Finance, 401 N. Michigan, Suite 1630, Chicago, IL 60611, Attn: Teri Stratton (tstratton@hilcofc.com) and Waleed Aly (WAlly@hilcoglobal.com) (collectively, the "Debtors' Advisors").

II. Participation Requirements.

To receive due diligence information and to receive additional non-public information regarding the Debtors, a potential bidder (other than a lease counterparty (a "Landlord Bidder") submitting a bid on its own lease (a "Landlord Bid", which Landlord Bidder shall be deemed an Acceptable Bidder (as defined below)) must deliver to each of the Debtors' Advisors, on or prior to five days before the May 25, 2023 Bid Deadline, unless otherwise waived by the Debtors, the following documents (collectively, the "Preliminary Bid Documents"), which will be shared by the Debtors' Advisors with the Consultation Parties (as defined below); *provided, however*, that the Debtors will not share such information with SSCP so long as SSCP still has the right to submit a Bid by the Bid Deadline:

- a. an executed confidentiality agreement (a "Confidentiality Agreement") on terms acceptable to the Debtors, to the extent not already executed, which Confidentiality Agreement shall, among other terms, contain customary provisions regarding: (i) the nondisclosure of confidential information, (ii) prohibitions on contacting third parties in connection with a Transaction, (iii) covenants to not solicit employees of the Debtors, (iv) prohibitions on purchasing or otherwise acquiring the Debtors' debt and equity securities, and (v) the survival of certain provisions of the Confidentiality Agreement;
- b. written disclosure of any connections or agreements with the Debtors, any other known potential bidder or Qualified Bidder (defined below), "insiders" of the Debtors (as that term is contemplated by section 101(31) of the Bankruptcy Code), any manager, operator, or direct or indirect equity security holder of the

Debtors, and/or the Stalking Horse Bidder, if any; and

- c. identification of the potential bidder, its principals, and the representatives thereof who are authorized to appear and act on its behalf for all purposes regarding the contemplated transaction and a Certificate of Good Standing from the potential bidder's state of incorporation or formation; *provided, however,* the Debtors, in their business judgment and after consulting with the Consultation Parties, may waive the requirement to provide a Certificate of Good Standing to obtain access to the Preliminary Bid Documents; *provided further,* all Acceptable Bidders must provide the Debtors with a Certificate of Good Standing from the Acceptable Bidder's state of incorporation or formation to be considered a Qualified Bidder.

Only those potential bidders that have submitted acceptable Preliminary Bid Documents, as determined by the Debtors, upon consultation with the Consultation Parties, (each, an "Acceptable Bidder") may submit Bids.

Auction Process

I. Bid Deadline.

An Acceptable Bidder that desires to make a proposal, solicitation, or offer (each, a "Bid") shall transmit such proposal, solicitation, or offer via email (in pdf or similar format) so as to be **actually received** on or before **May 25, 2023 by 4:00 p.m.** (prevailing Eastern Time) (the "Bid Deadline") by:

- a. proposed Chief Restructuring Officer for the Debtors, CR3 Partners, LLC, 13355 Noel Road, Suite 2005, Dallas, TX 75240, Attn: Greg Baracato (greg.baracato@cr3partners.com) and Winston Mar (winston.mar@cr3partners.com);
- b. proposed counsel for the Debtors, Culhane Meadows PLLC, 3411 Silverside Road, Baynard Building, Suite 104-13, Wilmington DE 19810, Attn: Mette H. Kurth (MKurth@cm.law) and Lynnette R. Warman (LWarman@cm.law);
- c. counsel to the Official Committee of Unsecured Creditors, (the "Committee"), Tucker Ellis LLP, 233 S. Wacker Dr., Suite 6950, Chicago, IL 60606-9997, Attn: Jason M. Torf (jason.torf@tuckerellis.com) and Thomas R. Fawkes (thomas.fawkes@tuckerellis.com), and Potter Anderson & Corroon, LLP, 1313 N. Market St., 6th Floor, P.O. Box 951, Wilmington, DE 19801, Attn: Christopher Samis (csamis@potteranderson.com); and
- d. counsel to SSCP, Foley & Lardner LLP, 2021 McKinney Avenue, Suite 1600, Dallas, TX. 75201, Attn: Holland N. O'Neil (honeil@foley.com), Mark C. Moore (mmoore@foley.com), and Tim Mohan (tmohan@foley.com) and Ashby & Geddes, P.A., 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE

II. Bid Requirements.

Each Bid submitted by an Acceptable Bidder (a “Bidder”) must be submitted in writing and satisfy the following requirements (collectively, the “Bid Requirements,” unless otherwise modified by the Debtors, in their discretion, upon consultation with the Consultation Parties (defined below)):

- a. Bid Deadline. A Bid must be received no later than the Bid Deadline.
- b. Asset Purchase Agreement. A Bid must include an executed asset purchase agreement (an “APA”), together with all exhibits and schedules (the “Transaction Documents”), pursuant to which the Bidder proposes to effectuate the contemplated transaction.
- c. Marked Agreement. If the Debtors have entered into, and obtained Court approval of, a Stalking Horse APA, the APA must be similar in form and substance to the Stalking Horse APA and be marked to reflect the differences between the Stalking Horse APA and the Bidder’s APA, including, without limitation, specification of the proposed purchase price, any assumed liabilities, and any changes to any exhibits or schedules to the APA. For the avoidance of doubt, the Debtors may, upon consultation with the Consultation Parties, disqualify a Bid if the Bidder’s APA materially alters any Stalking Horse APA.
- d. Disclosures. A Bid must identify with particularity each and every condition to closing and all executory contracts and unexpired leases to be assumed and assigned pursuant to the Transaction Documents. The Transaction Documents must include a commitment to close by June 14, 2023. A Bid should, but is not required to, propose a contemplated transaction involving all or substantially all of the Acquired Assets.
- e. Purpose. Each Acceptable Bidder must state that the Bid includes an offer by the Acceptable Bidder to purchase some or all of the Assets and state which Assets with reasonable specificity. Each Acceptable Bid must clearly identify the following: (i) contracts to be assumed, including cure amounts to be paid, if any, and parties responsible for payment thereof; (ii) the liabilities, if any, to be assumed; (iii) leases of equipment or non-residential real property to be assumed, including cure amounts to be paid, if any, and parties responsible for payment thereof; and (iv) which employees or groups thereof will be offered employment.
- f. Purchase Price. All consideration proposed by a Bid shall include cash and/or other consideration acceptable to the Debtors and the Senior Lender in an amount of no less than the sum of the Purchase Price. Each Bid must clearly

set forth the terms of any proposed Transaction, including and identifying separately any cash and non-cash components of the proposed Transaction consideration, including, for example, any liabilities to be assumed by the Acceptable Bidder.

- g. Financial Information. Each Bid must provide evidence by the potential bidder of its sufficient financial capacity to close a proposed transaction, which shall include financial statements of, or verified financial commitments obtained by, the potential bidder (or, if the potential bidder is an entity formed for the purpose of acquiring the Acquired Assets, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors and the Senior Lender, in consultation with the Consultation Parties.
- h. Deposit. Each Bid must be accompanied by a cash deposit in the amount equal to the greater of \$3,000,000 or 10% of the Purchase Price to be held in an escrow account to be identified and established by the Debtors (the “Deposit”).
- i. Irrevocable. All Bids (including any Stalking Horse Bid, if any) must be irrevocable until the selection of the Successful Bid and Backup Bid; *provided however*, that the Bids selected as either the Successful Bid or the Backup Bid (defined below) must be irrevocable and remain open for acceptance until three (3) Business Days after the closing of the Transaction with the Successful Bidder or the Backup Bidder, as applicable.
- j. Unconditional Offer / Contingencies. Each Bid must include a statement that the Bid is formal, binding, and unconditional and is not subject to any further due diligence or financing contingency, and is irrevocable until the Debtors notify the Bidder that such Bid is not a Successful Bid or a Backup Bid.
- k. Non-Reliance. Each Bid must include a written acknowledgement and representation of the Qualified Bidder that it has had an opportunity to conduct any and all due diligence regarding the Assets and Assumed Liabilities prior to making its Bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guaranties, express, implied, statutory or otherwise, regarding the Assets, the financial performance of the Assets or the physical condition of the Assets, the Assumed Liabilities, or the completeness of any information provided in connection therewith or the Auction.
- l. Identity. Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Acceptable Bidder, including if such Acceptable Bidder is an entity formed for the purpose of consummating the proposed Transaction contemplated by such Bid), and the complete terms of any such participation. Each Bid shall be accompanied by board of director

or other organizational resolutions authorizing such Bid. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any Bid. Each Bid must also include contact information for the specific person(s), counsel and other advisors whom the Debtors' Advisors should contact regarding such Bid.

- m. Adequate Assurance/Wherewithal to Close. Each Bid must contain evidence satisfactory to the Debtors, in consultation with the Consultation Parties, that the Acceptable Bidder has the wherewithal to perform thereunder and otherwise complies with the requirements of adequate assurance of future performance under section 365(b)(1) and 365(b)(3) of the Bankruptcy Code (the "Adequate Assurance Information"). Such evidence may include audited and unaudited financial statements for the past three (3) years, including all supplements or amendments thereto; tax returns, bank or financial institution confirmations; a description of the proposed business to be conducted at the premises; the specific name of the proposed assignee/tenant, if not the prospective purchaser, and the proposed name under which the assignee intends to operate the store if not a current trade-name of the Debtors; the potential assignee's intended use for the space if different from the present retail operation; cash flow projections for the proposed assignee, the proposed assignee's most recent business plan, all cash flow projections for the lease(s) subject to the assignment request, and any financial projections, calculations and/or pro-formas prepared in contemplation of purchasing the lease(s); all documents and other evidence of the potential assignee's retail experience and experience operating stores in a shopping center; a contact person for the proposed assignee that contract and lease counterparties may directly contact in connection with the adequate assurance of future performance; and/or any other documentation that is requested. Should the prospective bidder be a newly formed entity (a "Newco"), written evidence of adequate assurance of future performance should also include when such Newco was formed, how it will be financed, together with evidence of any financial commitments, and identify what credit enhancements, if any, will be available to guarantee the obligations under the leases.
- n. Authorization. Each Bid must contain evidence that the Acceptable Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors) with respect to the submission of its Bid and the closing of the Transaction contemplated in such Bid.
- o. No Fees Payable to Qualified Bidder. If the Debtors have previously entered into, and obtained approval of, a Stalking Horse Agreements, Bids may not request or entitle the Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment and by submitting a Bid, a Bidder shall be deemed to waive the right to pursue any break-up fee, termination fee, expense reimbursement or similar type of payment, or substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the

submission of its Bid or the Bidding Procedures.

- p. Landlord Bids. Notwithstanding anything to the contrary, any Landlord Bidder bidding on Leases to which it is a party shall not be required to include the items listed in subparagraphs b., c., f., g., h., j., n. and p., in any Lease Bid; and in lieu thereof, shall submit with its Bid a form of Lease Termination Agreement, together with 10% of any cash Purchase Price component of its Bid as a Deposit therefor;.

By submitting its Bid, each Bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of the Bidding Procedures and to refrain from submitting a Bid or seeking to reopen the Auction after conclusion of the Auction. **The submission of a Bid shall constitute a binding and irrevocable offer to acquire the Assets as reflected in such Bid.**

III. Designation of Qualified Bidders.

A Bid will be considered a “Qualified Bid,” and each Acceptable Bidder that submits a Qualified Bid will be considered a “Qualified Bidder,” if the Debtors determine, in their discretion, following consultation with the Consultation Parties, that such Bid (a) satisfies the Bid Requirements set forth in Section II herein; and (b) is reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid (as defined below), by June 14, 2023.

The Debtors will notify each Qualified Bidder whether such party is a Qualified Bidder and shall provide the Notice Parties (defined below) with a copy of each Bid that has been submitted to the Debtors (whether or not such bid has been determined by the Debtors to be a Qualified Bid).

If, following consultation with Consultation Parties, any Bid is determined by the Debtors not to be a Qualified Bid, the Debtors will refund such Acceptable Bidder’s Deposit on the date that is three (3) Business Days after the Bid Deadline, or as soon as is reasonably practicable thereafter. The Debtors reserve the right (following consultation with the Consultation Parties) to work with any Acceptable Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid.

Between the date that the Debtors notify an Acceptable Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the Acceptable Bidder’s purchase price, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; *provided* any Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply in all respects with the requirements for Qualified Bids set forth in these Bidding Procedures.

Notwithstanding anything to the contrary herein, a Landlord Bidder shall be deemed a Qualified Bidder. Landlord Bidders may offset all or a portion of the applicable cure amount proposed by such Landlord Bidder. If such Landlord Bidder is the Successful Bidder on its applicable Lease, and it is later determined by this Court or agreement by and among the Debtors and Landlord Bidder that the actual cure amount is a lesser amount, then the Landlord Bidder shall pay the difference in cash prior to the Closing.

IV. Right to Credit Bid.

Pursuant to the *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [D.I. 288] (the “Interim DIP Order”), the Debtors have stipulated to the amount, nature, extent, validity and perfection of the secured claims of SSCP Restaurant Investors LLC (“SSCP”). Subject to the terms of the Interim DIP Order, SSCP (or its designee) shall have the unqualified right at any time to credit bid on a dollar-for-dollar basis up to the full amount of the Prepetition Obligations, Senior DIP Obligations, and Adequate Protection Superpriority Claims, if any (as each term is defined in the Interim DIP Order) (“Credit Bid”).

V. Stalking Horse Procedures.

The Debtors may, subject to Court approval pursuant to the procedures set forth herein enter into a Stalking Horse APA. If the Debtors enter into a Stalking Horse APA, which may include bid protections for parties other than the Senior Lender or Related Party (as defined herein), they must file a notice (the “Stalking Horse Notice”) with the Bankruptcy Court and serve the Stalking Horse Notice on: (i) proposed counsel to the Committee; (ii) the United States Trustee; (iii) counsel to SSCP; and (iv) any other party that has requested notice pursuant to Bankruptcy Rule 2002 by overnight mail and, if known, by electronic mail. The Stalking Horse Notice must: (i) include a copy of the Stalking Horse APA and (ii) disclose whether the Stalking Horse Bidder is an “insider” or “affiliate” of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, as well as any common identity of incorporators, directors, officers, or controlling stockholders between the Stalking Horse Bidder and the Debtors (a “Related Party”). With respect to the Stalking Horse Bidder, the Debtors shall also provide contract and lease counterparties with the information provided under Section II.m herein within twenty-four (24) hours after the filing of the Stalking Horse Notice. If no objection to the proposed Stalking Horse APA is filed and served upon the Debtors within five (5) business days following service of the Stalking Horse Notice, the Debtors may submit an Order approving the Stalking Horse Notice to the Court under Certificate of No Objection. If any objection to the proposed Stalking Horse APA, the Debtors may seek an expedited hearing thereon. The Debtors shall promptly provide a copy of any approved Stalking Horse APA to any Potential Bidders. For the avoidance of doubt, if the Debtors seek to provide bid protections to a Stalking Horse Bidder in the Stalking Horse APA, then the Debtors will seek authority from the Court in a separate pleading from the Stalking Horse

Notice.

VI. The Minimum Baseline Bid if No Stalking Horse Agreement Is Approved.

If the Debtors have not obtained approval of a Stalking Horse APA, the Debtors, in their business judgment and in consultation with both Hilco and the Consultation Parties, may establish a minimum baseline bid for any Qualified Bids and Hilco will promptly inform all interested bidders of such baseline bid

VII. Auction.

If the Debtors receive more than one Qualified Bid for the Assets (including any Stalking Horse Bid, if any), the Debtors will conduct the Auction to determine both the Successful Bidder and the Backup Bidder with respect to such Assets. The Auction shall take place **May 30, 2023, at 10:00 a.m.** (prevailing Eastern Time), at the offices of offices of Culhane Meadows PLLC, 3411 Silverside Road, Baynard Building, Suite 104-13, Wilmington DE 19810 (or by video conference to the live proceeding at this location).

No later than the day before the Auction, the Debtors will notify all Qualified Bidders of the highest or otherwise best Qualified Bid, or, if multiple bids are received in respect of non-overlapping Assets, the highest or best Qualified Bid(s) received in relation to each group of Assets, in each case as determined in the Debtors' business judgment (each such bid, a "Baseline Bid"), and provide copies of the documents supporting the Baseline Bid(s) to all Qualified Bidders and the Consultation Parties. The determination of which Qualified Bid(s) constitutes the Baseline Bid(s) and which Qualified Bid(s) constitutes the Successful Bid(s) shall take into account any factors the Debtors, in consultation of the Consultation Parties, reasonably deem relevant to the value of the Qualified Bid(s) to the Debtors' estates, which may include, 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; (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Baseline Bid; (e) the tax consequences of such Qualified Bid; (f) the assumption of obligations, including contracts and leases; (g) the cure amounts to be paid; and (h) the impact on employees, including the number of employees proposed to be transferred and employee-related obligations to be assumed (collectively, the "Bid Assessment Criteria").

The Auction shall be conducted pursuant to the following procedures:

a. The Debtors Shall Conduct the Auction

The Debtors and the Debtors' Advisors shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid(s). All incremental Bids made thereafter shall be Overbids (as defined herein) and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders and the Consultation Parties. The Debtors shall maintain a written transcript of all Bids made and

announced at the Auction, including the Baseline Bid(s), all Overbids, the Successful Bid(s), and any Backup Bid(s).

The Qualified Bidders shall appear at the Auction in person and may speak or bid themselves or through duly authorized representatives. Only Qualified Bidders shall be entitled to make any subsequent bids at the Auction.

b. Terms of Overbids

“Overbid” means any bid made at the Auction by a Qualified Bidder subsequent to the Debtors’ announcement of the Baseline Bid. Each Overbid must comply with the following conditions:

- (i) Minimum Overbid Increment. Any Overbid to the initial Baseline Bid at the start of the Auction (other than a Landlord Bid) shall be in increments of no less than a value equal to \$500,000, unless otherwise determined by the Debtors in an exercise of their business judgment.
- (ii) Conclusion of Each Overbid Round. Upon the solicitation of each round of Overbids, the Debtors may announce a deadline (as the Debtors may, in their business judgment, and upon consultation with the Consultation Parties, extend from time to time, the “Overbid Round Deadline”) by which time any Overbids must be submitted to the Debtors.
- (iii) Overbid Alterations. An Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable to the Debtors’ estates than any prior Qualified Bid or Overbid, as determined in the Debtors’ business judgment, but shall otherwise comply with the terms of these Bidding Procedures.
- (iv) No Round Skipping. Round skipping, as described herein, is explicitly prohibited. To remain eligible to participate in the Auction, in each round of bidding, (i) each Qualified Bidder must submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding Bid submitted by a Qualified Bidder in such round of bidding and (ii) to the extent a Qualified Bidder fails to bid in such round of bidding or to submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding Bid submitted by a Qualified Bidder in such round of bidding, as determined by the Debtors in their reasonable business judgment, following consultation with the Consultation Parties, such Qualified Bidder shall be disqualified from continuing to participate in the Auction for the Assets. The Debtors, however, after consultation with the Consultation Parties, in their business judgment, may modify the these round skipping procedures in any manner that will best promote

the goals of these Bidding Procedures.

- (v) Announcing Highest Bid. With respect to the Auction, the Debtors shall, subsequent to each Overbid Round Deadline, announce whether the Debtors in consultation with the Consultation Parties have identified (a) in the initial Overbid round, an Overbid as being higher or otherwise better than the Baseline Bid in respect of the Assets that are the subject of the Auction or (b) in subsequent rounds, an Overbid as being higher or otherwise better than the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the “Prevailing Highest Bid”). The Debtors shall describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid as well as the value attributable by the Debtors to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria.

c. Closing the Auction

The Auction shall continue until there is only one Qualified Bid that the Debtors determine, in their discretion following consultation with the Consultation Parties, to be the highest or otherwise best Qualified Bid for the Assets. Such Qualified Bid shall be declared the “Successful Bid,” and such Qualified Bidder, the “Successful Bidder,” at which point the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. Such acceptance by the Debtors of such Successful Bid is conditioned upon approval by the Court of such Successful Bid. For the avoidance of doubt, nothing in these Bidding Procedures shall prevent the Debtors from exercising their fiduciary duties under applicable law. As soon as reasonably practicable after closing the Auction, the Debtors shall finalize definitive documentation to implement the terms of the Successful Bid, and, as applicable, cause such definitive documentation to be filed with the Court.

d. No Collusion; Good Faith *Bona Fide* Offer

Each Qualified Bidder participating in the Auction will be required to confirm on the record at the Auction that (i) it has not engaged in any collusion, within the meaning of section 363(n) of the Bankruptcy Code with respect to any bids submitted or not submitted in connection with the Sale, and (ii) its Qualified Bid is a good faith *bona fide* offer and it intends to consummate the proposed Transaction if selected as the Successful Bidder.

VIII. Backup Bidder.

- a. Notwithstanding anything in these Bidding Procedures to the contrary, if the Auction is conducted, the Qualified Bidder with the next-highest or otherwise second-best Qualified Bid at the conclusion of the Auction for the Assets or any sub-group thereof, as determined by the Debtors in the exercise of their business judgment, shall be required to serve as a backup bidder (the “Backup Bidder”) with respect to the Assets until such time that the Transaction is consummated. Each Qualified Bidder shall agree and be deemed to agree to be a Backup Bidder if so designated by the Debtors.
- b. The identity of a Backup Bidder and the amount and material terms of the Qualified Bid of such Backup Bidder shall be announced by the Debtors, at the conclusion of the Auction at the same time the Debtors announce the identity of the Successful Bidder related thereto. Such Backup Bidder shall be required to keep its Qualified Bid (or if the Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until the closing of the Approved Transaction (defined below). Each Backup Bidder’s Deposit shall be held in escrow until three (3) Business Days after the closing of the Approved Transaction.
- c. If a Successful Bidder fails to consummate the Approved Transaction contemplated by its Successful Bid, the Debtors may select the Backup Bidder with respect to the Assets or sub-group of the Debtors’ Assets or business as the Successful Bidder, and such Backup Bidder shall be deemed a Successful Bidder for all purposes. The Debtors will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party, except as set forth in the Bidding Procedures Order. In such case, the defaulting Successful Bidder’s Deposit shall be forfeited to the Debtors, and the Debtors specifically reserve the right to seek all available remedies against the defaulting Successful Bidder, including with respect to specific performance. Notwithstanding anything herein to the contrary, the Deposit of the Stalking Horse Bidder, if any, shall be treated in accordance with the Stalking Horse Agreement, if any.

IX. Notice and Consultation Parties.

Information that is provided to the “Notice Parties” under these Bidding Procedures must be provided to the following parties: (a) counsel to SSCP, Foley & Lardner LLP, 2021 McKinney Avenue, Suite 1600, Dallas, TX. 75201, Attn: Holland N. O’Neil (honeil@foley.com), Mark C. Moore (mmoore@foley.com), and Tim Mohan (tmohan@foley.com) and Ashby & Geddes, P.A, 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE 19899, Attn: Ricardo Palacio (RPalacio@ashbygeddes.com); (b) counsel to the Stalking Horse Bidder, if any; (c) counsel to any Official Committee of Unsecured Creditors (the “Committee”), Tucker Ellis LLP, 233 S. Wacker Dr., Suite 6950, Chicago, IL 60606-9997, Attn: Jason M. Torf (jason.torf@tuckerellis.com) and Thomas R. Fawkes (thomas.fawkes@tuckerellis.com), and Potter Anderson & Corroon, LLP,

1313 N. Market St., 6th Floor, P.O. Box 951, Wilmington, DE 19801, Attn: Christopher Samis (csamis@potteranderson.com); and (d) the Office of the U.S. Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801, Attn: Linda Casey (Linda.Casey@usdoj.gov).

The term “Consultation Parties” shall mean: (a) SSCP and (b) the Committee; *provided, however*, SSCP will not be a Consultation Party if and when it submits a Bid by the Bid Deadline. If SSCP submits a Bid by the Bid Deadline, then the Debtors CRO and investment banker will no longer be required to participate in weekly calls with SSCP regarding the status of the marketing and sale process.

X. “As Is, Where Is.”

Consummation of any Transaction will be on an “AS IS, WHERE IS” basis and without representations or warranties of any kind, nature, or description by the Debtors or their estates, except as specifically accepted or agreed to by the Debtors in the Transaction Documents. Except as specifically accepted or agreed to by the Debtors, all of the Debtors’ right, title, and interest in and to the respective Assets will be transferred, free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests in accordance with sections 363(f) of the Bankruptcy Code.

By submitting a Bid, each Acceptable Bidder will be deemed to acknowledge and represent that it (a) has had an opportunity to conduct adequate due diligence regarding the Assets prior to making its Bid, (b) has relied solely on its own independent review, investigation, and inspection of any document including, without limitation, executory contracts and unexpired leases, in making its Bid, and (c) did not rely on or receive from any party any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, with respect to the Assets or the completeness of any information provided in connection with the Transaction or the Auction.

XI. Reservation of Rights.

The Debtors reserve their rights to modify these Bidding Procedures, upon approval of SSCP, if a Milestone is impacted, and after consultation with the Consultation Parties, in their business judgment in any manner that will best promote the goals of these Bidding Procedures or impose at or prior to the Auction, additional customary terms and conditions on a Transaction, including, without limitation: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction at the Auction; (c) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; and (e) rejecting any or all Bids or Qualified Bids (other than the Stalking Horse Bid, if any).

To the extent an Auction will not be held or is cancelled, the Debtors will file and serve a Notice of Cancellation of Auction no later than 4:00 p.m. (prevailing Eastern Time) on May 29, 2023.

XII. Consent to Jurisdiction.

All Qualified Bidders at the Auction shall be deemed to have consented to the exclusive jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the construction and enforcement of these Bidding Procedures.

XIII. Sale Hearing.

A hearing to consider approval of the sale (the "Sale Hearing"), pursuant to which the Debtors and the Successful Bidder will consummate the Transaction (the "Approved Transaction"), will be held no later than **June 1, 2023** and otherwise in accordance with any scheduling order entered by the Court. The Approved Transaction shall be consummated by **June 14, 2023** or such later date as to which the Debtors, the Successful Bidder, and SSCP, agree.

Any objection to the Sale, if any, must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) be filed with the Court by no later than **May 22, 2023, at 4:00 p.m.** (prevailing Eastern Time) (the "Sale Objection Deadline) and (d) be served on: (i) proposed counsel for the Debtors, Culhane Meadows PLLC, 3411 Silverside Road, Baynard Building, Suite 104-13, Wilmington DE 19810, Attn: Mette H. Kurth (MKurth@cm.law) and Lynnette R. Warman (LWarman@cm.law); (2) counsel to the Official Committee of Unsecured Creditors, (the "Committee"), Tucker Ellis LLP, 233 S. Wacker Dr., Suite 6950, Chicago, IL 60606-9997, Attn: Jason M. Torf (jason.torf@tuckerellis.com) and Thomas R. Fawkes (thomas.fawkes@tuckerellis.com), and Potter Anderson & Corroon, LLP, 1313 N. Market St., 6th Floor, P.O. Box 951, Wilmington, DE 19801, Attn: Christopher Samis (csamis@potteranderson.com); (3) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801, Attn: Linda Casey (Linda.Casey@usdoj.gov) (the "U.S. Trustee"); (4) counsel to SSCP, Foley & Lardner LLP, 2021 McKinney Avenue, Suite 1600, Dallas, TX. 75201, Attn: Holland N. O'Neil (honeil@foley.com), Mark C. Moore (mmoore@foley.com), and Tim Mohan (tmohan@foley.com) and Ashby & Geddes, P.A, 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE 19899, Attn: Ricardo Palacio (RPalacio@ashbygeddes.com); (5) counsel to the Stalking Horse Bidder, if any; and (6) any other party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Objection Notice Parties").

Objections to the conduct of the Auction, the Successful Bidder, or, if applicable, the Sale to the Successful Bidder must may be made at the Sale Hearing (the "Post-Auction Objection Deadline").

XIV. Return of Deposits.

The Deposit of the Successful Bidder shall be applied to the purchase price of the Approved Transaction at closing. The Deposits for each Qualified Bidder shall be held in one or more escrow accounts on terms acceptable to the Debtors in their sole discretion and shall be returned (other than with respect to each Successful Bidder and each Backup Bidder) on the date that is three (3) business days after the Auction, or as soon as is reasonably practicable thereafter. Upon the return of the Deposits, the applicable Qualified Bidders shall receive any and all interest that will have accrued thereon.

If a Successful Bidder fails to consummate a proposed transaction because of a breach by such Successful Bidder, the Debtors shall be free to consummate the proposed transaction with the applicable Backup Bidder without the need for an additional hearing or order of the Court; provided, however, that the Stalking Horse Agreement, if any, shall govern the treatment of the Stalking Horse Bidder's Deposit, if any. To the extent the Debtors do not consummate the proposed transaction with the Backup Bidder due to the closing of the transaction with the Successful Bidder, the Backup Bidder's deposit shall be refunded within three days of the closing of the Approved Transaction.

XV. Fiduciary Duties.

Notwithstanding anything to the contrary contained herein, nothing in the Bidding Procedures will prevent the Debtors from exercising their fiduciary duties under applicable law. For the avoidance of doubt, any exercise of fiduciary duties that is materially inconsistent with these Bidding Procedures shall be subject to approval by the Court.