



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

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THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 21, 2024

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	Chapter 11
	§	
COTTONWOOD FINANCIAL LTD., <i>et al.</i> , ¹	§	Case No. 24-80035 (SWE)
	§	
Debtors.	§	(Jointly Administered)
	§	
	§	Re: Docket No. 16

**ORDER (A) APPROVING BIDDING PROCEDURES
AND CERTAIN BID PROTECTIONS, (B) SCHEDULING A BID
DEADLINE, AUCTION, AND SALE HEARING AND APPROVING THE
FORM AND MANNER OF NOTICE THEREOF, AND (C) APPROVING
CURE PROCEDURES AND THE FORM AND MANNER OF NOTICE THEREOF**

Upon the motion (the “Motion”),² of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of an order (a) approving the bidding procedures attached hereto as **Exhibit 1** (the “Bidding Procedures”) and certain bid protections, (b) scheduling the bid deadline,

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtors’ federal tax identification number are as follows: Cottonwood Financial Ltd. (1001); Cottonwood Financial Administrative Services, LLC (7228); Cottonwood Financial Texas, LLC (9059); Cottonwood Financial Idaho, LLC (5651); Cottonwood Financial Wisconsin, LLC (7075). The Debtors’ principal offices are located at 2100 W Walnut Hill Lane, Suite 300, Irving, TX 75038.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

auction date, and sale hearing (the “Sale Hearing”) and approving the form and manner of notice thereof; and (c) approving procedures to cure any default pursuant to section 365(b)(1) of the Bankruptcy Code and the form and manner of notice thereof; and this Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334; and this being a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N), and (O); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion, and all objections, if any, to the Motion having been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Motion and the record of the hearing on such motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, the Court finds as follows:

(a) The Debtors have articulated good and sufficient reasons for (i) approving the Bidding Procedures, (ii) the grant of certain bid protections in favor of one or more potential Stalking Horse Bidders, (iii) approving the manner of notice of the Motion, and establishing the Bid Deadline, the Auction, the Sale Hearing, and the assumption and assignment of the Assumed Contracts and proposed cure relating thereto, and (iv) scheduling the Sale Hearing;

(b) The Debtors’ payment to a Stalking Horse Bidder (if any) of the Bid Protections on the terms set forth in this Order (i) is an actual and necessary cost and expense of preserving the Debtors’ estates, within the meaning of section 503(b) of the Bankruptcy Code, (ii) is of substantial benefit to the Debtors’ estates, (iii) is reasonable and appropriate, in light of the size and nature of the Sale Transaction and the efforts that have been and will be expended by a potential Stalking Horse Bidder notwithstanding that the Sale Transaction is subject to higher or better offers, (iv) was negotiated by the parties at arms’ length and in good faith, and (v) is necessary to ensure that a potential Stalking Horse Bidder will continue to pursue its proposed acquisition of the Debtors’ assets;

(c) The Bidding Procedures are reasonable and appropriate and represent the best method for maximizing the realizable value of the Debtors' assets in part, in total, or as a going concern transaction; and

(d) Any objections that have not been previously resolved or withdrawn are overruled on the merits.

IT IS HEREBY ORDERED THAT:

1. The Bidding Procedures attached hereto as **Exhibit 1** and incorporated herein by reference as if fully set forth herein are **APPROVED** as set forth herein and shall govern the bidding and Auction proceedings.

2. Within three (3) business days after entry of this Order, the Debtors shall serve a package (the "Package") containing (a) a copy of this Order, (b) the Bidding Procedures, (c) the form APA, and (d) the notice of Bid Deadline, Auction, and Sale Hearing (the "Sale Notice") (collectively, the "Bid Package"), electronically or via first class U.S. mail, postage prepaid, upon the following (collectively, the "Bid Notice Parties"):

- (a) all potential buyers previously identified or solicited by the Debtors or OpCo and any additional parties who have previously expressed an interest to the Debtors or OpCo in potentially acquiring the Assets;
- (b) other potentially interested parties identified by the Debtors or their advisors;
- (c) counsel to the DIP Lender;
- (d) counsel to the Prepetition Secured Parties;
- (e) the U.S. Trustee;
- (f) counsel to any statutory committee appointed in these chapter 11 cases (the "Committee");
- (g) counterparties to the Debtors' executory contracts and unexpired leases;
- (h) any parties that have asserted a lien or security interest against or any other interest in, including, without limitation, preferential purchase rights or rights of first refusal on, any of the Debtors' assets;

- (i) any taxing authorities related to the Debtors' assets; and
- (j) all parties who have requested notice in this case.³

3. The Bid Deadline shall be **April 25, 2024, at 4:00 p.m. Central Time**, Qualified Bidders shall be notified by **April 26, 2024**, and deposits shall be returned to non-Qualified Bidders by **May 1, 2024**. A Notice of Proposed Sale Order shall be filed by **May 1, 2024**.

4. The Sale Notice attached hereto as **Exhibit 2** and the Cure Notice attached hereto as **Exhibit 3** are hereby approved.

5. The general form APA is hereby approved and may be modified by the Debtors subject to consultation with the Committee, the Prepetition Secured Parties, TreeMac Funding Group, LLC and the DIP Lender (collectively, the "Consultation Parties").

Auction and Sale Hearing

6. An Auction is scheduled to take place on **April 29, 2024**, commencing at **10:00 a.m. Central Time** at the offices of Gray Reed, 1601 Elm Street, Suite 4600, Dallas, TX 75201. The Debtors, in consultation with the Consultation Parties, are authorized to terminate the bidding process or the Auction at any time if they determine, in their business judgment, that the bidding process will not maximize value for the Debtors' estates. The Debtors shall file a Notice of Successful Bidder within the later of (a) **April 30, 2024**, and (b) 24 hours after the conclusion of the Auction.

7. Each Qualified Bidder participating in the Auction shall confirm that it has not engaged and will not engage in any collusion in connection with the bidding process or the Sale Transaction at any time.

³ All such entities will also be served by email to the extent the Debtors, OpCo or Epiq, the Debtors' notice agent, have email addresses for such parties.

8. The hearing to approve the results of the Auction (the “Sale Hearing”) shall take place on **May 13, 2024, at 9:30 a.m. Prevailing Central Time** in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, 1100 Commerce Street, 14th Floor, Courtroom 3, Dallas, Texas 75242, at which time the Court shall consider the Motion, the Sale Transaction, and confirm the results of the Auction, if any.⁴

9. Objections, if any, to the Motion and the Sale Transaction (a “Sale Objection”) shall be filed with the Bankruptcy Court and served on the following parties so as to be actually received on **May 3, 2024** (the “Sale Objection Deadline”): (i) counsel to the Debtors, Gray Reed, 1601 Elm Street, Suite 4600, Dallas, TX 75201, Attn: Lydia R. Webb (lwebb@grayreed.com); (ii) counsel to the Prepetition Secured Parties, Jackson Walker LLP, Attn: Bruce Ruzinsky (bruzinsky@jw.com), Ken Stohner (kstohner@jw.com), and Machir Stull (mstull@jw.com); (iii) counsel to the DIP Lender, Wick Phillips LLP, Attn: Jason Rudd (jason.rudd@wickphillips.com) and Catherine Curtis (catherine.curtis@wickphillips.com); (iv) counsel to any statutory committee; (v) TreeMac, Troutman Pepper, Attn: Gary W. Marsh (gary.marsh@troutman.com); and (vi) the Office of the United States Trustee for the Northern District of Texas, 1100 Commerce Street, Suite 976, Dallas, TX 75242, Attn: Asher Bublick (asher.bublick@usdoj.gov).

10. The failure to timely file and serve a Sale Objection by the Sale Objection Deadline shall be a bar to the assertion prior to, at the Sale Hearing, or thereafter, of any such objection to the Motion, the Sale, the Debtors’ consummation of the Sale Transaction, or the proposed assumption and assignment of any executory contracts or unexpired leases. Failure to file and serve a Sale Objection by the Sale Objection Deadline shall be deemed to be consent to the Sale

⁴ As set forth in the Bidding Procedures, the Debtors may cancel the Sale Hearing if the Alternative Transaction is ultimately accepted.

for purposes of Bankruptcy Code section 363(f) and a waiver of any preferential purchase rights or other similar rights to acquire any of the Debtors' assets.

11. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment made in open court.

Bid Protections

12. The Bid Protections to be paid to a Stalking Horse Bidder, if any, as more fully described in the Motion and the Bidding Procedures, are hereby approved pursuant to the terms and conditions set forth in the Motion and Bidding Procedures, and shall be paid pursuant to the terms of an order approving a Sale Transaction or a confirmation order approving a chapter 11 plan, as applicable; *provided, however*, that notwithstanding any term to the contrary set forth in the APA, the Bidding Procedures, or this Order, any potential Stalking Horse Bidder shall only be entitled to receive the Bid Protections if (a) a Stalking Horse Bidder, being ready, willing and able to close its transaction, is not the Successful Bidder at the Auction, (b) the Court authorizes the Debtors to enter into an Alternative Transaction, and (c)(i) if such Alternative Transaction is a Sale Transaction, such Sale Transaction actually closes or (ii) if such Alternative Transaction is a chapter 11 plan, a disclosure statement and chapter 11 plan are approved by the Court and the effective date of such chapter 11 plan occurs. Payment of the Bid Protections as set forth herein, if a Stalking Horse Bidder is declared, shall survive termination of the APA and shall constitute an administrative expense of the Debtors' estates. Neither the Break-Up Fee nor the Expense Reimbursement shall be payable if the termination of a Stalking Horse APA, if any, is the result of the actions of the Stalking Horse Bidder or the Stalking Horse Bidder is in breach thereunder such that the Debtors could terminate the Stalking Horse APA under the terms of the Stalking Horse APA.

Assumption of Contracts and Cure Notice

13. In the event the Debtors seek to assume and assign any contracts or leases, the Debtors shall file and serve the Cure Notice no later than **April 5, 2024**. The Cure Notice shall contain an initial schedule of executory contracts and unexpired leases that may be assumed and assigned as part of the Sale Transaction (the “Potential Assumed Contracts”) and the proposed cure amount for each. The Debtors shall serve the Cure Notice upon affected counterparties to the Potential Assumed Contracts (if any), subject to amendment and supplementation prior to the Sale Hearing. The Cure Notice shall also inform counterparties that documentation evidencing the Successful Bidder’s adequate assurance of future performance (“Adequate Assurance Documentation”) is available upon request. Any request for Adequate Assurance Documentation must: (i) be made in writing by email to CWFadequateAssurance@epiqglobal.com; (ii) contain in the subject line, in all caps, the phrase “REQUEST FOR ADEQUATE ASSURANCE INFORMATION”; and (iii) specify the email address(es) for delivery of such Adequate Assurance Documentation, which shall be the only manner in which Adequate Assurance Documentation will be provided. In the event a counterparty makes a written request for Adequate Assurance Documentation in strict compliance with these procedures by no later than **April 26, 2024**, then the Debtors shall supply responsive Adequate Assurance Documentation to such contract counterparty by no later than **April 30, 2024**.

14. Objections, if any, to the assumption and assignment of Potential Assumed Contracts on the basis of (a) lack of adequate assurance of future performance under section 365(b)(1) (an “Adequate Assurance Objection”); or (b) the amount, if any, that the Debtors believe is owed to each Counterparty to a Potential Assumed Contract in order to cure any defaults that

may exist under such contract (a “Cure Objection”), shall be filed and served on the Notice Parties so as to be actually received by **May 6, 2024**.

15. If an Adequate Assurance Objection or Cure Objection cannot be resolved consensually among the parties, the Court will set a hearing to determine such matters as soon thereafter as is practicable, and the Debtors are permitted to give notice only to the objecting party and those parties who have filed a notice of appearance. The Cure Amounts set forth in the Cure Notice shall be binding on all parties unless an objection thereto is timely filed and served. The failure to timely file and serve an objection shall be deemed consent to the assumption and assignment of the Potential Assumed Contracts and to the Cure Amounts, and any and all objections thereto shall be deemed forever released and waived.

16. Prior to the commencement of the Sale Hearing and no later than **May 8, 2024**, the Debtors shall file with the Court a schedule (the “Assumed Contract Schedule”) of executory contracts and unexpired leases elected to be assumed by the Successful Bidder (the “Assumed Contracts”). At the Sale Hearing, the Debtors shall seek authority to assume and assign the Assumed Contracts to the Successful Bidder effective as of the closing of the Sale Transaction; *provided, however*, that the Successful Bidder may add or remove any Potential Assumed Contracts from the Assumed Contract Schedule at any time up to the closing of the Sale Transaction. The counterparty to any Potential Assumed Contract that is added or removed from the Assumed Contract Schedule shall be notified of such change by written notice via first class U.S. mail by no later than two (2) business days from such determination.

17. Any objections to a Sale Transaction must be (a) in writing, (b) state the basis for such objection with specificity, (c) conform to the Bankruptcy Rules and Local Rules of the

Northern District of Texas, and (d) be filed no later than **May 3, 2024** (the “Sale Objection Deadline”).

18. Prior to the commencement of the Sale Hearing, but no later than **May 8, 2024**, the Debtors shall file with the Court a final schedule (the “Assumed Contract Schedule”) of executory contracts and unexpired leases elected to be assumed by the Successful Bidder (the “Assumed Contracts”). At the Sale Hearing, the Debtors shall seek authority to assume and assign the Assumed Contracts to the Successful Bidder effective as of the closing of the Sale Transaction; *provided, however*, that the Successful Bidder may remove or add any executory contract or unexpired lease to or from the Assumed Contract Schedule at any time up to the closing of the Proposed Sale. The counterparty to any such addition or removal shall be notified of such change no later than two business days from such determination by (a) written notice via electronic mail to the counterparty or its counsel, if possible, or first class U.S. mail, postage prepaid, where electronic delivery is unavailable, and (b) the Debtors filing a notice on the Court’s docket advising such Potential Assumed Contract has been added or removed.

19. If at any time after service of the Cure Notice and before closing of the Sale Transaction the Debtors identify additional Potential Assumed Contracts not included in the initial Cure Notice, the Debtors shall serve a supplemental Cure Notice on the counterparties to the additional Potential Assumed Contracts and such counterparties will have until the later of (i) May 3, 2024; or (ii) 14 days from service of the supplemental Cure Notice to object to inclusion of the additional Potential Assumed Contract on the Assumed Contract Schedule.

Additional Provisions

20. By submitting a bid, each Potential Bidder acknowledges that it will not look to the Debtors or OpCo for the payment of any fee or commission. In addition, the Potential Bidder shall

be responsible for the payment of any fee, commission, or other compensation payable to any broker, finder, or agent who alleges it has dealt with or through the Potential Bidder. By submitting a bid, a Potential Bidder shall be deemed to indemnify, defend, and hold harmless the Debtors and OpCo from and against any and all claims, damages, losses and liabilities, costs, and expenses (including reasonable attorneys' fees and disbursements) arising out of any claim or claims by any broker, finder, or similar agent for commissions, fees, or other compensation who allege that they have dealt with the Debtors and/or OpCo in connection with the Transaction.

21. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), 7062, 9014 or otherwise or any Local Rules of this Court, the terms and conditions of this Order are immediately effective and enforceable upon their entry. To the extent applicable, the stays described in Bankruptcy Rules 6004(h) and 6006(d) are hereby waived.

22. To the extent that this Order is inconsistent with the Motion or Bidding Procedures, the terms of this Order shall control.

23. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

Submitted by:

Jason S. Brookner (TX Bar No. 24033684)
Aaron M. Kaufman (TX Bar No. 24060067)
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GRAY REED

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*Proposed Counsel to the Debtors
and Debtors in Possession*

Exhibit 1

Bidding Procedures

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	)	
	)	Chapter 11
	)	
COTTONWOOD FINANCIAL LTD., <i>et al.</i> , ¹	)	Case No. 24-80035 (SWE)
	)	
Debtors.	)	(Jointly Administered)
	)	

BIDDING PROCEDURES

Set forth below are the bidding procedures (the “Bidding Procedures”) to be followed with respect to a proposed transaction (“Transaction”) of: (A) a sale of substantially all or a smaller portion of the assets of Cottonwood Financial Ltd. And its subsidiaries, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) as a going concern (the “Sale Transaction”), or (B) a restructuring transaction under a confirmed joint chapter 11 plan of reorganization or otherwise (an “Alternative Transaction”). The Transaction contemplated by these Bidding Procedures is subject to competitive bidding as set forth herein and approval by the Bankruptcy Court (as defined herein) pursuant to either (x) Sections 363 and 365 of title 11 of the United States Code (the “Bankruptcy Code”) or (y) a confirmed chapter 11 plan of reorganization.

On February 25, 2024, the Debtors filed their *Motion for Entry of (I) an Order (A) Approving Bidding Procedures and Certain Bid Protections, (B) Scheduling a Bid Deadline, Auction, and Sale Hearing and Approving the Form and Manner of Notice Thereof, and (C) Approving Cure Procedures and the Form and Manner of Notice Thereof; (II) an Order Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of Liens, Claim and Interests; and (III) Related Relief* [Docket No. 16] (the “Sale Motion”). On March 20, 2024, the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) entered its *Order (A) Approving Bidding Procedures and Certain Bid Protections, (B) Scheduling a Bid Deadline, Auction, and Sale Hearing and Approving the Form and Manner of Notice Thereof, and (C) Approving Cure Procedures and the Form and Manner of Notice Thereof* (the “Bidding Procedures Order”), approving these Bidding Procedures.

The Bidding Procedures set forth herein describe, among other things, the manner in which bidders and bids become “Qualified Bidders” and “Qualified Bids,” respectively, the receipt and negotiation of bids received, the conduct of any Auction (as defined herein), the ultimate selection of the Successful Bidder (as defined herein) and the Bankruptcy Court’s approval thereof (collectively, the “Bidding Process”).

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtors’ federal tax identification number are as follows: Cottonwood Financial Ltd. (1001); Cottonwood Financial Administrative Services, LLC (7228); Cottonwood Financial Texas, LLC (9059); Cottonwood Financial Idaho, LLC (5651); Cottonwood Financial Wisconsin, LLC (7075). The Debtors’ principal offices are located at 2100 W Walnut Hill Lane, Suite 300, Irving, TX 75038.

Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Sale Motion.

I. **Key Dates**

The Debtors and Oppenheimer & Co. Inc. (“OpCo”) have already begun the marketing process. Before being provided with any diligence materials, interested parties must sign and return a confidentiality agreement, in a form acceptable to the Debtors in their sole discretion (a “Confidentiality Agreement”). **Requests for a Confidentiality Agreement should be made to Cliff Booth, OpCo, 100 International Drive, Suite 19200, Baltimore, MD 21202, cliff.booth@opco.com.** Once an interested party signs and returns a Confidentiality Agreement to OpCo, it will receive access to an electronic data room. Further diligence information is set forth in Section VIII, below.

The key dates and deadlines are as follows:²

March 20, 2024, at 10:00 a.m. (prevailing Central Time)	Hearing to approve Bidding Procedures
March 26, 2024	Deadline to serve Bid Packages
April 5, 2024	Deadline to file list of Potential Assumed Contracts and Cure Notice
April 16, 2024 at 4:00 p.m. (prevailing Central Time)	Deadline to designate Stalking Horse Bidder and file notice of same with the Bankruptcy Court
April 19, 2024 at 4:00 pm (prevailing Central Time)	Deadline to object to any designation of Stalking Horse Bidder
April 23, 2024 at 9:30 a.m. (prevailing Central Time)	Hearing to resolve any objections to designation of Stalking Horse Bidder
April 25, 2024 at 4:00 p.m. (prevailing Central Time)	Bid Deadline to submit Qualified Bids
April 26, 2024	Notifications to Qualified Bidders and deadline for counterparties to request Adequate Assurance Documentation from the Debtors
May 1, 2024	Deadline to return deposits to non-Qualified Bidders
April 29, 2024 at 10:00 a.m. (prevailing Central Time)	Auction (if more than one Qualified Bids is received)

² All capitalized terms listed below but not yet defined shall have the meaning ascribed further below or in the Sale Motion.

April 30, 2024³	Deadline to file Notice of Successful Bidder and for Debtors to provide Adequate Assurance Documentation relating to Successful Bidder to counterparties who have requested the same
May 1, 2024	Deadline to file Notice of Proposed Sale Order
May 3, 2024	Deadline to object to Sale Transaction
May 6, 2024	Deadline for Adequate Assurance Objection or Cure Objection
May 8, 2024	Deadline to file the Assumed Contract Schedule
May 13, 2024, at 9:30 a.m. (prevailing Central Time)⁴	Sale Hearing, to approve the results of the Auction

II.

Sale of Assets or Going Concern Transaction

The Debtors are entertaining bids for a Sale Transaction. The Debtors may enter into one Transaction or several Transactions with multiple parties, depending upon the bids received.

In addition, (i) the Successful Bidder(s) in any Sale Transaction shall assume the assumed liabilities as may be set forth in any purchase agreement and (ii) the Debtors shall assume and assign the assumed contracts to such Successful Bidder(s), as may be set forth in any purchase agreement(s) accepted by the Debtors.

No Communications Among Potential Bidders

There may not be any communications between or among potential bidders, or between potential bidders and contract counterparties, unless the Debtors have previously authorized such communications in writing after consultation with the Consultation Parties. Should any potential bidder attempt to communicate directly with another potential bidder, such potential bidder, as applicable, shall immediately inform, in writing, the Debtors' counsel, and Opco. The Debtors reserve the right, in their reasonable business judgement and in consultation with the Consultation Parties, after notice and hearing, to disqualify any potential bidders that have communications between and among themselves without prior consent of the Debtors.

III.

"As Is, Where Is"

Any Transaction(s) entered into by the Debtors shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtors, their

³ The Bidding Procedures provide that the deadline to file the Notice of Successful Bidder is the later of: (i) April 30, 2024; and (ii) 24 hours after the conclusion of the Auction.

⁴ If the Debtors ultimately decide to pursue an Alternative Transaction (as defined below), the Sale Hearing will be cancelled, and the Debtors will promptly file a joint chapter 11 plan and pursue confirmation thereof.

agents, or estates, except as may be set forth in a purchase agreement(s) with a Successful Bidder(s) or joint chapter 11 plan, approved by the Bankruptcy Court.

IV.

Free of Any and All Claims and Interests

Any Transaction entered into by the Debtors shall be free and clear of all liens, claims, interests, and encumbrances (collectively, the “Claims and Interests”), with such Claims and Interests to attach to the net proceeds of the sale.

V.

Participation and Bid Requirements

Any person or entity who wishes to participate in the Bidding Process (a “Potential Bidder”) must become a Qualified Bidder. As a prerequisite to becoming a Qualified Bidder, a Potential Bidder must deliver the following documents to the Debtors, OpCo, and counsel to any statutory committee (the “Committee”), at the addresses set forth below, no later than the Bid Deadline (as defined below), in a form and substance acceptable to the Debtors and their advisors (the “Required Bid Documents”):

- (a) Identify the Potential Bidder, including its legal name, jurisdiction and form of organization, and details regarding the ownership and capital structure of the Potential Bidder, as well as the identity of any controlling persons, significant direct or indirect equity or debt investors, and/or guarantors of such entity, and any known connections the Potential Bidder has to the Debtors or their advisors, the Committee or its advisors, the DIP Lender or its advisors, or any other creditor or equity security holder of the Debtors;
- (b) Evidence of the Potential Bidder’s financial ability to close a Transaction, in a form and substance acceptable to the Debtors in their discretion in consultation with the Consultation Parties. Such evidence may take the form of, among other things, current audited financial statements, bank statements, evidence of a non-contingent financing commitment, or such other documentation as the Debtors may accept in their sole discretion;
- (c) A letter stating that the Potential Bidder’s offer is irrevocable until immediately following the closing of the Sale or confirmation of a chapter 11 plan, as applicable, and setting forth (i) the nature of the proposed Transaction, and if a Sale Transaction, whether such is a going concern or asset sale, which specifically identifies the assets or groups of assets to be purchased, and which includes the proposed consideration and the liabilities (if any) to be assumed, (ii) any assets or liabilities expected to be excluded from the Sale, and (iii) the structure and financing of the Transaction (including, but not limited to, the sources of financing);

- (d) If a Sale Transaction, a binding, executed, and definitive copy of the form Asset Purchase Agreement attached to the Sale Motion (the “APA”), together with all schedules thereto (a “Marked APA”) marked to show changes to the APA and schedules that the Potential Bidder proposes, including the purchase price in U.S. dollars for each asset or group of assets subject to the applicable bid, by Debtor, and a specific allocation of consideration among the groups of assets being bid upon (any all asset bids must also contain an allocation);
- (e) If an Alternative Transaction, an executed binding term sheet (the “Term Sheet”), together with such additional information as may be necessary to fully describe the elements of the proposed Alternative Transaction, including the consideration to be paid;
- (f) A good faith earnest money cash deposit (the “Deposit”) in an amount equal to 10% of the total cash consideration of the proposed Transaction price; *provided* that no Deposit is required for any credit bid component of a Transaction;
- (g) Information providing adequate assurance of future performance under all contracts and leases proposed to be assumed and assigned to the bidder, including (i) information about the bidder’s financial condition, such as federal tax returns, a current financial statement, or bank account statements, (ii) the identity and exact name of the bidder, and (iii) such additional information regarding the bidder as the bidder may elect to include, which information may be disseminated to counterparties in the event the Debtors determine such bid to be a Qualified Bid;
- (h) Evidence of corporate authority to enter into the Transaction;
- (i) An executed Confidentiality Agreement; and
- ji) Any additional information reasonably requested by the Debtors.

The Consultation Parties shall be entitled to review the information submitted by Potential Bidders.

VI.

Qualified Bidders and Qualified Bids

A Potential Bidder (i) who delivers the documents described in Section V above, (ii) whose financial information and credit-quality support or enhancement demonstrate the financial capability of such Potential Bidder to consummate the Transaction if selected as the Successful Bidder, (iii) who the Debtors determine is likely (based on availability of financing, experience, and other considerations) to consummate the Transaction within the time frame provided by the APA or otherwise applicable in the above-captioned chapter 11 cases (the “Cases”), and (iv) whose bid constitutes a “**Qualified Bid**” pursuant to these Bidding Procedures, shall be deemed a “**Qualified Bidder.**” The Debtors will determine whether a Potential Bidder is a Qualified Bidder after consulting with the Consultation Parties. By April 26, 2024, the Debtors will notify Potential

Bidders if they are Qualified Bidders and will provide copies of all Qualified Bids to the Consultation Parties. The DIP Lender is deemed to be a Qualified Bidder.

A bid will be deemed a “Qualified Bid” and considered by the Debtors only if the bid satisfies the following requirements:

- (a) is on terms and conditions (other than the amount of the consideration and the particular liabilities being assumed) that are substantially similar to, and are not materially more burdensome or conditional to the Debtors than, those contained in the APA;
- (b) clearly identifies (a) the particular Assets to be purchased, (b) allocates the consideration between groups of assets being purchased and between assets of different debtors, (c) the liabilities and obligations to be assumed, and (d) whether the bidder intends to operate the Debtors’ business as a going concern, or to liquidate the business.
- (c) clearly sets forth the purchase price to be paid for the Assets to be purchased.
- (d) contains no contingencies of any type, other than Bankruptcy Court approval of the Transaction and any applicable regulatory conditions;
- (e) other than any Stalking Horse Bid(s) that may be designated by the Debtors, is not conditioned upon any bid protections (such as a topping fee, termination fee, expense reimbursement, or similar type of payment);
- (f) contains an acknowledgement and representation that the bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Debtors and their assets and businesses prior to making its offer, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the businesses and assets of the Debtors 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 Debtors’ businesses or assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the APA, the Marked APA or the Term Sheet;
- (g) includes a list of assumed contracts and assumed liabilities (if any) and provides that the bidder will be responsible for any Cure Amounts associated with such assumption;
- (h) identifies each regulatory and third-party approval required for the bidder to consummate the Transaction, if any, and the time period within which the bidder expects to receive such regulatory and third-party approvals;
- (i) discloses (i) the identity of the Potential Bidder and each entity participating in the Transaction in connection with the Potential Bidder and the complete

terms of such participation, and (ii) any other term sheets and other written or oral understandings between the Potential Bidder and its affiliates on one hand, and any insider (as defined in section 101(31) of the Bankruptcy Code) of the Debtors, on the other; and

(j) is received by the Bid Deadline.

All bids for a Transaction must provide for payment in cash, in full, upon the closing of the Transaction, unless such bid is a credit bid or the Debtors agree otherwise, after consultation with the Consultation Parties. A credit bid shall be deemed to be a Qualified Bid, provided it complies with the above requirements other than the requirement for payment of the purchase price in cash.

To the extent the either the DIP Lender or the Prepetition Secured Parties submits a credit bid, whether or not such credit bid includes a cash component and whether or not such credit bid is a joint bid with a third party, the DIP Lender or the Prepetition Secured Parties, as the case may be, must comply with the above requirements other than the requirement for payment of the credit bid portion of the purchase price in cash.

Notwithstanding the foregoing, the Debtors shall have the right, in their sole discretion, and in the exercise of their business judgment, after consultation with the Consultation Parties, to entertain bids that do not conform to one or more of the requirements specified herein and deem such bids to be Qualified Bids, and to discuss bids with Potential Bidders to ensure that Potential Bidders satisfy the requirements herein. A Qualified Bid will be valued, among other things, based upon factors such as the net value provided by such bid, the likelihood and timing of consummating the Transaction in question, and any other factors that the Debtors may deem relevant to the Transaction.

Between the times the Debtors notify a Potential 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 in consultation with the Consultation Parties. 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 consideration contemplated by the Qualified Bid, or otherwise enhance the terms of the Qualified Bid.

The Debtors reserve the right to cancel the Auction (as defined below) if the Debtors do not receive any Qualified Bids (or if they receive only one Qualified Bid) by the Bid Deadline. In such event, the Debtors will file a notice cancelling the Auction with the Bankruptcy Court.

By submitting a bid, a Potential Bidder warrants and represents that it is a principal acting on its own behalf, and not as a broker, finder, or agent acting on another's behalf. Such Potential Bidder acknowledges that it will not look to the Debtors or OpCo for the payment of any fee or commission. In addition, each Potential Bidder agrees to be responsible for the payment of any fee, commission, or other compensation payable to any broker, finder, or agent who alleges it has dealt with or through such Potential Bidder. By submitting a bid, a Potential Bidder will be deemed to indemnify, defend, and hold harmless the Debtors and OpCo from and against any and all claims, damages, losses and liabilities, costs, and expenses (including reasonable attorneys' fees

and disbursements) arising out of any claim or claims by any broker, finder, or similar agent for commissions, fees, or other compensation who allege that they have dealt with the Debtors and/or OpCo in connection with the Transaction. Other than an approved Stalking Horse Bidder, each Potential Bidder will be deemed to have waived any right to request, or assert entitlement to, any bidding protection, breakup fee, transaction fee, termination fee, expense reimbursement, or any other administrative claim under section 503(b) of the Bankruptcy Code as it pertains to the bidding and Auction process.

VII.

Bid Deadline and Bid Recipients

A Qualified Bidder who desires to make a bid shall deliver written copies of its bid to each of the following, **no later than 4:00 p.m. Central Time on April 25, 2024** (the “Bid Deadline”):

(1) Debtors’ Counsel:

Gray Reed
1601 Elm Street
Suite 4600
Dallas, TX 75201
Attn.: Jason S. Brookner, Aaron M. Kaufman,
and Lydia Webb
Email: jbrookner@grayreed.com
akaufman@grayreed.com
lwebb@grayreed.com

**(2) Debtors’ Financial and Marketing
Advisor:**

Oppenheimer & Co. Inc.
100 International Drive, Suite 19200
Baltimore, MD 21202
Attn: Cliff Booth
Email: cliff.booth@OPCO.com

VIII.

Due Diligence

Following execution of a Confidentiality Agreement, the Debtors shall afford each interested party shall have an opportunity to perform due diligence with respect to the Debtors’ businesses and assets. Due diligence access may include management presentations as may be scheduled by the Debtors, on-site inspections, and such other matters which an interested party may reasonably request and as to which the Debtors, in their sole discretion, may agree. No due diligence shall continue after the Bid Deadline, provided that the Debtors will provide reasonable access to information reasonably requested by a Qualified Bidder after the Bid Deadline. The Debtors may, in their discretion, coordinate diligence efforts such that multiple interested parties have simultaneous access to due diligence materials and/or simultaneous attendance at management presentations or site inspections.

All diligence requests should be made to Cliff Booth, OpCo, 100 International Drive, Suite 19200, Baltimore, MD 21202, cliff.booth@opco.com.

Each Qualified Bidder shall be deemed to acknowledge and represent that (i) it has had an opportunity to conduct any and all due diligence regarding the Debtors’ businesses and assets prior to making its offer, (ii) it has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the business and assets in making its bid, (iii) 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 business or assets, or the completeness of any information provided in connection therewith, the Bidding Process or the Auction (as defined herein), except, as to any Stalking Horse, as expressly stated in the APA, and as to a Successful Bidder other than a potential Stalking Horse, as expressly stated in the definitive agreement with such Successful Bidder approved by the Bankruptcy Court, and (iv) that it has not engaged and will not engage in collusion in connection with the bidding process at any time.

IX.

Stalking Horse Declaration and Bid Protections

In the exercise of their business judgment, the Debtors may, without further order of the Bankruptcy Court, without any obligation to do so, and after consulting with the Consultation Parties, select one or more bidders to act as a stalking horse (each being a “Stalking Horse Bidder” with the relevant bid being a “Stalking Horse Bid”) for some or all of the Debtors’ assets. The Debtors may, but are not required to, (a) provide a break-up fee in an amount not to exceed 3.0% of the cash component of a Stalking Horse Bid (the “Break-Up Fee”) and (b) reimburse the reasonable expenses of a Stalking Horse Bidder in an amount not to exceed the lesser of 1% of the Stalking Horse Bid or \$250,000 (the “Expense Reimbursement,” and together with the Break-Up Fee, the “Bid Protections”); *provided* that the Bid Protections shall only be paid pursuant to the terms of an order approving a Sale Transaction or an order approving an Alternative Transaction, as applicable. The Bid Protections shall only be payable if (i) a Stalking Horse Bidder, being ready, willing, and able to close its Transaction is not the Successful Bidder at the Auction, (ii) the Bankruptcy Court authorizes the Debtors to enter into an Alternative Transaction, and (iii)(A) if such Alternative Transaction is a Sale Transaction, such Sale Transaction actually closes or (B) if such Alternative Transaction is a chapter 11 plan, a disclosure statement and chapter 11 plan are approved by the Court and the effective date of such plan occurs.

To the extent a determination is made to designate a Stalking Horse Bid provide Bid Protections, the Debtors will file notice of the same with the Bankruptcy Court, and such Bid Protections may be paid without further action or order of the Bankruptcy Court.

X.

Auction

If the Debtors receive more than one Qualified Bid, an auction (the “Auction”) will be conducted, upon notice to all Qualified Bidders who have submitted Qualified Bids, at **10:00 a.m. Central Time on April 29, 2024**, at the offices of Gray Reed, 1601 Elm Street, Suite 4600, Dallas, Texas 75201, with remote dial-in accommodations as necessary, in accordance with the following procedures:

- (a) Only the following persons shall be entitled to attend the Auction:
 - (i) professionals and principals or members of the Debtors, including OpCo;
 - (ii) professionals and principals or members of any Qualified Bidder who has timely submitted a Qualified Bid, including the Stalking Horse Bidder;
 - (iii) counsel and principals of the DIP Lender;
 - (iv) counsel and principals or

members of the Prepetition Secured Parties; (v) counsel to the Committee and one Committee representative; and (vi) the United States Trustee for the Northern District of Texas (the "U.S. Trustee"). The Auction shall be conducted by the Debtors or their professionals. Only Qualified Bidders will be entitled to make any Subsequent Bids (as defined below) at the Auction.

- (b) At the commencement of the Auction, Qualified Bidders in attendance will be informed which Qualified Bid or combination of Qualified Bids the Debtors believe is the highest or otherwise best offer(s), and from which bidding will begin (the "Baseline Bid").
- (c) All Qualified Bidders shall be entitled to be present for all Subsequent Bids (as defined below) with the understanding that the true identity of each bidder shall be fully disclosed to all other bidders and that all material terms of each Subsequent Bid shall be fully disclosed to all Qualified Bidders throughout the entire Auction.
- (d) The Debtors may in the exercise of their business judgment and in furtherance of their fiduciary duties, employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time allotted to make Subsequent Bids) for conducting the Auction, *provided* that such rules are not inconsistent with these Bidding Procedures, the Bankruptcy Code, or any order of the Bankruptcy Court entered in connection herewith, and after consulting with the Consultation Parties regarding the same.
- (e) Bidding at the Auction shall begin with the Baseline Bid. To the extent a Stalking Horse Bidder has been named, the initial overbid must exceed the Baseline Bid by the amount of the Break-Up Fee and Expense Reimbursement plus an additional \$100,000. Thereafter, or in the event no Stalking Horse Bidder has been named, the minimum bidding increment (the "Subsequent Bids" and each a "Subsequent Bid") shall be \$100,000 (which increments may be increased or decreased by the Debtors, in their discretion, in consultation with the Consultation Parties, depending on the nature of the Transactions presented).
- (f) A Subsequent Bid must comply with the requirements for a Qualified Bid set forth above. Any Subsequent Bid must remain open and binding on the bidder unless and until the Debtors accept a higher and better Subsequent Bid.
- (g) The Auction shall continue in one or more rounds of bidding. During each round of bidding, each Qualified Bidder will be given one opportunity to submit a Subsequent Bid. To qualify for the next round of bidding, each Qualified Bidder, with full knowledge and written confirmation of the then-existing highest bid or bids, must submit a Subsequent Bid within the time allotted by the Debtors to do so. The Debtors reserve the right, in exercising their business judgment and in consultation with the Consultation Parties, to

increase or decrease time limitations as necessary to facilitate the highest and best value for the estate. The Auction will conclude when only one Qualified Bidder has qualified for the next round of bidding.

The Debtors reserve the right, in the exercise of their business judgment and in consultation with the Consultation Parties, to adjourn the Auction at one or more times to, among other things (i) facilitate discussions among the Debtors and Qualified Bidders, (ii) allow Qualified Bidders to consider how they wish to proceed, and (iii) allow Qualified Bidders the opportunity to provide the Debtors with such additional information or evidence, as the Debtors may require in the exercise of their business judgment, that the Qualified Bidder has sufficient resources and sufficient non-contingent debt and/or equity funding commitments to consummate the Transaction at the then-prevailing Subsequent Bid amount.

The Debtors shall maintain a transcript of the proceedings at the Auction, including the Baseline Bid, all Subsequent Bids, and the Successful Bid (as defined below).

XI.

Closing of Auction and Selection of Successful Bid

The Auction shall continue until there is only one bid that the Debtors determine, in their sole and absolute discretion and business judgment, after consultation with the Consultation Parties, is the highest or otherwise best Qualified Bid for a Transaction or multiple Transactions, after taking into account factors such as the speed and certainty of consummating the transaction (such bid being the “Successful Bid,” and the bidder making such bid, the “Successful Bidder”). The Debtors shall file a notice of Successful Bid identifying the Successful Bidder and including a copy of the Successful Bid and related documents before the later of: (i) April 30, 2024; and (ii) 24 hours after the conclusion of the Auction.

All bidders will be deemed to have consented to the core and exclusive jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any and all disputes relating to, arising from, or connected with the Auction, the marketing process, the Transaction, and the construction and enforcement of any purchase agreement.

XII.

Back-Up Bidder

If there is an Auction, the Qualified Bidder that submits the second highest Bid at the Auction shall be required to serve as the back-up bidder (the “Back-Up Bidder”) and keep such Back-Up Bidder’s last Bid (the “Back-Up Bid”) open and irrevocable until the earlier of (i)(A) if a Sale Transaction, 5:00 p.m. Central Time on the date which is five days after the order approving the sale to the Successful Bidder becomes final and non-appealable or (B) if an Alternative Transaction, 5:00 p.m. Central Time on the date which is five days after the order approving the Alternative Transaction becomes final and non-appealable, and (ii) the closing of the Transaction with the Successful Bidder (the “Outside Back-Up Date”). If, (x) after the Sale Hearing but prior to the Outside Back-Up Date for a Sale Transaction or (y) after the conclusion of the Auction but prior to the Outside Back-up Date for an Alternative Transaction, the Successful Bidder fails to consummate or proceed with the relevant Transaction because of a breach or failure to perform on

the part of such Successful Bidder, the Back-Up Bidder will be deemed to have the new Successful Bid, and the Debtors will be authorized, without further order of the Bankruptcy Court, to consummate the Transaction with the Back-Up Bidder. The Debtors will provide notice to the Court, the U.S. Trustee, the DIP Lender, the Prepetition Secured Parties and the Committee of any failure by the Successful Bidder to close the Transaction and the election to proceed to close a Transaction with the Back-Up Bidder. Further, to the extent an Adequate Assurance Objection or Cure Objection has been filed with respect to the Successful Bidder, any such objection(s) shall carry over to the Back-Up Bidder and be heard by the Bankruptcy Court in due course.

XIII.

Right to Credit Bid

The DIP Lender is deemed a Qualified Bidder and shall be permitted to credit bid in an amount up to the full amount then outstanding under any DIP financing order at the Auction, pursuant to the requirements of section 363(k) of the Bankruptcy Code (a “Credit Bid”). The Prepetition Secured Parties shall have the right to credit bid their claim with respect to the collateral that secures such claim.

XIV.

The Sale Hearing and Return of Deposits

In the event one or more Sale Transactions are accepted by the Debtors, a hearing to approve the Sale(s) will take place before the Honorable Scott Everett, United States Bankruptcy Judge, **on May 13, 2024, at 9:30 a.m. Central Time**, in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, 1100 Commerce Street, Courtroom 3, Dallas, Texas 75242. The Sale Hearing may be adjourned or rescheduled by the Debtors without notice other than by an announcement made at the Sale Hearing.

The Debtors will not be bound by a Successful Bid for a Sale Transaction or a Back-Up Bid for a Sale Transaction unless and until the Bankruptcy Court has approved the same. Following Bankruptcy Court approval of a Sale Transaction with the Successful Bidder, if the Successful Bidder fails to consummate the Sale Transaction for any reason, the Back-Up Bidder will be deemed to be the Successful Bidder and the Debtors will enter into a Sale with the Back-Up Bidder on the terms of the Back-Up Bid without any further order of the Bankruptcy Court, and the Debtors may pursue any and all available remedies against the Successful Bidder in connection with its failure to consummate the Sale.

If the Debtors choose to move forward with an Alternative Transaction after consulting with the Consultation Parties, the Sale Hearing will be cancelled and notice of the same will be filed with the Bankruptcy Court.

The Deposit (together with interest, if any, thereon) of the Back-Up Bidder for a Sale Transaction will not be returned until two (2) business days following the closing of the Sale to the Successful Bidder. The Deposit (together with interest, if any, thereon) of all other Qualified Bidders will be returned within four (4) business days after the conclusion of the Auction. The Deposit of the Successful Bidder (together with interest, if any, thereon) shall be applied against the payment of the Sale Transaction consideration upon the closing of the Sale. In the event a

Bidder fails to close as a result of its own default, its Deposit shall be released to, and retained by, the Debtors.

Deposits made by Potential Bidders who are not determined to be Qualified Bidders will be returned within four (4) business days after the Bid Deadline.

XV.
Reservation of Rights

Notwithstanding any term to the contrary herein, the Debtors, in the exercise of their fiduciary duties and in furtherance of maximizing value, in consultation with the Consultation Parties, reserve the right to: (i) modify the Bidding Procedures at any time, including during the Auction to facilitate the business and Auction process, so long as such modifications conform substantially to the Bidding Procedures Order ; (ii) determine which Qualified Bid, if any, is the highest or otherwise best offer; (iii) reject at any time, any bid that is: (a) inadequate or insufficient; (b) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the APA; or (c) contrary to the best interests of the Debtors, their estates, and their creditors as determined by the Debtors in their sole discretion; and (iv) pursue an Alternative Transaction.

Nothing in these Bidding Procedures shall require the Debtors, the board of directors or similar governing body of the Debtors, or any individual board member or officer of the Debtors to take any action, or to refrain from taking any action, with respect to these Bidding Procedures or the Auction, to the extent such persons or entities determine, on the advice of counsel, that taking or refraining from taking such action, is required to comply with applicable law or their fiduciary obligations.

XVI.
Consultation by the Debtors

Where indicated in these Bidding Procedures, the Debtors shall consult with the advisors to any Committee, the DIP Lender, TreeMac Funding Group, LLC and the Prepetition Secured Parties (collectively, the “Consultation Parties”); *provided, however*, that notwithstanding anything to the contrary herein, in the event the DIP Lender or the Prepetition Secured Parties submits a bid or joins in a bid submitted by another Potential Bidder, the DIP Lender or Prepetition Secured Parties, as applicable, shall not be a Consultation Party, nor shall the DIP Lender or Prepetition Secured Parties, as applicable, be entitled to receive or otherwise consult with the Debtors regarding: a) copies of any bids or consultation rights with respect to any determination regarding which bids constitute Qualified Bids, (b) any information not generally available to all other Potential Bidders, except as expressly provided for in the DIP Order, (c) the adoption, modification or implementation of the Bidding Procedures, and (d) the selection of the Successful Bidder and Back-Up Bidder; *provided, further*, that the DIP Lender or Prepetition Secured Parties, as applicable, shall automatically become a Consultation Party with respect to the matters set forth in clauses (a)–(d) in the event that the DIP Lender or Prepetition Secured Parties, as applicable, withdraws its bid or the joint bid for any reason.

#

Exhibit 2

Sale Notice

Jason S. Brookner (TX Bar No. 24033684)
Aaron M. Kaufman (TX Bar No. 24060067)
Lydia R. Webb (TX Bar No. 24083758)

GRAY REED

1601 Elm Street, Suite 4600
Dallas, TX 75201

Telephone: (214) 954-4135

Facsimile: (214) 953-1332

Email: jbrookner@grayreed.com
akaufman@grayreed.com
lwebb@grayreed.com

*Proposed Counsel to the Debtors
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

COTTONWOOD FINANCIAL LTD., *et al.*,¹

Debtors.

)
) Chapter 11
)

) Case No. 24-80035 (SWE)
)

) (Jointly Administered)
)

NOTICE OF BID DEADLINE, AUCTION, AND SALE HEARING

PLEASE TAKE NOTICE that on February 25, 2024, the Debtors filed their *Motion for (I) an Order (A) Approving Bidding Procedures and Certain Bid Protections, (B) Scheduling a Bid Deadline, Auction, and Sale Hearing and Approving the Form and Manner of Notice Thereof, and (C) Approving Cure Procedures and the Form and Manner of Notice Thereof; (II) an Order Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims and Interests; and (III) Related Relief* [Docket No. 16] (the "Sale Motion").

PLEASE TAKE FURTHER NOTICE that on March 20, 2024, the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court") entered its *Order (A) Approving Bidding Procedures and Certain Bid Protections, (B) Scheduling a Bid Deadline, Auction, and Sale Hearing and Approving the Form and Manner of Notice Thereof, and (C) Approving Cure Procedures and the Form and Manner of Notice Thereof* [Docket

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtors' federal tax identification number are as follows: Cottonwood Financial Ltd. (1001); Cottonwood Financial Administrative Services, LLC (7228); Cottonwood Financial Texas, LLC (9059); Cottonwood Financial Idaho, LLC (5651); Cottonwood Financial Wisconsin, LLC (7075). The Debtors' principal offices are located at 2100 W Walnut Hill Lane, Suite 300, Irving, TX 75038.

No. __] (the “Bidding Procedures Order”), approving certain Bidding Procedures attached thereto as Exhibit 1.

PLEASE TAKE FURTHER NOTICE that, in accordance with the Bidding Procedures Order, unless cancelled, an Auction will take place on **April 29, 2024**, commencing at **10:00 a.m. Central Time** at the offices of Gray Reed, 1601 Elm Street, Suite 4600, Dallas, Texas 75201. The Auction will proceed, and be conducted, pursuant to the terms of the Bidding Procedures.

PLEASE TAKE FURTHER NOTICE that a hearing on the sale of the Debtors’ assets, including the assumption and assignment of any executory contracts (the “Sale Hearing”), will take place on **May 13, 2024, at 9:30 a.m. Central Time** in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, 1100 Commerce Street, Courtroom 3, Dallas, Texas 75242. As set forth in the Bidding Procedures, the Auction and the Sale Hearing may be cancelled, with a notice of cancellation to be filed by the Debtors with the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion and the Sale Transaction (a “Sale Objection”) shall be filed with the Bankruptcy Court and served on the following parties so as to be actually received no later than **May 3, 2024** (the “Sale Objection Deadline”).

PLEASE TAKE FURTHER NOTICE that objections to: (i) the Cure Amount proposed by the Debtors must also be filed and served by the Counterparty (a “Cure Objection”) and (ii) the assumption and assignment of the applicable Potential Assumed Contract on the basis of lack of adequate assurance of future performance under section 365(b)(1) (an “Adequate Assurance Objection”) with respect to the Successful Bidder must be filed by **May 6, 2024**.

PLEASE TAKE FURTHER NOTICE that any Sale Objection, Cure Objection or Adequate Assurance Objection must: (a) be in writing, (b) state the basis for such objection with specificity, (c) conform to the Bankruptcy Rules and Local Rules of the Northern District of Texas, (d) be filed so as to be actually on or before the Sale Objection Deadline, Cure Objection Deadline or Adequate Assurance Objection Deadline, as applicable; and (e) served upon the following persons: (i) counsel to the Debtors, Gray Reed, 1601 Elm Street, Suite 4600, Dallas, TX 75201, Attn: Lydia R. Webb (lwebb@grayreed.com); (ii) counsel to the Prepetition Secured Parties, Jackson Walker LLP, Attn: Bruce Ruzinsky (bruzinsky@jw.com), Ken Stohner (kstohner@jw.com) and Machir Stull (mstull@jw.com); (iii) counsel to the DIP Lender, Wick Phillips LLP, Attn: Jason Rudd (jason.rudd@wickphillips.com) and Catherine Curtis (catherine.curtis@wickphillips.com); (iv) counsel to any statutory committee; and (v) the Office of the United States Trustee for the Northern District of Texas, 1100 Commerce Street, Suite 976, Dallas, TX 75242, Attn: Asher Bublick (asher.bublick@usdoj.gov).

PLEASE TAKE FURTHER NOTICE that the failure to timely file and serve a Sale Objection, Cure Claim Objection or Adequate Assurance Objection by the applicable deadline shall be a bar to the assertion prior to, at the Sale Hearing, or thereafter, of any such objection to the Motion, the Sale, the Debtors’ consummation of the Sale Transaction, or the proposed assumption and assignment of any executory contracts or unexpired leases. Failure to file and serve a Sale Objection by the Sale Objection Deadline shall be deemed to be consent to the Sale

for purposes of Bankruptcy Code section 363(f) and a waiver of any preferential purchase rights or other similar rights to acquire any of the Debtors' assets.

PLEASE TAKE FURTHER NOTICE that copies of pleadings related to the proposed sale(s), including the Bidding Procedures Order (and attached Bidding Procedures) approved by the Bankruptcy Court, are available (for free) on the Debtors' Notice Agent website at <https://dm.epiq11.com/CottonwoodFinancial>, or (for a fee) on the Bankruptcy Court's website at <http://ecf.txnb.uscourts.gov/>.

Respectfully submitted this ____ day of [●], 2024.

GRAY REED

By: _____
Jason S. Brookner (TX Bar No. 24033684)
Aaron M. Kaufman (TX Bar No. 24060067)
Lydia R. Webb (TX Bar No. 24083758)
1601 Elm Street, Suite 4600
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Facsimile: (214) 953-1332
Email: jbrookner@grayreed.com
akaufman@grayreed.com
lwebb@grayreed.com
*Proposed Counsel to the Debtors
and Debtors in Possession*

Certificate of Service

I certify that on [●], 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ _____
Lydia R. Webb

Exhibit 3

Cure Notice

Jason S. Brookner (TX Bar No. 24033684)
Aaron M. Kaufman (TX Bar No. 24060067)
Lydia R. Webb (TX Bar No. 24083758)

GRAY REED

1601 Elm Street, Suite 4600
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Email: jbrookner@grayreed.com
akaufman@grayreed.com
lwebb@grayreed.com

*Proposed Counsel to the Debtors
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	)	
	)	Chapter 11
COTTONWOOD FINANCIAL LTD., <i>et al.</i> , ¹	)	
	)	Case No. 24-80035 (SWE)
Debtors.	)	(Jointly Administered)
	)	

**NOTICE OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES SUBJECT TO
POSSIBLE ASSUMPTION AND ASSIGNMENT AND PROPOSED CURE AMOUNTS**

PLEASE TAKE NOTICE that pursuant to the terms of that certain *Order (A) Approving Bidding Procedures and Certain Bid Protections, (B) Scheduling a Bid Deadline, Auction, and Sale Hearing and Approving the Form and Manner of Notice Thereof, and (C) Approving Cure Procedures and the Form and Manner of Notice Thereof* [Docket No. ___] (the “Bidding Procedures Order”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”), may hold an Auction for the sale of substantially all of their assets on April 29, 2024, at the Dallas office of Gray Reed.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bidding Procedures Order, the Debtors hereby provide their notice (the “Cure Notice”) of proposed cure amounts (each, a “Cure Amount,” and collectively, the “Cure Amounts”) for all contracts and leases subject to potential assumption and assignment to the successful bidder(s) at Auction.

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtors’ federal tax identification number are as follows: Cottonwood Financial Ltd. (1001); Cottonwood Financial Administrative Services, LLC (7228); Cottonwood Financial Texas, LLC (9059); Cottonwood Financial Idaho, LLC (5651); Cottonwood Financial Wisconsin, LLC (7075). The Debtors’ principal offices are located at 2100 W Walnut Hill Lane, Suite 300, Irving, TX 75038.

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit A** are schedules of the executory contracts and unexpired leases (collectively, the “Potential Assumed Contracts and Leases”) that may be included as part of the sale of the Debtors’ assets and the proposed Cure Amount for each such lease or contract.

PLEASE TAKE FURTHER NOTICE that objections to the Cure Amount proposed by the Debtors must be filed and served by the counterparty (a “Cure Objection”) no later than **May 6, 2024** (the “Cure Objection Deadline”).

PLEASE TAKE FURTHER NOTICE that you may request documentation evidencing adequate assurance of future performance from the Successful Bidder (“Adequate Assurance Documentation”). Any request for Adequate Assurance Documentation must (i) be made in writing by email to CWFadequateAssurance@epiqglobal.com; (ii) contain in the subject line, in all caps, the phrase “REQUEST FOR ADEQUATE ASSURANCE INFORMATION”; and (iii) specify the email address(es) for delivery of such Adequate Assurance Documentation. In the event you make a written request for Adequate Assurance Documentation in strict compliance with these procedures by no later than **April 26, 2024**, then the Debtors shall supply responsive Adequate Assurance Documentation to such contract counterparty by no later than **April 30, 2024**.

PLEASE TAKE FURTHER NOTICE that objections to the assumption and assignment of the applicable Potential Assumed Contract on the basis of lack of adequate assurance of future performance under section 365(b)(1) (an “Adequate Assurance Objection”) with respect to the Successful Bidder must be filed by **May 6, 2024** (the “Adequate Assurance Objection Deadline”).

PLEASE TAKE FURTHER NOTICE that any Cure Objection or Adequate Assurance Objection must: (a) be in writing, (b) state the basis for such objection with specificity, (c) conform to the Bankruptcy Rules and Local Rules of the Northern District of Texas, (d) be filed so as to be actually on or before the Cure Objection Deadline or Adequate Assurance Objection Deadline, as applicable; and (e) served upon the following persons: (i) counsel to the Debtors, Gray Reed, 1601 Elm Street, Suite 4600, Dallas, TX 75201, Attn: Lydia R. Webb (lwebb@grayreed.com); (ii) counsel to the Prepetition Secured Parties, Jackson Walker LLP, Attn: Bruce Ruzinsky (bruzinsky@jw.com), Ken Stohner (kstohner@jw.com) and Machir Stull (mstull@jw.com); (iii) counsel to the DIP Lender, Wick Phillips LLP, Attn: Jason Rudd (jason.rudd@wickphillips.com) and Catherine Curtis (catherine.curtis@wickphillips.com); (iv) counsel to any statutory committee; and (v) the Office of the United States Trustee for the Northern District of Texas, 1100 Commerce Street, Suite 976, Dallas, TX 75242, Attn: Asher Bublick (asher.bublick@usdoj.gov).

PLEASE TAKE FURTHER NOTICE that pursuant to the Bidding Procedures Order, the Cure Amounts set forth in the Cure Notice shall be binding on all parties unless an objection thereto is timely filed and served. If an objection to the assumption and assignment of the Potential Assumed Contracts and Leases or to the Cure Notice and any Cure Amount cannot be resolved consensually among the parties, the Court will set a hearing to determine such matters as soon thereafter as is practicable, and the Debtors are permitted to give notice only to the objecting party and those parties who have filed a notice of appearance. The failure to timely file and serve an objection shall be deemed consent to the assumption and assignment of the Potential Assumed Contracts and Leases and to the Cure Amounts, and any and all objections thereto shall be deemed forever released and waived.

PLEASE TAKE FURTHER NOTICE that the inclusion of any contracts or leases on **Exhibit A** hereto shall not constitute or be deemed to be a determination or admission by the Debtors that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code (all rights with respect thereto being expressly reserved).

PLEASE TAKE FURTHER NOTICE that copies of pleadings related to the proposed sale(s), including the Bidding Procedures Order approved by the Bankruptcy Court, are available (for free) on the Debtors' Notice Agent website at <https://dm.epiq11.com/CottonwoodFinancial>, or (for a fee) on the Bankruptcy Court's website at <http://ecf.txnb.uscourts.gov/>.

Respectfully submitted this ___ day of [●], 2024.

GRAY REED

By: _____

Jason S. Brookner (TX Bar No. 24033684)

Aaron M. Kaufman (TX Bar No. 24060067)

Lydia R. Webb (TX Bar No. 24083758)

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lwebb@grayreed.com

Proposed Counsel to the Debtors

and Debtors in Possession

Certificate of Service

I certify that on [●], 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ _____

Lydia R. Webb

Exhibit A

***[to Exhibit 3 – Notice of Executory Contracts and Unexpired Leases Subject to Possible
Assumption and Assignment and Proposed Cure Amounts]***

Schedule of Executory Contracts and Unexpired Leases

Counterparty	Address	Description of Contract/Lease	Proposed Cure Amount