

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

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In re:

NUMBER HOLDINGS, INC. *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11

)  
) Case No. 24-10719 (JKS)

)  
) (Jointly Administered)

)  
) **Hearing Date:**  
) **May 7, 2024, at 11:00 a.m. (ET)**

)  
) **Objection Deadline:**  
) **April 30, 2024, at 4:00 p.m. (ET)**  

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**DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING  
(I)(A) BIDDING PROCEDURES IN CONNECTION WITH THE SALE  
OF SUBSTANTIALLY ALL OF THE DEBTORS' REMAINING ASSETS,  
(B) ASSUMPTION AND ASSIGNMENT PROCEDURES, (C) FORM AND  
MANNER OF NOTICE OF SALE HEARING, ASSUMPTION PROCEDURES,  
AND AUCTION RESULTS; (II) AUCTION AND SALE HEARING DATES;  
(III)(A) DEBTORS' ENTRY INTO ONE OR MULTIPLE ASSET PURCHASE  
AGREEMENTS, (B) SALE(S) FREE AND CLEAR OF ALL ENCUMBRANCES,  
AND (C) ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES; AND (IV) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (the “Debtors” and, together with their non-Debtor affiliates, “99 Cents”) respectfully state the following in support of this motion (the “Motion”):

**Background**

1. On April 7, 2024 (the “Petition Date”),<sup>2</sup> the Debtors commenced these cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of title 11 of the

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: (i) Number Holdings, Inc. (1463); (ii) 99 Cents Only Stores LLC (1605); (iii) 99 Cents Only Stores Texas, Inc. (1229); (iv) 99 Cents PropCo LLC (7843); (v) 99 Cents HoldCo LLC (3987); and (vi) Bargain Wholesale LLC (8030). The Debtors’ principal offices are located at 1730 Flight Way, Suite 100, Tustin, CA 92782.

<sup>2</sup> Certain of the Debtors’ voluntary petitions were filed on the docket shortly after midnight (ET) on April 8, 2024.

United States Code (as amended, the “Bankruptcy Code”). The Debtors are authorized to continue operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These Chapter 11 Cases have been consolidated for procedural purposes only and are being administered jointly. No trustee, examiner, or official committee has been appointed in these Chapter 11 Cases.

2. The Debtors operate approximately 371 extreme value retail stores in California, Arizona, Nevada, and Texas under the business names “99¢ Only Stores” and “The 99 Store.” The Debtors offer their customers a wide array of quality products—from everyday household items, to fresh produce, deli, and other basic grocery items, to an assortment of seasonal and party merchandise—much of which is still priced at or below 99.99 cents. Headquartered in Tustin, California, the Debtors employed over 10,800 part-time and full-time individuals, as of the Petition Date.

3. The Debtors commenced these Chapter 11 Cases to implement a timely and efficient process to maximize the value of the Debtors’ estates for the benefit of all stakeholders. Through these cases, the Debtors intend to continue an orderly and value-maximizing wind down of their inventory, while conducting a marketing and sale process for their remaining assets on a timeline consistent with their store closures.

4. In connection therewith, concurrently with the commencement of these Chapter 11 Cases, the Debtors sought and obtained interim approval at a hearing held on the April 9, 2024 (the “First Day Hearing”) of their Store Closings and Store Closing Sales<sup>3</sup> for the sale of their merchandise and FF&E at all of their 371 stores and 5 distribution centers pursuant to the terms of

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<sup>3</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the *Declaration of Christopher J. Wells in Support of Chapter 11 Petitions and First Day Motions of Number Holdings, Inc. and Its Affiliated Debtors and Debtors in Possession* [Docket No. 18] (the “First Day Declaration”) or the Bidding Procedures (as defined below), as applicable.

the *Interim Order (I) Authorizing the Debtors to Assume Consulting Agreement, (II) Authorizing Store Closing Sales and Approving Related Procedures, (III) Authorizing Customary Compensation Enhancement, and (IV) Granting Certain Related Relief* [Dkt No. 151]. It is projected that the Debtors, with the assistance of their advisors, will have closed over 1/3 of the stores and all of the distribution centers by the end of April and the remaining stores by the end of May. Accordingly, the Debtors also sought and obtained approval at the First Day Hearing of certain procedures for the rejection and assumption and assignment of their non-residential real property leases (the “Leases”) pursuant to that certain *Interim Order (I) Authorizing and Approving Procedures of Rejection and Assumption and Assignment of Executory Contracts and Unexpired Leases, (II) Authorizing Abandonment of Certain Personal Property, and (III) Granting Related Relief* [Dkt No. 152] (the “Lease Rejection/Assumption and Assignment Procedures”). The Lease Rejection/Assumption and Assignment Procedures will allow the Debtors to exit their Leases on a timeline that will permit the Debtors to minimize the additional cost of administrative rent once the stores are dark. Pursuant to the procedures the Debtors may assume and assign any of their Leases on an *ad hoc* basis.

5. Even before the Petition Date, in the months leading up to the commencement of these Chapter 11 Cases, the Debtors were running a marketing process for the sale of Debtors’ remaining assets (i.e., other than their merchandise and FF&E that are being sold pursuant to their Store Closing Sales or pursuant to the Lease Rejection/Assumption and Assignment Procedures). By this Motion, the Debtors are seeking approval of various bidding, stalking horse, auction, assumption and assignment, notice, and other procedures in connection with the marketing and sale process for the Debtors’ Assets. Pursuant to the Bidding Procedures, Potential Bidders may bid for all Assets, a portion of the Debtors’ Assets, or a single Asset. Moreover, bids may include

a bid for any combination of owned real property, Leases, and/or other assets. Because Potential Bidders may be interested in both the owned real property and the Leases, and in light of the additional cost that the Debtors' estates would be forced to bear if the sale process with respect to the Leases were to run beyond the period in which the Store Closing Sales have completed and the stores are dark, the Debtors believe that running an expeditious process consistent with the Store Closing timeline and the DIP Milestones and subject to the Bidding Procedures will maximize the value for the benefit of all creditors. The Bidding Procedures also contemplate the Debtors potentially identifying and designating one or more Stalking Horse Bidders for some or all of the Assets, which would permit the Debtors to secure bids that will serve as a floor for other potential bids on such Assets.

6. The Bidding Procedures proposed by this Motion, including the potential identification and designation of Stalking Horse Bidder(s), ensure that the Debtors' postpetition marketing and Sale process builds upon the prepetition process in a fair, open manner that encourages bidders to submit proposals in a manner that is most likely to maximizes value for these estates.

#### **Jurisdiction and Venue**

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* of the United States District Court for the District of Delaware, dated as of February 29, 2012.

8. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Debtors consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), to the entry of a final order by this Court in connection with this Motion to the extent that it is later determined

that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

9. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

10. The bases for the relief requested herein are sections 105, 363, 365, 503 and 507 of the Bankruptcy Code, rule 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2002-1, 6004-1 and 9006-1.

### **Relief Requested**

11. By this Motion, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Bidding Procedures Order”), (i) approving the proposed bidding procedures attached as **Exhibit 1** to the Bidding Procedures Order (the “Bidding Procedures”) for the sale (the “Sale”) of substantially all of the Debtors’ remaining assets (the “Assets”)<sup>4</sup>; (ii) subject to entry of Stalking Horse Approval Order(s) (as defined below), authorizing, but not directing, the Debtors to designate one or more Stalking Horse Bidders (as defined below) in accordance with the Bidding Procedures; (iii) approving procedures for assuming and assigning executory contracts and unexpired leases and certain related notices, including notice of proposed cure amounts; (iv) approving the form and manner of notice of (a) the auction for the Assets (the “Auction”), if needed, and hearing (the “Sale Hearing”) with respect to the approval of the sale (the “Sale Notice”) attached as **Exhibit 2** to the Bidding Procedures Order; (b) the Assumption Procedures (the “Assumption Notice”), attached as **Exhibit 3** to the Bidding Procedures Order; and (c) Successful Bidder and Backup Bidder (the “Notice of

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<sup>4</sup> Certain of the Debtors’ assets, including the Debtors’ inventory and the fixtures, furniture, and equipment contained in the in the Debtors’ Stores may be sold pursuant to the Store Closing Motion, but any such assets that have not yet been sold may be included in a Qualified Bid. Additionally, individual leases may be assumed and assigned pursuant to the Contract Rejection and Assumption Procedures Motion but, to the extent not yet rejected or assigned, such leases may be included in a Qualified Bid.

Successful Bidder”), attached as **Exhibit 4** to the Bidding Procedures Order; (v) establishing dates and deadlines in connection with the Sale as set forth below; and (vi) granting related relief.

12. The Debtors request that the Bidding Procedures Order establish the following dates and deadlines, subject to extension and other modifications by the Debtors:

- (i) **Indication of Interest Deadline:** April 29, 2024 at 4:00 p.m. (prevailing Eastern Time), as the deadline for tendering a requested but not obligatory non-binding indication of interest (an “Indication of Interest”) setting forth all Assets proposed to be purchased, including any real property leases the Potential Bidder wishes to be assumed and assigned in connection with such transaction, the other material terms of the transaction (including the purchase price and its allocation among the target Assets), and any expected due diligence that would be required.
- (ii) **Bid Procedures Objection Deadline:** April 30, 2024 at 4:00 p.m. (prevailing Eastern Time) as the deadline for objecting to the Bidding Procedures for the Sale of the Assets; (ii) subject to entry of the Stalking Horse Approval Order, authorizing, but not directing, the Debtors to designate a Stalking Horse Bidder in accordance with the Bidding Procedures; (iii) approving procedures for assuming and assigning executory contracts and unexpired leases and certain related notices, including notice of proposed cure amounts; (iv) approving the form and manner of notice of the Auction, Sale Hearing, and the Assumption.
- (iii) **Sale Objection Deadline:** May 14, 2024 at 4:00 p.m. (prevailing Eastern Time) as the deadline (the “Sale Objection Deadline”) to (i) object to the Sale and/or (ii) except as otherwise set forth in the Assumption Procedures (defined below), object to the potential assumption or assumption and assignment of the Debtors’ executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code (all such contracts and leases capable of being assumed or assumed and assigned under section 365 of the Bankruptcy Code, the “Assigned Contracts”) and cure amounts related thereto, *provided* that, notwithstanding the foregoing, any (x) objections to the conduct of the Auction or designation of the successful bid or bids for the Assets (the “Successful Bid”, and the bidder or bidders with respect thereto, the “Successful Bidder”) or backup bid or bids for the Assets (the “Backup Bid”, and each party submitting a Backup Bid, a “Backup Bidder”), or (y) Adequate Assurance Objections (defined below) may be filed at least 24 hours prior to the Sale Hearing;
- (iv) **Bid Deadline:** May 15, 2024 at 4:00 p.m. (prevailing Eastern Time), as the deadline by which all Qualified Bids for the Assets must be actually received pursuant to the Bidding Procedures (the “Bid Deadline”);

- (v) **Auction**: On or before May 21, 2024 at 10:00 a.m. (prevailing Eastern Time) as the date and time of the Auction, if necessary, which will be held at the offices of the proposed co-counsel to the Debtors, Milbank LLP, 55 Hudson Yards, New York, NY 10001, telephonically, or by video via Zoom, or such later time or other place as the Debtors will timely notify all other Qualified Bidders;
- (vi) **Auction Objection Deadline**: May 22, 2024 at 4:00 p.m. (prevailing Eastern Time) as the deadline to object to the conduct of the Auction, the choice of any Successful Bidder and/or Backup Bidder, and Adequate Assurance Objections (as defined below) with respect to any Successful Bidder and/or Backup Bidder other than a Stalking Horse Bidder;
- (vii) **Sale Hearing**: Subject to the Court's availability, May 23, 2024, at 10:00 a.m. (prevailing Eastern Time) as the date for the Sale Hearing to be held before the Honorable J. Kate Stickles, Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, at District of Delaware, at 824 Market Street North, 5th Floor, Wilmington, Delaware 19801, or pursuant to the Court's video hearing procedures.

13. In addition, by this Motion, the Debtors seek, following the conclusion of the Sale Hearing, entry of one or more orders (collectively, the "Sale Order"), (i) authorizing (a) the Debtors to enter into and perform under one or multiple asset purchase agreements for the Debtors' Assets, a form for which will be made available to all Potential Bidders and filed no less than seven (7) days prior to the Bidding Procedures Objection Deadline (the "Form of Asset Purchase Agreement"), (b) the sale of the Assets free and clear of all claims, liens, liabilities, rights, interests, and encumbrances, and (c) the assumption and assignment of certain executory contracts and unexpired leases; and (ii) granting related relief.

### **The Proposed Bidding Procedures and Sale Notice**

#### **I. Bidding Procedures**

14. Through the Bidding Procedures outlined in this Motion, the Debtors intend to build upon their prepetition efforts by marketing the Assets more broadly than 99 Cents executed prepetition. Prior to the filing of these Chapter 11 Cases, the Debtors' proposed investment banker, Jefferies LLC ("Jefferies") had reached out to numerous potential strategic buyers (including many

of 99 Cents’ competitors) and private equity companies about potentially purchasing all or a portion of the Debtors’ assets. In connection with the filing of these Chapter 11 Cases, Jefferies and the Debtors’ proposed real estate advisor, Hilco Real Estate, LLC (“Hilco Real Estate”), have begun a coordinated effort to market the Assets by contacting all of the potential purchasers from the prepetition process as well as additional potential purchasers who may be interested in purchasing all or a significant portion of the Assets and potential purchasers who may be interested in engaging in a smaller transaction for one or multiple of the Debtors real property or Leases.

15. The Bidding Procedures are designed to facilitate a fair, robust and competitive sale process to ensure that the value of the Assets is maximized. The Bidding Procedures allow the Debtors to solicit and evaluate bids from potential bidders and determine the highest or otherwise best offer for their Assets on a reasonable timeline. Specifically, the Bidding Procedures would provide nearly 30 days between the filing of this Motion and the Bid Deadline, which the Debtors’ believe, taking into account the Debtors’ prepetition marketing process and their efforts since the commencement of these Chapter 11 Cases, will be sufficient to allow potential bidders to conduct diligence and formulate competing bids.<sup>5</sup>

16. Pursuant to Local Rule 6004-1(c), certain of the key terms of the Bidding Procedures are highlighted in the chart below:<sup>6</sup>

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<sup>5</sup> This timeline is comparable to other timelines recently approved in this district. *See, e.g., In re Tricida, Inc.*, Case No. 23-10024 (JTD) (Bankr. D. Del. Jan. 26, 2023) (approving a sale timeline that provided for an approximate four-week period between the filing of the motion and the bid deadline); *In re Winc, Inc.*, Case No. 22-11238 (LSS) (Bankr. D. Del. Dec. 22, 2022) (approving a sale timeline that provided an approximate five-week period between the filing of the motion and the bid deadline); *In re Fast Radius, Inc.*, Case No. 22-11051 (JKS) (Bankr. D. Del. Nov. 14, 2022) (approving a sale timeline that provided an approximate four-week period between the filing of the motion and the bid deadline); *In re Clarus Therapeutics Holdings Inc.*, Case No. 22-10845 (Bankr. D. Del. Sept. 22, 2022) (approving a sale timeline that provided a five-week period between the filing of the motion and the bid deadline).

<sup>6</sup> This summary is provided for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the Bidding Procedures, the Bidding Procedures govern in all respects.

| MATERIAL TERMS OF THE BIDDING PROCEDURES                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| Provisions Governing Qualification of Bidders, Qualified Bids, and Bid Protections to “Stalking Horse” or Initial Bidder<br>Local Rule 6004-1(c)(i)(A)-(C) | <p><b>A. Bid Deadline</b> – May 15, 2024 at 4:00 p.m. (prevailing Eastern Time). (<b>Bid Procedures, Section I</b>)</p> <p><b>B. Diligence Access Requirements</b> – To access the Debtors’ data room and participate in the sale process, a Potential Bidder must submit: (1) a confidentiality agreement on customary terms that are reasonably acceptable to the Debtors (the “<u>Confidentiality Agreement</u>”); and (2) sufficient evidence, as reasonably determined by the Debtors, that the bidder intends to obtain due diligence and participate in the sale process for a bona fide purpose consistent with the Bidding Procedures. (<b>Bid Procedures, Section III</b>)</p> <p><b>C. Consultation Parties and Determination by Debtors</b> – The Debtors shall inform the Consultation Parties<sup>7</sup> of any person or entity that becomes a Potential Bidder and shall consult with the Consultation Parties (a) with respect to any due diligence disputes that arise concerning any such entity and (b) prior to revoking due diligence access to any such entity. After a Potential Bidder enters into a Confidentiality Agreement with the Debtors and provides preliminary proof, the adequacy of which the Debtors and their advisors will determine in their reasonable business judgment, of its bona fide interest in purchasing some or all of the Assets and its financial capacity to potentially consummate a proposed Sale, the Debtors shall deliver or make available (unless previously delivered or made available) to each Potential Bidder certain designated information with respect to the Assets. To the extent the Debtor provides any material written information to a Potential Bidder that the Debtor had not previously provided to a Consultation Party, the Debtor shall make such information available to such Consultation Party, subject, in the case of any Consultation Party that is not already party to a confidentiality agreement with the Debtor, to execution of a confidentiality agreement in form and substance reasonably satisfactory to the Debtors.</p> <p>Following consultation with the Consultation Parties, the Debtors shall: (a) coordinate with Potential Bidders regarding the conduct of their respective due diligence; (b) evaluate Bids from Potential Bidders on any Assets; (c) negotiate any Bid made to acquire any Assets; and (d) make such other determinations as are provided in the Bidding Procedures; <i>provided that</i>, notwithstanding anything to the contrary contained herein, the Debtors shall not consult with any Consultation Party (or its advisors) that is actively participating as a Potential Bidder for the Assets. Neither the Debtors nor their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets to any party that is not a Potential Bidder or a Consultation Party. (<b>Bid Procedures, Section IV</b>)</p> <p><b>D. Designation of Stalking Horse Bidder(s)</b> – The Debtors may, at any time prior to the Auction in accordance with the procedures set forth below, and with the consent of the relevant Consultation Parties unless otherwise ordered by the Court, designate one or more stalking horse bidders (each, a “<u>Stalking Horse Bidder</u>”), whose Qualified Bid shall serve as a stalking horse bid (the “<u>Stalking Horse Bid</u>”) for all or a portion of the Assets.</p> |

<sup>7</sup> The “Consultation Parties” are, collectively: (a) any statutory committee appointed in the Chapter 11 Cases (a “Committee”) and such Committee’s counsel, (b) the DIP Lenders and their counsel, (c) Royal Bank of Canada, as ABL Facility Agent, and its counsel, (d) Sixth Street Specialty Lending, Inc., as FILO Agent, and its counsel (e) the *Ad Hoc* Group of 2026 Noteholders, and its counsel, and (f) solely with respect to the sale of PropCo Priority Collateral (as defined in the Interim DIP Order), RCB Equities #1, LLC, as lender pursuant to the PropCo Promissory Note, and its counsel; *provided that* no person or entity that constitutes a Potential Bidder, a Qualified Bidder, a Stalking Horse Bidder, a Successful Bidder, or a Backup Bidder (each as defined in the Bidding Procedures) (as determined by the Debtors, in their reasonable discretion and in consultation with the Committee) shall be deemed a Consultation Party for so long as such person constitutes a Potential Bidder, a Qualified Bidder, a Stalking Horse Bidder, a Successful Bidder, or a Backup Bidder.

# **MATERIAL TERMS OF THE BIDDING PROCEDURES**

Any Stalking Horse Bid shall satisfy the requirements of a Qualified Bid (as set forth below, including by providing a Bid Deposit). Any asset purchase agreement memorializing the proposed transaction set forth in a Stalking Horse Bid (the “Stalking Horse APA”), which shall be in form and substance acceptable to the DIP Agent, will be binding on the Stalking Horse Bidder and set the floor for all Qualified Bids to purchase the Assets subject to such Stalking Horse APA, subject to higher or otherwise better Qualified Bids. Notwithstanding any of the foregoing, the Debtors are not obligated to select a Stalking Horse Bidder and may proceed to the Auction without one. **(Bid Procedures, Section V)**

- E. Timing of the Designation of Stalking Horse Bidders** – In the event that the Debtors designate a Stalking Horse Bidder and seek to enter into a Stalking Horse APA on or prior to May 1, 2024, at 4:00 p.m. (prevailing Eastern Time) (the “Stalking Horse Supplement Deadline”), the Debtors shall file a supplement to the Motion (a “Stalking Horse Supplement”) seeking approval of the same, and serve the Stalking Horse Supplement by email, where available, or otherwise by first class mail, with no less than three (3) business days’ notice of the objection deadline (the “Stalking Horse Objection Deadline”) to: (a) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”); (b) the Consultation Parties; and (c) those parties who have requested notice of all pleadings filed in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002 (collectively, the “Stalking Horse Notice Parties”) with no further notice being required; *provided* that with respect to each Stalking Horse Bid, the Stalking Horse Supplement: (a) sets forth the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly-formed entity, then the Stalking Horse Bidder’s parent company or sponsor); (b) sets forth the amount of the Stalking Horse Bid and what portion is cash; (c) specifies any proposed bid protections (the “Bid Protections”), which, for the avoidance of doubt, shall solely be payable from the proceeds of the successful bid, if not the Stalking Horse Bidder (the “Bid Protection Condition”); (d) attaches the Stalking Horse APA, including all exhibits, schedules or attachments thereto; and (e) sets forth the deadline to object to the Stalking Horse Bidder designation and Bid Protections. The Stalking Horse Supplement shall also include any evidence the Debtors would like the Court to consider in connection with any request to approve any breakup fee and/or expense reimbursement and/or any other Bid Protections as an administrative expense under section 503(b) of the Bankruptcy Code, subject to the Bid Protections Condition. If the Debtors designate one or more Stalking Horse Bidders by the Stalking Horse Supplement Deadline, the Debtors will file the proposed form of the Sale Order agreed to by each such Stalking Horse Bidder, which shall be in form and substance acceptable to the DIP Agent, on or before the Stalking Horse Supplement Deadline.

In the event the Debtors designate a Stalking Horse Bidder after the occurrence of the Stalking Horse Supplement Deadline, but prior to the Auction, the Debtors may seek Court approval on an expedited basis of the Stalking Horse Bidder and Stalking Horse APA, including the Bid Protections, and reserves its right to file such a motion at any time after the Stalking Horse Supplement Deadline and prior to the Auction. Prior to the filing of any proposed motion, the Debtors will consult with the Consultation Parties with respect to the designation of a Stalking Horse Bidder and Stalking Horse APA. **(Bid Procedures, Section V)**

- F. Objections to a Stalking Horse Bidder** – Objections to the designation of a Stalking Horse Bidder or any of the terms of a Stalking Horse Bid (the “Stalking Horse Objection”) shall: (a) be in writing; (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; (c) state, with specificity, the legal and factual bases thereof; and (d) be filed with the Court and served on the Stalking Horse Notice Parties within three (3) business days after the service of the Stalking Horse Supplement.

If a timely Stalking Horse Objection is filed, the Debtors will schedule a hearing

| MATERIAL TERMS OF THE BIDDING PROCEDURES |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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|                                          | <p>regarding such Stalking Horse Objection as soon as reasonably practicable seeking approval of such Stalking Horse Bid on or before May 7, 2024 (but in no event fewer than three (3) business days after the service of the Stalking Horse Supplement). If no Stalking Horse Objection is timely filed and served with respect to the Stalking Horse Bid, upon the expiration of the Stalking Horse Objection Deadline, the Debtors will submit to the Court an order under certification of counsel approving the designation of the Stalking Horse Bidder and Stalking Horse APA (the “<u>Stalking Horse Approval Order</u>”), which may be entered by the Court without a hearing, including with respect to any Bid Protections set forth in the Stalking Horse Supplement. <b>(Bid Procedures, Section V)</b></p> <p><b>G. Approval of a Stalking Horse Bidder</b> – Upon entry of an order approving the Stalking Horse Bidder, the Debtors’ obligation to pay the Bid Protections shall constitute, pursuant to section 503(b) of the Bankruptcy Code, an administrative expense claim against the Debtors’ estates, subject to the Bid Protection Condition, and shall survive termination of the relevant Stalking Horse APA. In such case, the Bid Protections shall be payable by the Debtors to such Stalking Horse Bidder on the terms and conditions set forth in the Stalking Horse APA. <b>(Bid Procedures, Section V)</b></p> <p><b>H. Bid Requirements</b> - To be eligible to participate in the Auction, a Potential Bidder must deliver to the Debtors and their advisors, a written, irrevocable offer that must be determined by the Debtors, in their reasonable business judgment, to satisfy each of the following conditions (collectively, the “<u>Bid Requirements</u>”):</p> <ul style="list-style-type: none"> <li>• <b>Identity.</b> Each Bid must fully disclose the identity of each entity that will be participating in connection with such Bid (including any equity owners or sponsors, if the purchaser is an entity formed for the purpose of consummating the acquisition of the Assets), and the complete terms of any such participation, along with sufficient evidence that the Potential Bidder is legally empowered, by power of attorney or otherwise, to complete the transactions on the terms contemplated by the parties. A Bid must also fully disclose any connections or agreements with the Debtors, any known, potential, prospective bidder, or Qualified Bidder (as defined herein), or any officer, director, or equity security holder of the Debtors.</li> <li>• <b>Assets.</b> Each Potential Bidder must state that the Bid includes an offer by the Potential Bidder to purchase some or all of the Assets and identify the Assets with reasonable specificity, whether individually or in combination.</li> <li>• <b>Purchase Price.</b> Each Bid must clearly set forth the purchase price to be paid for the Assets (the “<u>Purchase Price</u>”) and must (i) indicate the source of cash consideration, including funding commitments, and confirm that such consideration is not subject to any contingencies (ii) identify separately the non-cash components of the Purchase Price, which non-cash components shall be limited only to credit bids and assumed liabilities and (iii) allocate the Purchase Price amongst the target Assets. For the avoidance of doubt, a Qualified Bid must at a minimum allocate the purchase price (x) amongst each parcel of owned real property to be purchased, (y) the leases proposed to be assumed and assigned, and (z) any furniture, fixtures, or equipment proposed to be purchased; <i>provided</i> that such allocation shall not prejudice the rights of any party in interest to contest such allocation. The Bid should include a detailed sources and uses schedule. The Purchase Price must include the payment of all cure amounts and all other amounts required to affect the assumption and assignment of any applicable executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code.</li> <li>• <b>No Fees.</b> Each Bid must provide, other than as may be exclusively applicable to the Stalking Horse Bid, that if designated, the Bid is not subject to any bidding fee, break-up fee, termination fee, transaction fee, expense reimbursement (including for</li> </ul> |

| MATERIAL TERMS OF THE BIDDING PROCEDURES |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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|                                          | <p>legal fees) or any similar type of reimbursement, and include an express waiver of any substantial contribution administrative expense claim under Section 503(b) of the Bankruptcy Code related to bidding for the Assets; <i>provided, however</i>, that nothing in the Bidding Procedures shall limit, alter, or impair the rights of any party to payment and reimbursement of expenses set forth in the DIP Orders, and parties entitled to payment or reimbursement of expenses under the DIP Orders shall be entitled to payment or reimbursement of expenses incurred in connection with the Bidding Procedures and any Sale.</p> <ul style="list-style-type: none"> <li>• <b>Minimum Bid.</b> There is no minimum bid for any of the Assets; <i>provided</i> that, in the event a Stalking Horse Bidder is designated, all Bids for Assets contained in such Stalking Horse Bid must provide consideration to the Debtors of at least the sum of (i) the Stalking Horse Bid, (ii) the amount of any Bid Protections, and (iii) a reasonable minimum overbid amount equal to or greater than an amount determined by the Debtors, in consultation with the Consultation Parties, upon entry of the Stalking Horse Approval Order (the “<u>Incremental Overbid</u>”) over the Starting Bid or Leading Bid (as defined below).</li> <li>• <b>Bid Deposit.</b> Each Bid, other than a credit bid, must be accompanied by a cash deposit (made by wire transfer or certified or cashier’s check) equal to the greater of the aggregate amount of rent required to be paid through the proposed Closing and ten percent (10%) of the aggregate value of the cash consideration of the Bid (the “<u>Good Faith Deposit</u>”), which funds will be deposited, prior to the Bid Deadline, into a segregated account established by the Debtors. The Debtors reserve the right to increase the amount of the Good Faith Deposit for a particular Asset or group of Assets.</li> <li>• <b>Committed Financing.</b> If a Bid is not accompanied by evidence of the Potential Bidder’s capacity to consummate the Sale set forth in its Bid with cash on hand, each Bid must include committed financing documented to the Debtors’ satisfaction, in consultation with the Consultation Parties, that demonstrates that the Potential Bidder has received sufficient debt and/or equity funding commitments to satisfy the Potential Bidder’s Purchase Price and other obligations (including any assumed liabilities) under its Bid. Such funding commitments or other financing must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants, conditions, and term and termination provisions acceptable to the Debtors.</li> <li>• <b>Pro Forma Capital Structure.</b> To the extent that a Bid is made by a special purpose vehicle, such Bid must include a description of the Bidder’s pro forma capital structure.</li> <li>• <b>Good Faith Offer.</b> Each Bid must constitute a good faith, bona fide offer to purchase the Assets set forth in such Bid.</li> <li>• <b>Marked Agreement.</b> Each Bid must be accompanied by clean and duly executed transaction documents including, at a minimum, a draft asset purchase agreement, including the exhibits and schedules related thereto, and any related material documents integral to such Bid pursuant to which the Potential Bidder proposes to effectuate the Sale, along with redlines of such agreements marked to reflect any amendments and modifications from the Form of Asset Purchase Agreement (if no Stalking Horse APA has been entered into at the time of the Bid with respect to the target Assets) or the Stalking Horse APA (if a Stalking Horse APA has been entered into at the time of the Bid that includes some or all of the target Assets), which amendments and modifications may not be inconsistent with the Bidding Procedures. If a Stalking Horse APA has been entered into at the time of the Bid,</li> </ul> |

| MATERIAL TERMS OF THE BIDDING PROCEDURES |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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|                                          | <p>each such draft purchase agreement must provide for payment to the Stalking Horse Bidder in cash at Closing in respect of the Bid Protections.</p> <ul style="list-style-type: none"> <li>• <b>Contracts and Leases.</b> Each Bid must identify a schedule of executory contracts and unexpired leases to be assumed and assigned to the Potential Bidder in connection with the Sale.</li> <li>• <b>No Contingencies.</b> A Bid must contain a clear statement that it is not conditioned on any contingency, including, among others, on obtaining any of the following (i) financing, (ii) shareholder, board of directors, or other approvals (including regulatory approvals), and/or (iii) the outcome or completion of a due diligence review by the Potential Bidder.</li> <li>• <b>Binding and Irrevocable.</b> A Potential Bidder's Bid must be irrevocable unless and until the Debtors accept a higher Bid and such Potential Bidder is not selected as the Backup Bidder. In the event a Bid is chosen as the Backup Bid, it must remain irrevocable until the Debtors and the Successful Bidder consummate the Sale.</li> <li>• <b>Joint Bids.</b> The Debtors will be authorized to approve joint Bids in their reasonable discretion, on a case-by-case basis, in consultation with the Consultation Parties.</li> <li>• <b>Adequate Assurance Information.</b> Each Bid must be accompanied by sufficient and adequate financial and other information (the "<u>Adequate Assurance Information</u>") to demonstrate, to the reasonable satisfaction of the Debtors, that such Potential Bidder (i) has the financial wherewithal and ability to consummate the acquisition of the Assets covered by the Bid (the "<u>Closing</u>"), and (ii) can provide adequate assurance of future performance in satisfaction of the requirements under section 365(f)(2)(B) of the Bankruptcy Code, and the Potential Bidder's willingness to perform, under any contracts that are proposed to be assumed and assigned to such party (any executory contracts and unexpired leases that are not assumed and assigned will be deemed rejected at closing). Such evidence may also include audited and unaudited financial statements, tax returns, bank account statements, a description of the proposed business to be conducted at the premises and/or any other documentation that the Debtors further request. The Bid must also identify a contact person that parties may contact to obtain additional Adequate Assurance Information.</li> <li>• <b>Authorization.</b> Each Bid must contain evidence that the Potential Bidder has obtained authorization or approval from its board of directors and, if required, its shareholders (or a comparable governing body reasonably acceptable to the Debtors) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.</li> <li>• <b>Adherence to Bidding Procedures.</b> By submitting its Bid, each Potential Bidder is agreeing to (i) abide by and honor the terms of the Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction and (ii) serve as Backup Bidder, if its Bid is selected as the next highest or next best bid after the Successful Bid with respect to the applicable Assets.</li> <li>• <b>Regulatory Approvals and Covenants.</b> A Bid must set forth each governmental, regulatory, and third-party approval required, if any, for the Potential Bidder to consummate the applicable Sale and the time period within which the Potential Bidder expects to receive such approvals (and in the case that receipt of any such approval is expected to take more than 30 days following execution and delivery of the asset purchase agreement, those actions the Potential Bidder will take to ensure receipt of such approvals as promptly as possible) and satisfy the carrying costs of</li> </ul> |

## MATERIAL TERMS OF THE BIDDING PROCEDURES

the Debtors' estates with respect to such assets.

- **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the Potential Bidder (i) has had an opportunity to conduct any and all due diligence regarding the Assets and liabilities prior to making its Bid, (ii) has relied solely upon its own or its advisors' independent review, investigation, and/or inspection of any documents and/or the Assets and liabilities 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 Assets, liabilities, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Potential Bidder's proposed purchase agreement for the Assets.
- **Time Frame for Closing.** A Bid by a Potential Bidder must be reasonably likely (based on experience other considerations) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame reasonably acceptable to the Debtors. To the extent a Bid includes any unexpired leases, the Bid must (i) provide for the Closing of the Sale of such leases no later than June 1, 2024 and (ii) provide that the Potential Bidder will pay rent and other amounts due and payable to the landlords under such leases on or after June 1, 2024 in the event that the Closing has not occurred.
- **Consent to Jurisdiction.** The Potential Bidder must submit to the jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to the Debtors' qualification of Bids, the Auction, the construction and enforcement of the Bidding Procedures, the Sale documents, and the Closing, as applicable.

Bids fulfilling each of the preceding Bid Requirements, as determined by the Debtors and their advisors, in their reasonable business judgment and in consultation with the Consultation Parties, will be deemed to be "Qualified Bids," and those parties submitting Qualified Bids will be deemed to be "Qualified Bidders," *provided*, that notwithstanding anything to the contrary herein, any Bid submitted by the DIP Agent, Prepetition Administrative Agent, or Prepetition FILO Agent or their respective designees shall be a Qualified Bid. The Debtors shall promptly provide to the applicable Consultation Parties copies of all Bids received by the Debtors. The Debtors shall inform the Qualified Bidders that their Bids have been designated as Qualified bids no later than May 21, 2024.

Any Stalking Horse Bid will be deemed a Qualified Bid, and the Stalking Horse Bidder will be deemed a Qualified Bidder, for all purposes and requirements herein, notwithstanding the requirements that a Potential Bidder must satisfy to become a Qualified Bidder. If the Stalking Horse Bid is chosen as the Successful Bid for any Assets, the rights and obligations of the Stalking Horse Bidder shall be as set forth in the Stalking Horse APA (as the same may be modified in connection with the Auction). If the Stalking Horse Bid is selected as the Backup Bid for any Assets, it must remain irrevocable only for so long as is required under the Stalking Horse APA.

The Debtors reserve the right, in consultation with the Consultation parties, to (a) waive any of the Qualified Bid requirements set forth above and deem a Bid to be a Qualified Bid notwithstanding any non-compliance with such requirements and (b) alter the Incremental Overbid. **(Bid Procedures, Section VI)**

- I. No Qualified Bids** – If the Debtors receive only one Qualified Bid (which may be a Stalking Horse Bid) by the Bid Deadline for an Asset or group of Assets, the Debtors,

| <b>MATERIAL TERMS OF THE BIDDING PROCEDURES</b>                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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|                                                                                             | <p>after consultation with the Consultation Parties, may cancel the Auction and decide, in the Debtors' reasonable business judgment, to designate such Qualified Bid as the Successful Bid for such Asset or group of Assets, and pursue entry of a Sale Order approving such Sale. <b>(Bid Procedures, Section VII)</b></p> <p><b>J. Credit Bidding</b> - Any Qualified Bidder that has a valid and perfected lien on any Assets of the Debtors' estates (a "<u>Secured Party</u>") shall be entitled to credit bid all or a portion of the face value of such Secured Party's claims against the Debtors toward the Purchase Price specified in such Qualified Bidder's Bid; <i>provided</i> that a Secured Party shall be entitled to credit bid its claim(s) only with respect to Assets that are subject to a valid and perfected first priority lien in favor of such Secured Party as to such claim(s). Any Qualified Bid that contains a Credit Bid for some portions of the Assets included in such bid shall otherwise be required to comply with all other requirements of a Qualified Bid including without limitation with respect to the purchase price allocation and Bid Deposits. Notwithstanding anything to the contrary herein, each of the Prepetition Agents (as defined in the DIP Motion), subject to section 363(k) of the Bankruptcy Code, and the DIP Agent (as defined in the DIP Motion) may submit a credit bid of all or any portion of the aggregate amount of their respective secured claims, including, with respect to the DIP Agent, any postpetition financing claims for Assets over which such Secured Party has a perfected first priority lien. Any bid timely submitted by a Prepetition Agent, subject to section 363(k) of the Bankruptcy Code, or the DIP Agent shall be deemed a Qualified Bid regardless of whether it meets the other requirements set forth herein. Notwithstanding anything to the contrary herein, the DIP Agent and Prepetition Agents shall not be subject to the Good Faith Deposit requirement. Any credit bid submitted by a Secured Party (other than the DIP Agent) must contain a cash component sufficient to pay the cash expenses allocable to such Sale, including any M&amp;A or transaction fees allocable to such Sale.</p> <p>The rights and defenses of the Debtors and any other party in interest with respect to whether any assertion that any liens, claims, encumbrances, or interests, if any, will attach to the proceeds of the Sale transaction(s) are expressly preserved. <b>(Bid Procedures, Section VIII)</b></p> |
| <p><b>Modification of Bidding and Auction Procedures</b><br/>Local Rule 6004-1(c)(i)(D)</p> | <ul style="list-style-type: none"> <li>• The Debtors reserve the right to waive any of the Qualified Bid requirements set forth above and deem a Bid to be a Qualified Bid notwithstanding any non-compliance with such requirements. <b>(Bidding Procedures, Section VI)</b></li> <li>• The Debtors reserve the right to alter the Incremental Overbid under the Bidding Procedures. <b>(Bidding Procedures, Section VI)</b></li> <li>• The Debtors reserve the right to require the last and final Bids at the Auction to be submitted on a "blind" basis. <b>(Bidding Procedures, Section IX)</b></li> <li>• The Debtors reserve the right, in their reasonable business judgment, to adjourn the Auction one or more times. <b>(Bidding Procedures, Section IX)</b></li> <li>• The Auction will be governed by such other Auction Procedures as may be announced by the Debtors and their advisors, from time to time on the record at the Auction; <i>provided</i> that such other Auction Procedures are (a) not inconsistent with the Bidding Procedures Order, the Bankruptcy Code, or any other order of the Bankruptcy Court, (b) disclosed orally or in writing to all Qualified Bidders and other attendees at the Auction and recorded on the record, and (c) determined by the Debtors, in good faith, to further the goal of attaining the highest or otherwise best offer for the Assets. <b>(Bidding Procedures, Section IX)</b></li> <li>• The Debtors reserve the right to continue the Sale Hearing to a later date. <b>(Bidding</b></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

| <b>MATERIAL TERMS OF THE BIDDING PROCEDURES</b>                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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|                                                                                        | <p><b>Procedures, Section XI)</b></p> <ul style="list-style-type: none"> <li>The Debtors reserve their rights to modify the Bidding Procedures in good faith, including by setting procedures for an Auction, to further the goal of attaining the highest or otherwise best offer for the Assets, or impose, at or prior to the Auction, additional customary terms and conditions on the Sale of the Assets. The Debtors shall provide notice of any such modification to any Qualified Bidder, including any Stalking Horse Bidder. <b>(Bidding Procedures, Section XIV)</b></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p><b>Closing with Alternative Backup Bidder(s)</b><br/>Local Rule 6004-1(c)(i)(E)</p> | <p>Prior to the conclusion of the Auction, the Debtors shall (a) determine, in consultation with the Consultation Parties, which Qualified Bid is the next highest or otherwise best Qualified Bid after the Successful Bid for the applicable Assets (each, a “<u>Backup Bid</u>”) and (b) notify all Qualified Bidders bidding for the applicable Assets of the identity of the relevant Backup Bidder(s) and the amount of the Purchase Price and other material terms of its Backup Bid. Each Backup Bidder shall wire to the Debtors, in immediately available funds, the Incremental Deposit Amount (defined below), based on the Purchase Price of its Backup Bid, no later than one (1) business day following the date on which the applicable Backup Bid is announced. Notwithstanding anything to the contrary herein, any Bid by the DIP Agent, Prepetition Administrative Agent, and Prepetition FILO Agent, or their respective designees, shall not be a Backup Bid unless such agent so agrees in writing.</p> <p>The Backup Bid(s) shall remain binding on the Backup Bidder(s) until the earlier of (a) the closing of the Sale for the applicable Assets and (b) 60 days after the date of the Sale Hearing. If the Successful Bidder(s) for the applicable Assets fail to consummate the Sale(s), the Backup Bidder(s) shall be deemed the new Successful Bidder(s) for the applicable Assets, and the Debtors shall be authorized, but not required, to consummate the Sale(s) of the applicable Assets to the Backup Bidder(s). <b>(Bidding Procedures, Section XII)</b></p>                                                                                                                                                                                                                                                                                                 |
| <p><b>Provisions Governing the Auction</b><br/>Local Rule 6004-1(c)(ii)</p>            | <p>If at least two Qualified Bids (including any Stalking Horse Bid) are received by the Bid Deadline with regard to any particular Assets, the Debtors will conduct the Auction with respect to such Assets and shall determine, after consultation with the Consultation Parties, which Qualified Bid is the highest or otherwise best Qualified Bid for purposes of constituting the opening bid at the Auction for the relevant Assets (the “<u>Starting Bid(s)</u>”). In the event a Stalking Horse Bidder is selected, the Starting Bid shall include the amount provided for in the Stalking Horse Bid plus the amount of any Bid Protections. The Starting Bid(s) will be communicated and provided to the Qualified Bidders prior to the commencement of the Auction.</p> <p>The Auction, if any, will commence <b>on or before May 21, 2024 at 10:00 a.m. (prevailing Eastern Time)</b>, at the offices of Milbank LLP, 55 Hudson Yards, New York, NY 10001, telephonically, or by video via Zoom, or such later time or other place as the Debtors will timely notify all other Qualified Bidders for such Auction Asset or Auction Assets.</p> <p><b>Auction Procedures:</b></p> <ul style="list-style-type: none"> <li>the Auction will be conducted openly;</li> <li>only the Qualified Bidders, including the Stalking Horse Bidder, if applicable, will be entitled to bid at the Auction;</li> <li>the Qualified Bidders, including the Stalking Horse Bidder, if applicable, must appear in person, telephonically, or by video via Zoom, or through duly-authorized representatives at the Auction;</li> <li>only the Consultation Parties and duly-authorized representatives of each of the Qualified Bidders (including the Stalking Horse Bidder, if applicable) will be permitted to attend the Auction; <i>provided</i> that any party in interest may request</li> </ul> |

### MATERIAL TERMS OF THE BIDDING PROCEDURES

permission to attend the Auction, and the Debtors may permit such party to attend the Auction;

- bidding at the Auction will begin at the Starting Bid;
- subsequent Bids at the Auction, including any Bids by any Stalking Horse Bidder, must be made in minimum increments as the Debtors, in consultation with the Consultation Parties, determine is appropriate for the subject Asset or Assets;
- upon a Qualified Bidder's declaration of its bid, it shall commit on the record that, if such bid is to be the Successful Bid or the Backup Bid, it shall, following the Auction, pay the additional Good Faith Deposit, calculated on the basis of the increased Purchase Price (the "Incremental Deposit Amount");
- each Qualified Bidder will be informed of the terms of the previous Bids and the Debtors shall, during the course of the Auction, promptly inform each Auction Qualified Bidder of which subsequent Bids reflect, in the Debtors' reasonable business judgment, in consultation with the Consultation Parties, the highest or otherwise best Bid(s) for the subject Assets (the "Leading Bid");
- the Auction will be transcribed to ensure an accurate recording of the bidding at the Auction;
- each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the Sale;
- the Auction for such Assets will 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 or otherwise best Bid, subject to the Debtors' right, in consultation with the Consultation Parties, to require last and final Bids to be submitted on a "blind" basis;
- the Debtors reserve the right, in their reasonable business judgment and in consultation with the Consultation Parties, to adjourn the Auction with respect to any Asset or group of Assets one or more times to, among other things, (a) facilitate discussions between the Debtors and Qualified Bidders, (b) allow Qualified Bidders to consider how they wish to proceed, and (c) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, may require to establish that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing amount; and
- each Auction will be governed by such other Auction Procedures as may be announced by the Debtors and their advisors, in consultation with the Consultation Parties, from time to time on the record at the Auction; *provided* that such other Auction Procedures are (a) not inconsistent with the Bidding Procedures Order, the Bankruptcy Code, or any other order of the Bankruptcy Court, (b) disclosed orally or in writing to all Qualified Bidders and other attendees at the Auction and recorded on the record, and (c) determined by the Debtors, in good faith, to further the goal of attaining the highest or otherwise best offer for the Assets.

To remain eligible to participate in the Auction, in each round of bidding for an Asset or group of Assets, (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 highest or otherwise best Bid submitted by a Qualified Bidder in such round of bidding for such Assets, and (ii) to the extent a Qualified Bidder fails to submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding highest or otherwise best

| <b>MATERIAL TERMS OF THE BIDDING PROCEDURES</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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|                                                 | <p>Bid submitted by a Qualified Bidder in such round of bidding, as determined by the Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, such Qualified Bidder shall be disqualified from continuing to participate in the Auction for such Assets.</p> <p>For the avoidance of doubt, nothing in the Auction Procedures will prevent the Debtors from exercising their respective fiduciary duties under applicable law (as reasonably determined in good faith by the Debtors in consultation with their outside legal counsel). <b>(Bidding Procedures, Section IX)</b></p> |

## **II. Form and Manner of Sale Notice**

17. Within five (5) business days of the filing of this Motion, the Debtors intend to serve the Sale Notice containing the Debtors' proposed dates and deadlines upon the following parties (or their respective counsel, if known): (i) the Notice Parties (defined below); (ii) all parties to executory contracts and leases to be assumed and assigned as part of any proposed Sale transaction; (iii) any parties known or reasonably believed to have expressed an interest in the Assets; (iv) all entities known or reasonably believed to have asserted a lien, encumbrance, claim, or other interest in any of the Assets; (v) all applicable state and local taxing authorities; (vi) each governmental agency that is an interested party with respect to any proposed Sale transaction; and (vii) all parties included on the Debtors' consolidated list of creditors; and (vii) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002. To the extent that any of the Debtors' proposed dates and deadlines set forth above are modified, the Debtors will serve upon the same parties a revised form of the Sale Notice setting forth such modifications.

18. Additionally, as soon as practicable after entry of the Bidding Procedures Order, the Debtors shall publish a notice, substantially in the form of the Sale Notice, on one occasion, in the national edition of *The Los Angeles Times* or another publication with similar national circulation. This publication notice will provide notice of the sale to any other interested parties whose identities are unknown to the Debtors.

19. The Debtors submit that the Sale Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed sale, including: (i) the date, time, and place of the Auction (if one is held); (ii) the Bidding Procedures and the dates and deadlines related thereto; and (iii) the dates and deadlines related to the Sale Hearing. Accordingly, the Debtors request that the Court approve form and manner of the Sale Notice attached as **Exhibit 2** to the Bidding Procedures Order and determine that no other or further notice of the Auction or Sale Hearing is required.

### **Assumption Procedures and Post-Auction Notice**

20. To facilitate the Sale, the Debtors seek authority to assume and assign the Assigned Contracts designated by any Successful Bidder to be assumed and assigned to such Successful Bidder. The Debtors seek authority to assume and assign the Assigned Contracts to any such Successful Bidder in accordance with the assumption and assignment procedures set forth below (the “Assumption Procedures”), subject to the payment of any payments necessary to cure any defaults arising under any Assigned Contract (the “Cure Payments”). The Assumption Procedures are as follows:

- (i) **Contract Assumption Notice.** Within five (5) business days after the filing of this Motion (the “Assumption Notice Deadline”), the Debtors intend to file with the Court and serve a notice of contract assumption (the “Assumption Notice”), substantially in the form attached to the proposed Bidding Procedures Order as **Exhibit 3**, via overnight delivery on all counterparties to all potential Assigned Contracts (each, a “Counterparty” and, collectively, the “Counterparties”). The Assumption Notice shall include, without limitation, a list of Assigned Contracts (the “Assigned Contract List”) that may be assumed and assigned in connection with the Sale and the Cure Payment, if any, that the Debtors believe is required to be paid to the applicable Counterparty under Bankruptcy Code sections 365(b)(1)(A) and (B) for each of the Assigned Contracts. If no Cure Payment is listed on the Assigned Contracts List for a particular Assigned Contract, the Debtors’ asserted Cure Payment for such Assigned Contract shall be deemed to be \$0.00; *provided, however*, if an Assigned Contract is not listed on the Assigned Contracts List attached to an Assumption Notice, supplemental Assumption Notice, or revised Assumption Notice at all, it may not be assumed and assigned via this Motion. If a Counterparty objects to the Cure Payment, the

Counterparty must file with the Court and serve on the Objection Notice Parties<sup>8</sup> a written objection on or before the Sale Objection Deadline. Service of an Assumption Notice does not constitute an admission that such contract is an executory contract or unexpired lease or that such stated Cure Payment constitutes a claim against the Debtors or a right against a Successful Bidder (all rights with respect thereto being expressly reserved). Further, the inclusion of a contract or lease on the Assumption Notice is not a guarantee that such contract will ultimately be assumed and assigned.

- (ii) **Cure Payments.** The payment of the applicable Cure Payments specified in the Assumption Notice by a Successful Bidder, after the expiration of the applicable objection period and the failure of any applicable Counterparty to object to the proposed Cure Payment or to the assumption or assignment of its executory contract or unexpired lease, shall (a) constitute a cure of all defaults existing thereunder as of the filing of the Assumption Notice, and (b) sufficiently compensate for any actual pecuniary loss to such counterparty resulting from such default.
- (iii) **Contract Objections.** Objections, if any, to the proposed assumption and assignment of a contract or lease, including objections to Cure Payments, (a) “Contract Objection”), must (a) be in writing, (b) comply with the applicable provisions of the Bankruptcy Rules, and the Local Rules, (c) state with specificity the nature of the objection and, if the objection pertains to the proposed Cure Payment, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (d) be filed with the Court and served, so as to be actually received by, the Objection Notice Parties, before the Sale Objection Deadline, except as otherwise set forth below with respect to Assigned Contracts added to the Assigned Contracts List (or for which a previously stated Cure Payment associated with any Assigned Contract is modified) less than ten (10) days prior to the Sale Hearing (collectively, the “Subsequently Designated Assigned Contracts”).
- (iv) **Changes to Assigned Contract List and Cure Payments.** Up until one (1) day prior to the Sale Hearing, the Debtors are authorized but not directed, to (a) add previously omitted Assigned Contracts to the Assigned Contracts List as contracts that may be assumed and assigned to a Successful Bidder in accordance

<sup>8</sup> The “Objection Notice Parties” are, collectively: (i) proposed co-counsel to the Debtors, (1) Milbank LLP, 55 Hudson Yards, New York, NY 10001, Attn: Dennis F. Dunne (ddunne@milbank.com); Michael W. Price (mprice@milbank.com); Lauren C. Doyle (ldoyle@milbank.com); Brian Kinney (bkinney@milbank.com); and James A. McIntyre (jmcintyre@milbank.com), and (2) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney, Sr. (rdehney@morrisnichols.com); Matthew O. Talmo (mtalmo@morrisnichols.com), and Jonathan M. Weyand (jweyand@morrisnichols.com); (ii) counsel to any Stalking Horse Bidder, (iii) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); (iv) counsel to any Committee; and (v) counsel to the DIP Agent, Proskauer Rose LLP, 11 Times Square, New York, NY 10036, Attn: David M. Hillman (dhillman@proskauer.com) and Megan R. Volin (mvolin@proskauer.com).

with the definitive agreement for the Sale, or (b) modify the previously stated Cure Payment associated with any Assigned Contract; *provided however*, objections to the Subsequently Designated Assigned Contracts shall be filed by the Subsequently Designated Assigned Contracts Deadline. Such objections must (1) be in writing, (2) state, with specificity, the legal and factual bases thereof, and (3) be filed with the Court and served so as to be actually received by the Objection Notice Parties. Any party or entity who fails to timely make an objection with respect to the Subsequently Designated Assigned Contracts on or before the Subsequently Designated Assigned Contracts Deadline shall be forever barred from asserting any objection with respect to the Subsequently Designated Assigned Contracts.

- (v) **Changes to Assigned Contract List and Cure Payments.** Up until Closing, the Debtors are authorized, but not directed, to remove an Assigned Contract from the Assigned Contract List that a Successful Bidder proposes be assumed and assigned in connection with the Sale.
- (vi) **Notice of Successful Bidder/Adequate Assurance Objections.** As soon as practicable after the Auction and in no event later than 12 hours after the Auction, the Debtors shall file with the Court and post on the case website, <https://cases.ra.kroll.com/99only/>, the notice, substantially in the form attached to the proposed Bidding Procedures Order as **Exhibit 4** (the “Notice of Successful Bidder”), no later than one (1) business day after the conclusion of the Auction, identifying the Successful Bidder(s) and Backup Bidder, together with a copy of such Successful Bidder(s)’s proposed purchase agreement and financial and other information regarding adequate assurance of future performance of the Assigned Contracts, and serve the Notice of Successful Bidder on the Counterparties by overnight delivery, and the Counterparties shall file any Contract Objections solely on the basis of adequate assurance of future performance by such Successful Bidder other than any Stalking Horse Bidder (each, an “Adequate Assurance Objection”) not later than the Auction Objection Deadline.
- (vii) **Assigned Contracts.** At the Sale Hearing, the Debtors will seek Court approval of the assumption and assignment to any Successful Bidder of the Assigned Contracts; *provided that*, in the event any Successful Bidder is not a Stalking Horse Bidder, objections to adequate assurance of future performance of the Assigned Contracts by such Successful Bidder will be heard at a subsequent hearing. The inclusion of an Assigned Contract on an Assumption Notice will not (a) obligate the Debtors to assume any Assigned Contract listed thereon nor any Successful Bidder to take assignment of such Assigned Contract or (b) constitute any admission or agreement of the Debtors that such Assigned Contract is an executory contract.
- (viii) **Dispute Resolution.** To the extent that the parties are unable to consensually resolve any Contract Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the cure amount

required to be paid to the applicable Counterparty under Bankruptcy Code sections 365(b)(1)(A) and (B), such Contract Objection will be adjudicated at the Sale Hearing or at a subsequent hearing to be scheduled by the Court at the Debtors' discretion, or as otherwise ordered by the Court; *provided, however*, that (a) Contract Objections to Assigned Contracts added to the Assigned Contract List up until ten (10) days prior to the Sale Hearing shall be heard and resolved at the Sale Hearing; and (b) Contract Objections to Subsequently Designated Assigned Contracts shall be heard and resolved at a subsequent hearing before the Court at such day and time as may be fixed by the Court.

- (ix) **Backup Bidder Adequate Assurance Objections.** In the event that a Successful Bidder does not consummate the Sale and a Backup Bidder (other than the Stalking Horse Bidder) has been previously identified, the Debtors shall file with the Court and post on the case website, <https://cases.ra.kroll.com/99only/>, a Notice of Intent to Proceed with Backup Bid, together with a copy of such Backup Bidder's proposed purchase agreement and financial and other information regarding adequate assurance of future performance of the Assigned Contracts by such Backup Bidder (including the name of such Backup Bidder and description of its business), and serve the Notice of Intent to Proceed with Backup Bid on the Counterparties by overnight delivery, and the Counterparties shall have seven (7) days to file and serve on the Objection Notice Parties a Contract Objection solely on the basis of adequate assurance of future performance by such Backup Bidder. If any objections are filed, the Debtors shall schedule a hearing, which may be expedited, upon reasonable notice under the circumstances (which shall be no less than seven (7) days after the Notice of Intent to Proceed with Backup Bid is filed), with respect to such Contract Objections.
- (x) **Contract Assumption at Closing.** No Assigned Contract shall be deemed assumed and assigned pursuant to section 365 of the Bankruptcy Code until the later of (a) the date the Court has entered an order authorizing the assumption and assignment of such Assigned Contracts or (b) the date the Sale has closed.

21. Any party failing to timely file an objection to the Cure Payment or the proposed assumption and assignment of an Assigned Contract listed on the Contract Assumption Notice is deemed to have consented to (i) such Cure Payment, (ii) the assumption and assignment of such Assigned Contract, (iii) the related relief requested in this Motion, and (iv) the Sale. Such party shall be forever barred and estopped from objecting to the Cure Payments, the assumption and assignment of the Assigned Contract, adequate assurance of future performance, the relief requested in this Motion, whether applicable law excuses such counterparty from accepting

performance by, or rendering performance to, any Successful Bidder for purposes of section 365(c)(1) of the Bankruptcy Code, and from asserting any additional cure or other amounts against the Debtors and any Successful Bidder, as applicable, with respect to such party's Assigned Contract.

22. To provide the Counterparties with information concerning any Successful Bidder and any Backup Bidder who may take assignment of their contracts or leases, and to enable them to object to such assignment on adequate assurance grounds (to the extent such Successful Bidder/Backup Bidder is not the Stalking Horse Bidder), as soon as practicable after the Auction and in no event less than one (1) business day before the date of the Sale Hearing, the Debtors shall file with the Court and serve on all Counterparties a Notice of Successful Bidder, substantially in the form attached as **Exhibit 4** to the Bidding Procedures Order.

### **Basis for Relief**

#### **I. The Relief Sought in the Bidding Procedures Order, Including the Potential Entry into the Stalking Horse Agreement, Is in the Best Interests of the Debtors' Estate and Should Be Approved**

23. Section 363(b) of the Bankruptcy Code provides that "[t]he [debtor in possession], after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate . . . ." 11 U.S.C. § 363(b)(1). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of a debtor's estate, courts have approved the authorization of a sale of a debtor's assets if such sale is based upon the sound business judgment of the debtor. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513 (7th Cir. 1991)); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *Stephen Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983).

24. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (i) whether a sound business justification exists for the sale, (ii) whether adequate and reasonable notice of the sale was provided to interested parties, (iii) whether the sale will produce a fair and reasonable price for the property, and (iv) whether the parties have acted in good faith. *See In re Decora Indus., Inc.*, No. 00-4459 (JJF), 2002 WL 32332749, at \*2 (D. Del. May 20, 2002) (citing *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)). Where a debtor demonstrates a valid business justification for a decision, it is presumed that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. at 656.

25. Courts uniformly recognize that procedures established for the purpose of enhancing competitive bidding are consistent with the fundamental goal of maximizing the value of a debtor’s estate. *See Calpine Corp. v. O’Brien Envtl. Energy, Inc. (In re O’Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 537 (3d Cir. 1999) (noting that bidding procedures that promote competitive bidding provide a benefit to a debtor’s estate); *Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (observing that sale procedures “encourage bidding and...maximize the value of the debtor’s assets”).

26. The Debtors have carefully designed a process that they believe will maximize the value of their estates and produce maximum recoveries. This process includes the Bidding Procedures, which contemplate the potential entry into one or more Stalking Horse Agreements to set a baseline bid for a particular Asset or group of Assets, and which are designed to promote active bidding from seriously interested parties and to elicit the highest or otherwise best offers available for the applicable Assets. The Debtors are confident that the Bidding Procedures will

allow the Debtors to solicit additional offers and conduct their sale process in a controlled, fair, and open fashion that will encourage participation by financially capable bidders who will offer the best consideration for the applicable Assets taken as a whole and who can demonstrate the wherewithal to take on the Assets, obligations, and liabilities being transferred. In particular, the Bidding Procedures contemplate an open auction process with minimum barriers to entry and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid.

27. The Debtors respectfully submit that the Bidding Procedures and any Stalking Horse agreement that is entered into will encourage robust bidding for the Assets and are appropriate under, and consistent with, the relevant standards governing overbid processes in bankruptcy proceedings. Accordingly, the Debtors respectfully submit that the Bidding Procedures – including, subject to Court approval of a Stalking Horse Approval Order, authorizing, but not directing, the Debtors to designate one or more Stalking Horse Bidder(s) – in accordance with the Bidding Procedures – should be approved.

## **II. The Assumption Procedures Should be Approved.**

28. In connection with the assumption and assignment of certain Assigned Contracts, the Debtors believe it is necessary to establish a process by which (i) the Debtors and Counterparties to Assigned Contracts can reconcile cure obligations, if any, in accordance with section 365 of the Bankruptcy Code and (ii) such Counterparties can object to the assumption and assignment of the Assigned Contracts and/or related cure amounts.

29. As set forth in the Bidding Procedures Order, the Debtors also request that any party that fails to object to the proposed assumption and assignment of any Assigned Contract be deemed to consent to (a) the assumption and assignment of the applicable Assigned Contract pursuant to section 365 of the Bankruptcy Code and (b) assignment notwithstanding any anti-alienation

provision or other restriction on assignment. *See, e.g., Hargrave v. Township of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to sale motion, creditor deemed to consent); *Pelican Homestead v. Wooten (In re Gabel)*, 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same).

30. The Debtors believe that the Assumption Procedures are fair and reasonable, provide sufficient notice to parties to the executory contracts and unexpired leases, and provide certainty to all parties in interest regarding their obligations and rights in respect thereof. Accordingly, the Debtors request the Court approve the Assumption Procedures set forth in the Bidding Procedures Order.

### **III. The Form and Manner of the Sale Notice of Successful Bidder Should Be Approved**

31. Pursuant to Bankruptcy Rule 2002(a), the Debtors are required to provide creditors with 21 days' notice of an auction. Pursuant to Bankruptcy Rule 2002(c), such notice must include the time and place of the proposed auction and the deadline for filing any objections to such a sale.

32. Within five (5) business days of filing this Motion, the Debtors intend to serve the Sale Notice containing the Debtors' proposed dates and deadlines upon the following parties (or their respective counsel, if known): (i) the Notice Parties (defined below), (ii) all parties to executory contracts and leases to be assumed and assigned as part of any proposed Sale transaction; (iii) any parties known or reasonably believed to have expressed an interest in the Assets; (iv) all entities known or reasonably believed to have asserted a lien, encumbrance, claim, or other interest in any of the Assets; (v) all applicable state and local taxing authorities; (vi) each governmental agency that is an interested party with respect to any proposed Sale transaction; (vii) all parties included on the Debtors' consolidated list of creditors, and (viii) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002. To the extent that any of the

Debtors' proposed dates and deadlines set forth above are modified, the Debtors will serve upon the same parties a revised form of the Sale Notice setting forth such modifications.

33. The Debtors submit that the Sale Notice, which includes information concerning the "free and clear" nature of the Sale, the Bidding Procedures, and other material information, constitutes good and adequate notice of the Auction and the proceedings with respect thereto in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002 and Local Rule 6004-1. Accordingly, no further notice is necessary and the Debtors request that this Court approve the form and manner of the notice of the Sale Notice.

34. In addition, to provide the Counterparties with information concerning any Successful Bidder and any Backup Bidder who may take assignment of their contracts or leases and enable them to object to such assignment on adequate assurance grounds (to the extent such Successful Bidder or Backup Bidder is not a Stalking Horse Bidder), as soon as practicable after the Auction and in no event less than one (1) business day before the date of the Sale Hearing, the Debtors shall file with the Court and serve on all Counterparties the Notice of Successful Bidder. The Debtors submit that such service of the Notice of Successful Bidder is proper and sufficient to timely and proper notice that the Debtors will proceed with assumption and assignment of the Assigned Contracts in connection with the Sale. Accordingly, the Debtors request that this Court approve the form and manner of notice of the Notice of Successful Bidder.

#### **IV. Approval of the Sale Is Appropriate and in the Best Interests of the Debtors' Estates**

##### **A. The Sale Should Be Approved as an Exercise of the Debtors' Sound Business Judgment**

35. Bankruptcy Code section 363(b) provides that a debtor may sell property of the estate outside the ordinary course of business after notice and a hearing. Although Bankruptcy Code section 363 does not specify a standard for determining when it is appropriate for a court to

authorize the use, sale or lease of property of the estate, courts have found that a debtor's sale or use of its assets outside the ordinary course of business should be approved if the debtor can demonstrate "some articulated business justification." See *In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Delaware & Hudson Railway Co.*, 124 B.R. 169, 176 (D. Del. 1991)); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3rd Cir. 1986); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983).

36. Once the Debtors articulate a valid business justification, "[t]he business judgment rule 'is a presumption that in making the business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.'" *In re S.N.A. Nut Co.*, 186 B.R. 98 (Bankr. N.D. Ill. 1995) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del.1985)); see also *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992); *In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("a presumption of reasonableness attaches to a Debtor's management decisions").

37. The Debtors have a sound business justification for running a competitive bidding process for the sale of the Assets consistent with the Bidding Procedures. The competitive bidding process will ensure that the Debtors obtain the best possible value for their assets, for the benefit of the Debtors' estates. As such, the Debtors' determination to run a competitive bidding process for the sale of the Assets as provided for in the Bidding Procedures is a valid and sound exercise of the Debtors' business judgment.

**B. The Sale Should Be Approved as an Exercise of the Debtors' Sound Business Judgment**

38. As set forth above, the Sale Notice (i) will be served in a manner that provides at least 21-days' notice of the date, time and location of the Auction and the Sale Hearing, (ii) informs interested parties of the deadlines for objecting to the Sale, and (iii) otherwise includes all

information relevant to parties interested in or affected by the Sale. Significantly, the form and manner of the Sale Notice will have been approved by this Court pursuant to the Bidding Procedures Order, after notice and a hearing, before it is served on parties in interest, and, as such, the Debtors are confident that the Sale Notice will be properly vetted by the time of service thereof

**C. The Sale Has Been Proposed in Good Faith and Without Collusion, and each Successful Bidder Will Be a “Good Faith Buyer”**

39. Pursuant to Bankruptcy Code section 363(m), a good-faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143, 147 (to constitute lack of good faith, a party’s conduct in connection with the sale must usually amount to fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders); *see also In re Bedford Springs Hotel, Inc.*, 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); *In re Perona Bros., Inc.*, 186 B.R. 833, 839 (D.N.J. 1995). (3d Cir. 1986) (to constitute lack of good faith, a party’s conduct in connection with the sale must usually amount to fraud, collusion between the buyer and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders); *see also In re Bedford Springs Hotel, Inc.*, 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); *In re Perona Bros., Inc.*, 186 B.R. 833, 839 (D.N.J. 1995).

40. In other words, a party would have to show fraud or collusion between the successful bidder and the debtor-in-possession or trustee or other bidders in order to demonstrate a lack of good faith. *See In re Pursuit Capital Mgmt., LLC*, 874 F.3d 124, 135 (3d Cir. 2017) (“The good faith requirement speaks to the integrity of [the purchaser’s] conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee,

or an attempt to take grossly unfair advantage of other bidders.”); *In re Dura Auto. Sys., Inc.*, No. 06-11202 KJC, 2007 WL 7728109, at \*96 (Bankr. D. Del. Aug. 15, 2007) (same).

41. The Debtors submit that a Successful Bidder will be a “good faith” purchaser within the meaning of Bankruptcy Code section 363(m) and the terms of any purchase agreement with any Successful Bidder will be negotiated at arms-length and in good faith without any collusion or fraud.<sup>9</sup> Accordingly, the Debtors will be prepared to show at the hearing to approve any such sale that such Successful Bidder is entitled to the full protections of Bankruptcy Code section 363(m).

**D. The Sale Should Be Approved “Free and Clear” Under Bankruptcy Code Section 363(f).**

42. Bankruptcy Code section 363(f) permits the Debtors to sell property free and clear of another party’s interest in the property if: (a) applicable non-bankruptcy law permits such a free and clear sale; (b) the holder of the interest consents; (c) the interest is a lien and the sale price of the property exceeds the value of all liens on the property; (d) the interest is the subject of a bona fide dispute; or (e) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. 11 U.S.C. § 363(f)(1)-(5). As Bankruptcy Code section 363(f) is stated in the disjunctive, when proceeding pursuant to section 363(f), it is only necessary to meet one of the five conditions of section 363(f). *See In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“Section 363(f) is written in the disjunctive, not the

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<sup>9</sup> Bankruptcy Code section 363(m) provides that:

[t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

*See* 11 U.S.C. § 363(m).

conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.”); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same). The Debtors believe that they will be able to demonstrate at the Sale Hearing that they have satisfied one or more of these conditions.

**E. Assumption and Assignment of Assigned Contracts Should Be Approved; Contracts that Are Not Assigned Contracts Should Be Deemed Rejected at Closing**

43. Section 365(a) of the Bankruptcy Code provides that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Courts employ the business judgment standard in determining whether to approve a debtor’s decision to assume or reject an executory contract or unexpired lease. *See, e.g., In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (assumption or rejection of lease “will be a matter of business judgment by the bankruptcy court”); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that a debtor’s decision to assume or reject executory contract is governed by business judgment standard and may only be overturned if decision is product of bad faith, whim, or caprice). The “business judgment” test in this context only requires that a debtor demonstrate that assumption or rejection of an executory contract or unexpired lease benefits the estate. *See Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989).

44. Here, a review of relevant facts demonstrates that the Court should approve the decision to assume and assign the executory contracts and unexpired leases in connection with the Sale as a sound exercise of the Debtors’ business judgment, consistent with the well-settled standard in this district governing such decision. The potential Assigned Contracts include those executory contracts and unexpired leases that (i) may constitute some of the Debtors’ Leases and/or (ii) are necessary to operate the Assets. As such, they are essential to inducing the best offer for

the Assets. Also, such Assigned Contracts will be assumed and assigned through the process approved by the Court pursuant to the Bid Procedures Order and, thus, will be reviewed by key constituents in the Chapter 11 Cases.

45. Accordingly, the Debtors submit that the assumption and assignment of the Assigned Contracts by way of the Assumption Procedures should be approved as an exercise of their business judgment.

46. Upon finding that a debtor has exercised its business judgment in determining that assuming an executory contract or unexpired lease is in the best interest of its estate, courts must then evaluate whether the assumption meets the requirements of section 365(b) of the Bankruptcy Code that a debtor (a) cure, or provide adequate assurance of prompt cure of, prepetition defaults in the executory contract, (b) compensate parties for pecuniary losses arising therefrom, and (c) provide adequate assurance of future performance thereunder. 11 U.S.C. § 365. This section “attempts to strike a balance between two sometimes competing interests, the right of the contracting nondebtor to get the performance it bargained for and the right of the debtor’s creditors to get the benefit of the debtor’s bargain.” *Matter of Luce Indus., Inc.*, 8 B.R. 100, 107 (Bankr. S.D.N.Y. 1980).

47. The Debtors submit that the statutory requirements of section 365(b)(1)(A) of the Bankruptcy Code will be promptly satisfied. The proposed Bidding Procedures Order and Assumption Procedures provide a clear process by which to resolve disputes over cure amounts or other defaults, which will afford counterparties a meaningful opportunity to challenge the Debtors’ proposed cure amounts. Once established, the cure amounts will be paid (either by the Successful Bidder, or the Debtors from the cash proceeds of the sale). Thus, the Bidding Procedures and

Assumption Procedures ensure that all defaults will be cured in connection with the assignment of the Assigned Contracts, as required by section 365(b)(1)(A).

48. Similarly, the Debtors submit that counterparties will receive adequate assurance of future performance under the Assigned Contracts, as required by section 365(b)(1)(C) of the Bankruptcy Code. “The phrase ‘adequate assurance of future performance’ adopted from section 2-609(1) of the Uniform Commercial Code, is to be given a practical, pragmatic construction based upon the facts and circumstances of each case.” *Matter of U.L. Radio Corp.*, 19 B.R. 537, 542 (Bankr. S.D.N.Y. 1982). Although no single solution will satisfy every case, “the degree of assurance necessary falls considerably short of an absolute guaranty.” *In re Decora Indus., Inc.*, No. 00-4459, 2002 WL 32332749, at \*8 (D. Del. May 20, 2002) (citing *In re Prime Motor Inns, Inc.*, 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994)). Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *Luce Indus.*, 8 B.R. at 107; *see also Dura Auto.*, 2007 WL 7728109, at \*97 (adequate assurance of future performance present where a prospective assignee has financial resources and has expressed a willingness to devote sufficient funding to a business to give it a strong likelihood of succeeding); *In re Bygaph, Inc.*, 56 B.R. 596, 605–06 (Bankr. S.D.N.Y. 1986) (same).

49. The Debtors believe that they can and will demonstrate that the requirements for assumption and assignment of certain Assigned Contracts to the Successful Bidder will be satisfied at the Sale Hearing. As required by the Bidding Procedures, the Debtors will evaluate the financial wherewithal of potential bidders before designating such party a Qualified Bidder (*e.g.*, financial credibility, willingness and ability of the interested party to perform under the Assigned Contracts). Further, all counterparties will be provided with notice of the proposed assumption and assignment

and will have adequate time and opportunity to object to the assumption or proposed cure amount or otherwise be heard with respect thereto.

**Waiver of Bankruptcy Rules 6004(h) and 6006(d)**

50. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of fourteen days after the entry of the order, unless the court orders otherwise.” Additionally, Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the expiration of fourteen days after the entry of the order, unless the court orders otherwise.” The Debtors request that any sale order entered in connection with a Sale transaction be effective immediately upon its entry by providing that the fourteen-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

51. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the fourteen-day stay period, the leading treatise on bankruptcy suggests that the fourteen-day stay should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to procedure.” 10 Collier on Bankruptcy ¶ 6004.10 (15th rev. ed. 2006). Furthermore, if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. *Id.*

52. To maximize the value received for the Assets, the Debtors seek to close all Sale transactions as soon as possible after the Sale Hearing. Accordingly, the Debtors hereby request that the Court waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d).

**Notice**

53. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (i) the U.S. Trustee; (ii) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (iii) counsel to the DIP Agent, the DIP Lender, and the FILO Agent; (iv) counsel to the ABL Facility Agent; (v) Wilmington Trust, National Association, as Trustee and Notes Collateral Agent pursuant to 2026 Notes Indenture; (vi) counsel to the *Ad Hoc* Group of 2026 Noteholders; (vii) counsel to certain 2026 Noteholders; (viii) RCB Equities #1, LLC, as lender pursuant the PropCo Promissory Note; (ix) the United States Securities and Exchange Commission; (x) the Internal Revenue Service; (xi) the state attorneys general for all states in which the Debtors conduct business; (xii) the United States Attorney's Office for the District of Delaware; and (xiii) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties"). In light of the nature of the relief requested herein, the Debtors respectfully submit that such notice is sufficient, and no other or further notice is required or necessary.

WHEREFORE, the Debtors respectfully request that this Court enter the proposed Bidding Procedures Order, substantially in the form attached hereto, and grant such other relief as this Court deems appropriate under the circumstances.

Dated: April 16, 2024  
Wilmington, Delaware

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

/s/ Erin L. Williamson

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Matthew O. Talmo (No. 6333)  
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- and -

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*Proposed Co-Counsel for Debtors in Possession*

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

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In re:

NUMBER HOLDINGS, INC. *et al.*,<sup>1</sup>

Debtors.

---

)  
) Chapter 11  
)

) Case No. 24-10719 (JKS)  
)

) (Jointly Administered)  
)

) **Hearing Date:**

) **May 7, 2024, at 11:00 a.m. (ET)**  
)

) **Objection Deadline:**

) **April 30, 2024, at 4:00 p.m. (ET)**  
)  
)

**NOTICE OF HEARING REGARDING DEBTORS'  
MOTION FOR ENTRY OF AN ORDER APPROVING  
(I)(A) BIDDING PROCEDURES IN CONNECTION WITH THE SALE  
OF SUBSTANTIALLY ALL OF THE DEBTORS' REMAINING ASSETS,  
(B) ASSUMPTION AND ASSIGNMENT PROCEDURES, (C) FORM AND  
MANNER OF NOTICE OF SALE HEARING, ASSUMPTION PROCEDURES,  
AND AUCTION RESULTS; (II) AUCTION AND SALE HEARING DATES;  
(III)(A) DEBTORS' ENTRY INTO ONE OR MULTIPLE ASSET PURCHASE  
AGREEMENTS, (B) SALE(S) FREE AND CLEAR OF ALL ENCUMBRANCES,  
AND (C) ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES; AND (IV) GRANTING RELATED RELIEF**

**PLEASE TAKE NOTICE** that on April 16, 2024, the above-captioned debtors and debtors in possession (the "Debtors") filed the *Debtors' Motion For Entry Of An Order Approving (I)(A) Bidding Procedures In Connection With The Sale Of Substantially All Of The Debtors' Remaining Assets, (B) Assumption And Assignment Procedures, (C) Form And Manner Of Notice Of Sale Hearing, Assumption Procedures, And Auction Results; (II) Auction And Sale Hearing Dates; (III)(A) Debtors' Entry Into One Or Multiple Asset Purchase Agreements, (B) Sale(s) Free And Clear Of All Encumbrances, And (C) Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases; And (IV) Granting Related Relief* (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Court").

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: (i) Number Holdings, Inc. (1463); (ii) 99 Cents HoldCo LLC (3987); (iii) 99 Cents Only Stores LLC (1605); (iv) 99 Cents Only Stores Texas, Inc. (1229); (v) 99 Cents PropCo LLC (7843); (vi) Bargain Wholesale LLC (8030). The Debtors' principal offices are located at 1730 Flight Way, Suite 100, Tustin, CA 92782.

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to the Motion must be (a) in writing; (b) filed with the Clerk of the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before **April 30, 2024, at 4:00 p.m. (ET)** (the “Objection Deadline”); and (c) served so as to be received on or before the Objection Deadline by the undersigned counsel to the Debtors.

**PLEASE TAKE FURTHER NOTICE** THAT A HEARING ON THE MOTION WILL BE HELD ON **MAY 7, 2024, AT 11:00 A.M. (ET)** BEFORE THE HONORABLE J. KATE STICKLES AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5th FLOOR, COURTROOM #6, WILMINGTON, DELAWARE 19801.

**PLEASE TAKE FURTHER NOTICE** THAT ONLY OBJECTIONS MADE IN WRITING AND TIMELY FILED AND RECEIVED IN ACCORDANCE WITH THE PROCEDURES ABOVE WILL BE CONSIDERED BY THE COURT AT SUCH HEARING.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

*(Signature page follows)*

Dated: April 16, 2024  
Wilmington, Delaware

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

/s/ Erin L. Williamson

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Robert J. Dehney, Sr. (No. 3578)  
Matthew O. Talmo (No. 6333)  
Jonathan M. Weyand (No. 6959)  
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Michael W. Price, Esq. (admitted *pro hac vice*)  
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*Proposed Co-Counsel for Debtors in Possession*

**Exhibit A**

**Proposed Bidding Procedures Order**

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

---

In re:

NUMBER HOLDINGS, INC. *et al.*,<sup>1</sup>

Debtors.

---

)  
) Chapter 11  
)

) Case No. 24-10719 (JKS)  
)

) (Jointly Administered)  
)

) **Re: D.I. \_\_\_\_**  
)

**ORDER APPROVING (I)(A) BIDDING PROCEDURES IN CONNECTION  
WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS'  
REMAINING ASSETS, (B) ASSUMPTION AND ASSIGNMENT PROCEDURES,  
(C) FORM AND MANNER OF NOTICE OF SALE HEARING, ASSUMPTION  
PROCEDURES, AND AUCTION RESULTS; (II) AUCTION AND SALE HEARING  
DATES; (III)(A) DEBTORS' ENTRY INTO ONE OR MULTIPLE ASSET PURCHASE  
AGREEMENTS, (B) SALE(S) FREE AND CLEAR OF ALL ENCUMBRANCES,  
AND (C) ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES; AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (the "Debtors") for entry of an order: (i) approving the proposed bidding procedures attached hereto as **Exhibit 1** to the Bidding Procedures Order (the "Bidding Procedures") for the Sale of the Assets, (ii) subject to entry of a Stalking Horse Approval Order, authorizing, but not directing, the Debtors to designate one or more stalking horse bidders (each a "Stalking Horse Bidder") whose Qualified Bid shall serve as a stalking horse bid for some or all of the Assets (a "Stalking Horse Bid") in accordance with the Bidding Procedures; (iii) approving procedures for assuming and assigning executory contracts and unexpired leases and certain related notices, including

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: (i) Number Holdings, Inc. (1463); (ii) 99 Cents Only Stores LLC (1605); (iii) 99 Cents Only Stores Texas, Inc. (1229); (iv) 99 Cents PropCo LLC (7843); (v) 99 Cents HoldCo LLC (3987); and (vi) Bargain Wholesale LLC (8030). The Debtors' principal offices are located at 1730 Flight Way, Suite 100, Tustin, CA 92782.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Bidding Procedures, as applicable.

notice of proposed cure amounts; (iv) approving the form and manner of the Sale Notice attached hereto as **Exhibit 2**, Assumption Notice attached hereto as **Exhibit 3**, and Notice of Successful Bidder attached hereto as **Exhibit 4**; (v) establishing dates and deadlines in connection with the Sale as set forth herein; and (vi) granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* of the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. §157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the notice of the Motion and of the opportunity to be heard at the hearing thereon were appropriate under the circumstances and that no other notice need be provided, except as set forth herein; and this Court having reviewed the Motion and having heard the statements and argument in support of the relief requested at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing 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,

**IT IS HEREBY FOUND AND DETERMINED THAT:**<sup>3</sup>

A. The Debtors’ notice of the Motion, the Hearing, and the proposed entry of this Order was sufficient under the circumstances of this case and complied with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the applicable Local Rules.

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<sup>3</sup> The findings of fact and the conclusions of law stated herein shall constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

Accordingly, no other or further notice of the Motion or the entry of this Order is necessary or required.

B. The Debtors and their advisors have been engaging and continue to engage with potential interested parties to solicit and develop the highest and otherwise best offers for the Assets.

C. The Debtors have articulated good and sufficient reasons for authorizing and approving the Bidding Procedures attached hereto as **Exhibit 1**, which were developed in good faith, are fair, reasonable, and appropriate under the circumstances, comply with Local Rule 6004-1(c), and are designed to maximize the recovery on, and the realizable value of, the Assets, as determined by the Debtors in an exercise of their business judgment.

D. The Sale Notice attached hereto as **Exhibit 2**, including as previously served by the Debtors, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction (if any), and the Sale, including: (i) the date, time, and place of the Auction (if any); (ii) the Bidding Procedures and certain dates and deadlines related thereto; (iii) the objection deadline for the Sale, and the date, time, and place of the Sale Hearing; (iv) reasonably specific identification of the Assets; and (v) representations describing the Sale as being free and clear of liens, claims, interests, and other encumbrances. No other or further notice of the Bidding Procedures, Auction (if any), or Sale shall be required.

E. The Debtors have articulated good and sufficient business reasons for the Court to approve the Assumption Procedures, which comply with section 365 of the Bankruptcy Code and Bankruptcy Rule 6006, were developed in good faith, and are fair, reasonable, and appropriate under the circumstances. The Assumption Notice attached hereto as **Exhibit 3**, including as previously served by the Debtors, is appropriate and reasonably calculated to provide all interested

parties with timely and proper notice of the Assumption Procedures and any Cure Payments (as defined herein), and objection deadlines related thereto. No other or further notice shall be required for the Assumption Procedures, except as expressly set forth in this Order.

F. The Notice of Successful Bidder attached hereto as **Exhibit 4** is reasonably calculated to provide interested parties with timely and proper notice of any proposed Sale(s) with respect to the Assets (or a portion thereof), including the: (i) highest or otherwise best Qualified Bid for a specific Asset or group of Assets (the “Successful Bid” and, the person or entity submitting a Successful Bid, the “Successful Bidder”); (ii) next highest or otherwise best Qualified Bid after the Successful Bid for the applicable Asset(s) (each, a “Backup Bid” and the person or entity submitting such bid, the “Backup Bidder”), if applicable; (iii) key terms of the proposed Sale(s); and (iv) date, time, and place for the Sale Hearing, as applicable.

G. The process for filing a Stalking Horse Supplement and the granting of any Bid Protections is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of, with respect to any Stalking Horse Bid: (i) the identification of such Stalking Horse Bidder (and, if a Stalking Horse Bidder is a newly formed entity, then its parent company or sponsor); (ii) the amount of the Stalking Horse Bid and what portion is cash; (iii) whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Stalking Horse Bid; (iv) any proposed Bid Protections; (v) the Stalking Horse APA (as defined below), including all exhibits, schedules, or attachments thereto; and (vi) the Stalking Horse Objection Deadline (as defined below).

H. To the extent that the Debtors select a Stalking Horse Bidder with respect to any portion of the Assets, any Bid Protections (as defined below), to the extent payable under any Stalking Horse APA, shall be deemed an actual and necessary cost of preserving the Debtors’

estates within the meaning of, and shall be treated as an allowed administrative expense claim against the Debtors pursuant to, sections 503(b) and 507(a)(2) of the Bankruptcy Code, in each case, solely to the extent approved in an order approving any Stalking Horse Supplement (as defined below) and subject to the Bid Protection Condition (as defined below).

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein.
2. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled prior to or at the Hearing are overruled.

**I. Important Dates Deadlines**

3. The following dates and deadlines are hereby approved, subject to any extensions or modifications by the Debtors pursuant to the terms herein and in the Bidding Procedures:

| <b>Deadline</b>                                                                           | <b>Event</b>                                                                             |
|-------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|
| April 29, 2024, at 4:00 p.m. (prevailing Eastern Time)                                    | Indication of Interest Deadline                                                          |
| April 30, 2024 at 4:00 p.m. (prevailing Eastern Time)                                     | Bid Procedures Objection Deadline                                                        |
| May 7, 2024 at 11:00 a.m. (prevailing Eastern Time)                                       | Hearing to consider approval of Bidding Procedures and entry of Bidding Procedures Order |
| May 14, 2024 at 4:00 p.m. (prevailing Eastern Time)                                       | Sale Objection Deadline                                                                  |
| May 15, 2024 at 4:00 p.m. (prevailing Eastern Time)                                       | Bid Deadline                                                                             |
| May 21, 2024 at 10:00 a.m. (prevailing Eastern Time)                                      | Auction(s)                                                                               |
| May 22, 2024 at 4:00 p.m. (prevailing Eastern Time)                                       | Auction Objection Deadline                                                               |
| May 23, 2024 at 10:00 a.m. (prevailing Eastern Time), subject to the Court's availability | Sale Hearing                                                                             |

**II. Bidding Procedures**

4. The Bidding Procedures attached hereto as **Exhibit 1**, including all dates and

deadlines therein, are hereby approved in their entirety and incorporated herein as if fully set forth in this Order. The Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to the Assets. Any party desiring to submit a Bid shall comply with the Bidding Procedures and this Order.

5. The Debtors are authorized to proceed with the Sale in accordance with the Bidding Procedures and to take any and all actions necessary or appropriate to implement the Bidding Procedures.

6. The failure to specifically include or reference any particular provision of the Bidding Procedures in the Motion or this Order shall not diminish or otherwise impair the effectiveness of such procedures.

7. Subject to this Order, the Debtors may, in any manner consistent with the Debtors' fiduciary duties and applicable law and in consultation with the Consultation Parties, modify the Bidding Procedures and deadlines set forth therein (including, without limitation, extending the Bid Deadline, modifying the Bid Requirements, modifying the procedures for conducting the Auction, rescheduling the Auction, or adjourning the Sale Hearing) or adopt new rules, procedures, and deadlines in order to, in their sole and reasonable discretion, better maximize value for their estates; *provided* that the Debtors may not amend the Bidding Procedures or the bidding process to reduce or otherwise modify their obligations to consult with any Consultation Party without the consent thereof or further order of the Court. All such modifications and additional rules shall be communicated to each of the Consultation Parties, the Sale Notice Parties, Potential Bidders, and Qualified Bidders (each as defined below); *provided* that, to the extent such modifications occur at the Auction, disclosure of such modifications may be limited to those in attendance at the Auction.

### III. Credit Bidding

8. Subject to section 363(k) of the Bankruptcy Code, any Qualified Bidder that has a valid and perfected lien on any Assets of the Debtors' estates (a "Secured Party") shall be entitled to credit bid all or a portion of the face value of such Secured Party's claims against the Debtors toward the Purchase Price specified in such Qualified Bidder's Bid; *provided* that a Secured Party shall be entitled to credit bid its claim(s) only with respect to Assets that are subject to a valid and perfected first priority lien in favor of such Secured Party as to such claim(s). Any Qualified Bid that contains a Credit Bid for some portions of the Assets included in such bid shall otherwise be required to comply with all other requirements of a Qualified Bid including without limitation with respect to the purchase price allocation and Bid Deposits. Notwithstanding anything to the contrary herein, each of the Prepetition Agents, subject to section 363(k) of the Bankruptcy Code, and the DIP Agent may submit a credit bid of all or any portion of the aggregate amount of their respective secured claims, including, with respect to the DIP Agent, any postpetition financing claims for Assets over which such Secured Party has a perfected first priority lien. Any credit bid timely submitted by a Prepetition Agent, subject to section 363(k) of the Bankruptcy Code, or the DIP Agent shall be deemed a Qualified Bid regardless of whether it meets the other requirements set forth herein. Notwithstanding anything to the contrary herein, the DIP Agent and Prepetition Agents shall not be subject to the Good Faith Deposit requirement. Any credit bid submitted by a Secured Party (other than the DIP Agent) must contain a cash component sufficient to pay the cash expenses allocable to such Sale, including any M&A or transaction fees allocable to such Sale.

9. The rights and defenses of the Debtors and any other party in interest with respect to whether any assertion that any liens, claims, encumbrances, or interests, if any, shall attach to the proceeds of the Sale transaction(s) are expressly preserved.

#### IV. Designation of Stalking Horse Bidders

10. The Debtors are hereby authorized, but not required, in the exercise of their reasonable business judgment and with the consent of the relevant Consultation Parties or further order of this Court, to (a) designate one or more Stalking Horse Bidders for all or a portion of the Assets, (b) enter into asset purchase agreement memorializing the proposed transaction set forth in such Stalking Horse Bid (the “Stalking Horse APA”), which shall be in form and substance acceptable to the DIP Agent, and (c) agree to the Bid Protections, subject to further Court approval, in each case, on or prior **to May 1, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the “Stalking Horse Supplement Deadline”) and in accordance with the Bidding Procedures.

11. In the event that the Debtors designate a Stalking Horse Bidder and seek to enter into a Stalking Horse APA on or prior to the Stalking Horse Supplement Deadline, the Debtors shall file a supplement to the Motion (the “Stalking Horse Supplement”) seeking approval of the same, with no less than three (3) business days’ notice of the objection deadline (the “Stalking Horse Objection Deadline”) to: (a) the U.S. Trustee; (b) the Consultation Parties; and (c) those parties who have requested notice of all pleadings filed in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002 (collectively, the “Stalking Horse Notice Parties”), with no further notice being required; *provided* that the Stalking Horse Supplement with respect to each Stalking Horse Bid must: (a) set forth the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly-formed entity, then the Stalking Horse Bidder’s parent company or sponsor); (b) set forth the amount of the Stalking Horse Bid and what portion is cash; (c) specify any proposed bid protections (the “Bid Protections”), which, for the avoidance of doubt, shall solely be payable from the proceeds of the successful bid, if not the Stalking Horse Bidder (the “Bid Protections Condition”); (d) attach the Stalking Horse APA, including all exhibits, schedules, or attachments thereto; and (e) set forth the deadline to object to the Stalking Horse Bidder designation and Bid

Protections. The Stalking Horse Supplement shall also include any evidence the Debtors would like the Court to consider in connection with any request to approve any breakup fee and/or expense reimbursement and/or any other Bid Protections as an administrative expense under section 503(b) of the Bankruptcy Code, subject to the Bid Protections Condition.

12. If the Debtors designate a Stalking Horse Bidder by the Stalking Horse Supplement Deadline, the Debtors shall file the proposed form of the Sale Order agreed to by the Stalking Horse Bidder and the DIP Agent on or before the Stalking Horse Supplement Deadline.

13. Objections to the designation of a Stalking Horse Bidder or any of the terms of a Stalking Horse Bid (the “Stalking Horse Objection”) shall: (a) be in writing; (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; (c) state, with specificity, the legal and factual bases thereof; and (d) be filed with the Court and served on the Stalking Horse Notice Parties within three (3) business days after the service of the Stalking Horse Supplement.

14. If a timely Stalking Horse Objection is filed, the Debtors shall schedule a hearing regarding such Stalking Horse Objection as soon as reasonably practicable seeking approval of such Stalking Horse Bid on or before **May 7, 2024** (but in no event fewer than three (3) business days after the service of the Stalking Horse Supplement). If no Stalking Horse Objection is timely filed and served with respect to the Stalking Horse Bid, upon the expiration of the Stalking Horse Objection Deadline, the Debtors may submit to the Court an order under certification of counsel approving the designation of the Stalking Horse Bidder and Stalking Horse APA (the “Stalking Horse Approval Order”), which may be entered by the Court without a hearing, including with respect to any Bid Protections set forth in the Stalking Horse Supplement.

15. In the event the Debtors designate a Stalking Horse Bidder after the occurrence of the Stalking Horse Supplement Deadline, but prior to the Auction, the Debtors reserve the right to

file a motion with the Court seeking approval, on an expedited basis, of the Stalking Horse Bidder and the Stalking Horse APA, including the Bid Protections. Prior to the filing of any such motion, the Debtors shall consult with the Consultation Parties.

16. Upon entry of an order approving a Stalking Horse Bidder, the Debtors' obligation to pay the relevant Bid Protections shall constitute, pursuant to section 503(b) of the Bankruptcy Code, an administrative expense claim against the Debtors' estates, subject to the Bid Protection Condition, and shall survive termination of such Stalking Horse APA. In such case, the Bid Protections shall be payable by the Debtors to such Stalking Horse Bidder on the terms and conditions set forth in such Stalking Horse APA from the proceeds of the Successful Bid for the Assets that were subject to such Stalking Horse APA.

**V. Qualified Bids**

17. All Qualified Bids must be actually received by the parties specified in the Bidding Procedures no later than the Bid Deadline.

18. For the purposes of the Bidding Procedures, (a) any designated Stalking Horse Bidder and any Stalking Horse APA shall be considered a Qualified Bidder and Qualified Bid, respectively, and (b) in determining whether Potential Bidders constitute Qualified Bidders, the Debtors may consider a combination of Bids for the Assets.

19. All Bidders submitting a Qualified Bid are deemed to have submitted to the jurisdiction of this Court with respect to all matters related to the Auction and the terms and conditions of the transfer of the Assets.

20. The Debtors shall inform the Qualified Bidders that their bids have been designated as Qualified Bids no later than May 21, 2024.

21. If the Debtors receive only one Qualified Bid (which may be a Stalking Horse Bid) by the Bid Deadline for an Asset or group of Assets, the Debtors, after consultation with the

Consultation Parties, may cancel the Auction for such Asset or group of Assets and decide, in the Debtors' reasonable business judgment, to designate such Qualified Bid as the Successful Bid for such Asset or group of Assets, and pursue entry of a Sale Order approving such Sale.

**VI. Auction and Sale Hearing**

22. If at least two Qualified Bids (including any Stalking Horse Bid) are received by the Bid Deadline with regard to any particular Asset(s), the Debtors shall conduct the Auction with respect to such Asset(s) on May 21, 2024 at 10:00 a.m. (prevailing Eastern Time) in accordance with the Bidding Procedures and the Auction Procedures set forth therein.

23. Only the duly authorized representatives of each of the Qualified Bidders, the Consultation Parties, and any party in interest that the Debtors deem appropriate shall be permitted to attend the Auction.

24. Each Qualified Bidder shall be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the Sale.

25. Following the Auction, the Debtors shall, in the exercise of their reasonable business judgment, identify the Successful Bidder.

26. Prior to the conclusion of the Auction, the Debtors shall (a) determine, in consultation with the Consultation Parties, which Qualified Bid is the Backup Bid for the applicable Assets and (b) notify all Qualified Bidders bidding for the applicable Assets of the identity of the relevant Backup Bidder(s) and the amount of the Purchase Price and other material terms of its Backup Bid. Each Backup Bidder (other than a with respect to a credit bid) shall wire to the Debtors, in immediately available funds, the Incremental Deposit Amount, based on the Purchase Price of its Backup Bid, no later than one (1) business day following the date on which the applicable Backup Bid is announced.

27. The Backup Bid(s) shall remain binding on the Backup Bidder(s) until the earlier

of (a) the closing of the Sale for the applicable Assets and (b) 60 days after the date of the Sale Hearing. If the Successful Bidder(s) for the applicable Assets fail to consummate the Sale(s), the Backup Bidder(s) shall be deemed the new Successful Bidder(s) for the applicable Assets, and the Debtors shall be authorized, but not required, to consummate the Sale(s) of the applicable Assets to the Backup Bidder(s).

## **VII. Sale Hearing**

28. At the Sale Hearing, the Debtors shall present the Successful Bids to the Court for Approval.

29. The Sale Hearing may be continued to a later date by the Debtors by sending notice prior to, or making an announcement at, the Sale Hearing.

30. Any party or entity who fails to timely make an objection to the Sale (including the assumption of any Assigned Contracts) on or before the Sale Objection Deadline shall be forever barred from asserting any objection to the Sale, including with respect to the transfer of the assets free and clear of all liens, claims, encumbrances, and other interests.

## **VIII. Assumption and Assignment Procedures**

31. The Assumption Procedures set forth in the Motion (and repeated below) are hereby approved and shall govern (a) the assumption of certain executory contracts and unexpired leases that the Debtors believe they might seek to assume and assign to the Stalking Horse Bidder or another Successful Bidder in connection with a Sale (collectively, the “Assigned Contracts”) and (b) the determination of payments necessary to cure any defaults or arrears existing under the Assigned Contracts (the “Cure Payments”). The Assumption Procedures set forth in the Motion are as follows:

- (i) **Contract Assumption Notice.** Within five (5) business days after the filing of this Motion (the “Assumption Notice Deadline”), intend to file with the Court and serve a notice of contract assumption (the “Assumption Notice”),

substantially in the form attached to the proposed Bidding Procedures Order as **Exhibit 3**, via overnight delivery on all counterparties to all potential Assigned Contracts (each, a “Counterparty” and, collectively, the “Counterparties”). The Assumption Notice shall include, without limitation, a list of Assigned Contracts (the “Assigned Contract List”) that may be assumed and assigned in connection with the Sale and the Cure Payment, if any, that the Debtors believe is required to be paid to the applicable Counterparty under Bankruptcy Code sections 365(b)(1)(A) and (B) for each of the Assigned Contracts. If no Cure Payment is listed on the Assigned Contracts List for a particular Assigned Contract, the Debtors’ asserted Cure Payment for such Assigned Contract shall be deemed to be \$0.00; *provided, however*, if an Assigned Contract is not listed on the Assigned Contracts List attached to an Assumption Notice, supplemental Assumption Notice, or revised Assumption Notice at all, it may not be assumed and assigned via this Motion. If a Counterparty objects to the Cure Payment, the Counterparty must file with the Court and serve on the Objection Notice Parties<sup>4</sup> a written objection on or before the Sale Objection Deadline. Service of an Assumption Notice does not constitute an admission that such contract is an executory contract or unexpired lease or that such stated Cure Payment constitutes a claim against the Debtors or a right against a Successful Bidder (all rights with respect thereto being expressly reserved). Further, the inclusion of a contract or lease on the Assumption Notice is not a guarantee that such contract will ultimately be assumed and assigned.

- (ii) **Cure Payments.** The payment of the applicable Cure Payments specified in the Assumption Notice by a Successful Bidder, after the expiration of the applicable objection period and the failure of any applicable Counterparty to object to the proposed Cure Payment or to the assumption or assignment of its executory contract or unexpired lease, shall (a) constitute a cure of all defaults existing thereunder as of the filing of the Assumption Notice, and (b) sufficiently compensate for any actual pecuniary loss to such counterparty resulting from such default.

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<sup>4</sup> The “Objection Notice Parties” are, collectively: (i) proposed co-counsel to the Debtors, (1) Milbank LLP, 55 Hudson Yards, New York, NY 10001, Attn: Dennis F. Dunne (ddunne@milbank.com); Michael W. Price (mprice@milbank.com); Lauren C. Doyle (ldoyle@milbank.com); Brian Kinney (bkinney@milbank.com); and James A. McIntyre (jmcintyre@milbank.com), and (2) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney, Sr. (rdehney@morrisnichols.com); Matthew O. Talmo (mtalmo@morrisnichols.com), and Jonathan M. Weyand (jweyand@morrisnichols.com); (ii) counsel to any Stalking Horse Bidder, (iii) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); (iv) counsel to any Committee; and (v) counsel to the DIP Agent, Proskauer Rose LLP, 11 Times Square, New York, NY 10036, Attn: David M. Hillman (dhillman@proskauer.com) and Megan R. Volin (mvolin@proskauer.com).

- (iii) **Contract Objections.** Objections, if any, to the proposed assumption and assignment of a contract or lease, including objections to Cure Payments, (a) “Contract Objection”), must (a) be in writing, (b) comply with the applicable provisions of the Bankruptcy Rules, and the Local Rules, (c) state with specificity the nature of the objection and, if the objection pertains to the proposed Cure Payment, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (d) be filed with the Court and served, so as to be actually received by, the Objection Notice Parties, before the Sale Objection Deadline, except as otherwise set forth below with respect to Assigned Contracts added to the Assigned Contracts List (or for which a previously stated Cure Payment associated with any Assigned Contract is modified) less than ten (10) days prior to the Sale Hearing (collectively, the “Subsequently Designated Assigned Contracts”).
- (iv) **Changes to Assigned Contract List and Cure Payments.** Up until one (1) day prior to the Sale Hearing, the Debtors are authorized but not directed, to (a) add previously omitted Assigned Contracts to the Assigned Contracts List as contracts that may be assumed and assigned to a Successful Bidder in accordance with the definitive agreement for the Sale, or (b) modify the previously stated Cure Payment associated with any Assigned Contract; *provided however*, objections to the Subsequently Designated Assigned Contracts shall be filed by the Subsequently Designated Assigned Contracts Deadline. Such objections must (1) be in writing, (2) state, with specificity, the legal and factual bases thereof, and (3) be filed with the Court and served so as to be actually received by the Objection Notice Parties. Any party or entity who fails to timely make an objection with respect to the Subsequently Designated Assigned Contracts on or before the Subsequently Designated Assigned Contracts Deadline shall be forever barred from asserting any objection with respect to the Subsequently Designated Assigned Contracts.
- (v) **Changes to Assigned Contract List and Cure Payments.** Up until Closing, the Debtors are authorized, but not directed, to remove an Assigned Contract from the Assigned Contract List that a Successful Bidder proposes be assumed and assigned in connection with the Sale.
- (vi) **Notice of Successful Bidder/Adequate Assurance Objections.** As soon as practicable after the Auction and in no event later than 12 hours after the Auction, the Debtors shall file with the Court and post on the case website, <https://cases.ra.kroll.com/99only/>, the notice, substantially in the form attached to the proposed Bidding Procedures Order as **Exhibit 4** (the “Notice of Successful Bidder”), no later than one (1) business day after the conclusion of the Auction, identifying the Successful Bidder(s) and Backup Bidder, together with a copy of such Successful Bidder(s)’s proposed purchase agreement and financial and other information regarding adequate assurance of future performance of the Assigned Contracts, and serve the Notice of Successful Bidder on the Counterparties by overnight delivery, and the Counterparties shall

file any Contract Objections solely on the basis of adequate assurance of future performance by such Successful Bidder other than any Stalking Horse Bidder (each, an “Adequate Assurance Objection”) not later than the Auction Objection Deadline.

- (vii) **Assigned Contracts.** At the Sale Hearing, the Debtors will seek Court approval of the assumption and assignment to any Successful Bidder of the Assigned Contracts; *provided* that, in the event any Successful Bidder is not a Stalking Horse Bidder, objections to adequate assurance of future performance of the Assigned Contracts by such Successful Bidder will be heard at a subsequent hearing. The inclusion of an Assigned Contract on an Assumption Notice will not (a) obligate the Debtors to assume any Assigned Contract listed thereon nor any Successful Bidder to take assignment of such Assigned Contract or (b) constitute any admission or agreement of the Debtors that such Assigned Contract is an executory contract.
- (viii) **Dispute Resolution.** To the extent that the parties are unable to consensually resolve any Contract Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the cure amount required to be paid to the applicable Counterparty under Bankruptcy Code sections 365(b)(1)(A) and (B), such Contract Objection will be adjudicated at the Sale Hearing or at a subsequent hearing to be scheduled by the Court at the Debtors’ discretion, or as otherwise ordered by the Court; *provided, however*, that (a) Contract Objections to Assigned Contracts added to the Assigned Contract List up until ten (10) days prior to the Sale Hearing shall be heard and resolved at the Sale Hearing; and (b) Contract Objections to Subsequently Designated Assigned Contracts shall be heard and resolved at a subsequent hearing before the Court at such day and time as may be fixed by the Court.
- (ix) **Backup Bidder Adequate Assurance Objections.** In the event that a Successful Bidder does not consummate the Sale and a Backup Bidder (other than the Stalking Horse Bidder) has been previously identified, the Debtors shall file with the Court and post on the case website, <https://cases.ra.kroll.com/99only/>, a Notice of Intent to Proceed with Backup Bid, together with a copy of such Backup Bidder’s proposed purchase agreement and financial and other information regarding adequate assurance of future performance of the Assigned Contracts by such Backup Bidder (including the name of such Backup Bidder and description of its business), and serve the Notice of Intent to Proceed with Backup Bid on the Counterparties by overnight delivery, and the Counterparties shall have seven (7) days to file and serve on the Objection Notice Parties a Contract Objection solely on the basis of adequate assurance of future performance by such Backup Bidder. If any objections are filed, the Debtors shall schedule a hearing, which may be expedited, upon reasonable notice under the circumstances (which shall be no less than seven (7) days after the Notice of Intent to Proceed with Backup Bid is filed), with respect to such Contract Objections.

- (x) **Contract Assumption at Closing.** No Assigned Contract shall be deemed assumed and assigned pursuant to section 365 of the Bankruptcy Code until the later of (a) the date the Court has entered an order authorizing the assumption and assignment of such Assigned Contracts or (b) the date the Sale has closed.

32. On or prior to May 6, 2024 (the “Assumption Notice Deadline”), the Debtors shall file with the Court and serve the Assumption Notice, in substantially the form attached hereto as **Exhibit 3**, via overnight delivery on all counterparties to all potential Assigned Contracts (each, a “Counterparty” and, collectively, the “Counterparties”). The Assumption Notice shall include, without limitation, a list of Assigned Contracts (the “Assigned Contract List”) that may be assumed and assigned in connection with the Sale and the Cure Payment, if any, that the Debtors believe is required to be paid to the applicable Counterparty under Bankruptcy Code sections 365(b)(1)(A) and (B) for each of the Assigned Contracts.

33. Objections to the Cure Payments and/or the assumption and assignment of any contracts identified in the Assigned Contract List (a “Contract Objection”) must be filed with the Court and served, so as to be actually received by the Objection Notice Parties on or before **May 14, 2024 at 4:00 p.m. (prevailing Eastern Time)** and must (a) be in writing, (b) comply with the applicable provisions of the Bankruptcy Rules and the Local Rules, (c) state with specificity the nature of the objection and, if the objection pertains to the Cure Payments, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (d) be filed with the Court and served, so as to be actually received by, the Objection Notice Parties, except as otherwise set forth in the Assumption Procedures with respect to Assigned Contracts added to the Assigned Contracts List (or for which a previously stated Cure Payment associated with any Assigned Contract is modified) less than ten (10) days prior to the Sale Hearing (collectively, the “Subsequently Designated Assigned Contracts”).

34. Unless counterparties to any executory contracts and/or unexpired leases that the

Debtors seek to assume and assign in connection with a Sale (the “Assigned Contracts”) timely and properly filed and served an objection to the assumption and assignment of its Assigned Contract, such counterparty shall be (a) forever barred from objecting to the cure amounts; (b) estopped from asserting or claiming any cure amount against the Debtors, Successful Bidder, or Stalking Horse Bidder that is greater than the cure amount; and (c) deemed to have consented to the assumption and assignment of the applicable contract and/or lease.

#### **IX. Noticing**

35. The form of Sale Notice and Assumption Notice, attached hereto as **Exhibit 2** and **Exhibit 3**, respectively, are hereby approved and appropriate and sufficient for all purposes, and no other or further notice shall be required.

36. The Debtors have caused the Sale Notice and Assumption Notice, substantially in the forms attached hereto as **Exhibit 2** and **Exhibit 3**, to be served upon the following parties, and their respective counsel, if known (collectively, the “Sale Notice Parties”): (i) the Notice Parties, (ii) all parties to executory contracts and leases to be assumed and assigned as part of any proposed Sale transaction; (iii) any parties known or reasonably believed to have expressed an interest in the Assets; (iv) all entities known or reasonably believed to have asserted a lien, encumbrance, claim, or other interest in any of the Assets; (v) all applicable state and local taxing authorities; (vi) each governmental agency that is an interested party with respect to any proposed Sale transaction; and (vii) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002. In addition, the Debtors have caused the Sale Notice, substantially in the form attached hereto as **Exhibit 2**, to be served upon all parties included on the Debtors’ consolidated list of creditors. To the extent that any of the Debtors’ proposed dates and deadlines set forth in the form of Sale Notice or Assumption Notice previously served by the Debtors are modified by this Order, as soon as reasonably practicable after entry of this Order, the Debtors

shall cause the Sale Notice and Assumption Notice to be served upon the foregoing parties, as applicable. The Debtors shall further cause the dates and deadlines set forth in this Order to be displayed on the case website maintained by the Debtors' claims and noticing agent.

37. Qualified Bids shall be submitted in writing to the following parties (the "Bid Notice Parties"): (i) proposed co-counsel for the Debtors: (1) Milbank LLP, 55 Hudson Yards, New York, New York, 10001, Attn: Dennis F. Dunne (ddunne@milbank.com), Michael W. Price (mprice@milbank.com), Lauren C. Doyle (ldoyle@milbank.com), Brian Kinney (bkinney@milbank.com), and James A. McIntyre (jmcintyre@milbank.com), and (2) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware, 19899-1347, Attn: Robert J. Dehney, Sr. (rdehney@morrisnichols.com), Matthew O. Talmo (mtalmo@morrisnichols.com), and Jonathan M. Weyand (jweyand@morrisnichols.com); (ii) the Debtors' proposed investment banker, Jefferies LLC, 520 Madison Ave, New York, NY 10022 Attn: Jefferies Debt Advisory & Restructuring (project.coin.rx@jefferies.com) and (iii) the Debtors' proposed real estate agent, Hilco Real Estate, LLC, 5 Revere Drive, Suite 410, Northbrook, Illinois 60062, Attn: Adam Surkis (asurkis@hilcoglobal.com).

38. In addition, as soon as practicable after entry of this Order, the Debtors shall publish a notice, substantially in the form of the Sale Notice, on one occasion, in the national edition of *The Los Angeles Times* or another publication with similar national circulation to provide notice to any other potential interested parties. Publication of the Sale Notice as described in this Order conforms to the requirements of Bankruptcy Rules 2002(l) and 9008, and is reasonably calculated to provide notice to any affected party, including any Potential Bidder(s), and to afford the affected party the opportunity to exercise any rights affected by the Motion and the relief granted by this Order.

**X. Miscellaneous**

39. Any M&A Transaction Fee<sup>5</sup> due to Jefferies LLC (“Jefferies”) as a result of the closing of a Sale shall, after payment of the DIP Facility and the Prepetition FILO Secured Obligations (each as defined in the DIP Motion<sup>6</sup>) in full, be segregated and escrowed (for the exclusive benefit of Jefferies) from the proceeds of such Sale, as an express carve-out from the collateral of the Debtors’ pre- and postpetition secured lenders sold in such Sale, prior to any other use or distribution of such proceeds. All Bids (including any credit bid other than a credit bid by the DIP Agent) must contain a cash component sufficient to pay the corresponding M&A Transaction Fee due to Jefferies in full, which shall be segregated and escrowed as set forth above. For the avoidance of doubt, nothing in this Order shall prohibit or be construed to prohibit the use of any unencumbered assets of the Debtors or the proceeds thereof to pay any fees and expenses of Jefferies or the assertion or allowance of an administrative priority claim under sections 503(b)(2) and 507(a)(2) of the Bankruptcy Code, if applicable, on account of any fees or expenses of Jefferies.

40. Any Bankruptcy Lease Fee,<sup>7</sup> Property Sale Fee and/or Credit Bid Fee due to Hilco Real Estate LLC (“Hilco Real Estate”) as a result of the closing of a Sale shall, after payment of

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<sup>5</sup> Capitalized terms used in this paragraph and not otherwise defined herein shall have the meanings ascribed to such terms in that certain amended and restated engagement letter between Jefferies and counsel to the Debtors, effective as of April 7, 2024, a copy of which is being filed in connection with the Debtors’ application to retain Jefferies.

<sup>6</sup> “DIP Motion” means the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing Them to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, (V) Granting Adequate Protection, and (VI) Granting Related Relief* [Docket No. 17].

<sup>7</sup> Capitalized terms used in this paragraph and not otherwise defined herein shall have the meanings ascribed to such terms in that certain Consulting and Marketing Services Agreement for Multiple Asset Categories between Hilco Merchant Resources, LLC and Hilco Real Estate, LLC, on the one hand, and Number Holdings, Inc. and its subsidiaries, on the other, dated as of March 29, 2024, a copy of which is being filed in connection with the Debtors’ application to retain Hilco Real Estate LLC.

the DIP Facility and the Prepetition FILO Secured Obligations (each as defined in the DIP Motion) in full, be segregated and escrowed (for the exclusive benefit of Hilco Real Estate) from the proceeds of such Sale, as an express carve-out from the collateral of the Debtors' pre- and postpetition secured lenders sold in such Sale, prior to any other use or distribution of such proceeds. All Bids (including any credit bid other than a credit bid by the DIP Agent) must contain a cash component sufficient to pay the corresponding Bankruptcy Lease Fee, Property Sale Fee and/or Credit Bid Fee due to Hilco Real Estate in full, which shall be segregated and escrowed as set forth above. For the avoidance of doubt, nothing in this Order shall prohibit or be construed to prohibit the use of any unencumbered assets of the Debtors or the proceeds thereof to pay any fees and expenses of Hilco Real Estate or the assertion or allowance of an administrative priority claim under sections 503(b)(2) and 507(a)(2) of the Bankruptcy Code, if applicable, on account of any fees or expenses of Hilco Real Estate.

41. Failure to timely file an objection in accordance with this Order shall forever bar the assertion of any objection to the Motion, entry of the Sale Order, or consummation of the Sale, and shall be deemed to constitute consent to entry of the Sale Order and consummation of the Sale and all transactions related thereto including, without limitation, for purposes of section 363(f) of the Bankruptcy Code.

42. All parties (whether or not Qualified Bidders) that participate in the Bidding Process shall be deemed to have knowingly and voluntarily (a) consented to the entry of a final order by this Court in connection with the Motion or this Order (including any disputes relating to the Bidding Process, the Auction and/or the Sale) to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution, and (b) waived any right to jury trial

in connection with any disputes relating to the any of the foregoing matters.

43. In the event there is any conflict between this Order and the Bidding Procedures, the terms and conditions of this Order shall control and govern in all respects.

44. The requirements set forth in Local Rules 6004-1 and 9013-1 are hereby satisfied, modified, or waived.

45. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon its entry.

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

**Exhibit 1**

**Bidding Procedures**

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

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In re:

NUMBER HOLDINGS, INC. *et al.*,<sup>1</sup>

Debtors.

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)  
) Chapter 11  
)

) Case No. 24-10719 (JKS)  
)

) (Joint Administered)  
)  
)  
)

**BIDDING PROCEDURES IN CONNECTION WITH THE  
SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' REMAINING ASSETS**

On April 7, 2024 (the “Petition Date”),<sup>2</sup> the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

On [●], 2024, the Bankruptcy Court entered an order [Docket No. [●]] (the “Bidding Procedures Order”),<sup>3</sup> approving, among other things, these bidding procedures (the “Bidding Procedures”) in connection with the sale(s) or disposition(s) (the “Sale”) of the Debtors’ Assets (as defined below).

**I. KEY DATES AND DEADLINES**

| <b>Deadline</b>                                        | <b>Event</b>                            |
|--------------------------------------------------------|-----------------------------------------|
| April 29, 2024, at 4:00 p.m. (prevailing Eastern Time) | Indication of Interest Deadline         |
| April 30, 2024 at 4:00 p.m. (prevailing Eastern Time)  | Bid Procedures Objection Deadline       |
| May 7, 2024 at 11:00 am. (prevailing Eastern Time)     | Hearing to consider approval of Bidding |

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: (i) Number Holdings, Inc. (1463); (ii) 99 Cents HoldCo LLC (3987); (iii) 99 Cents Only Stores LLC (1605); (iv) 99 Cents Only Stores Texas, Inc. (1229); (v) 99 Cents PropCo LLC (7843); and (vi) Bargain Wholesale LLC (8030). The Debtors’ principal offices are located at 1730 Flight Way, Suite 100, Tustin, CA 92782.

<sup>2</sup> Certain of the Debtors’ voluntary petitions were filed on the docket shortly after midnight (ET) on April 8, 2024.

<sup>3</sup> Capitalized terms used but not defined herein have the meanings ascribed in the Bidding Procedures Order.

| <b>Deadline</b>                                                                           | <b>Event</b>                                     |
|-------------------------------------------------------------------------------------------|--------------------------------------------------|
| Eastern Time)                                                                             | Procedures and entry of Bidding Procedures Order |
| May 14, 2024 at 4:00 p.m. (prevailing Eastern Time)                                       | Sale Objection Deadline                          |
| May 15, 2024 at 4:00 p.m. (prevailing Eastern Time)                                       | Bid Deadline                                     |
| May 21, 2024 at 10:00 a.m. (prevailing Eastern Time)                                      | Auction(s)                                       |
| May 22, 2024 at 4:00 p.m., (prevailing Eastern Time)                                      | Auction Objection Deadline                       |
| May 23, 2024 at 10:00 a.m. (prevailing Eastern Time), subject to the Court's availability | Sale Hearing                                     |

## **II. DESCRIPTION OF ASSETS TO BE SOLD**

The Debtors are seeking to sell substantially all of their remaining assets, including their owned real property, intellectual property, and leasehold interests that have not been assumed and assigned or rejected (collectively the “Assets”), or any portion thereof, in each case free and clear of all liens, claims, and encumbrances thereon.<sup>4</sup>

## **III. DUE DILIGENCE**

To be eligible to participate in the bidding process for any or all of the Assets, any interested party (each, a “Potential Bidder”) shall first deliver the following to each of the Bid Notice Parties (as defined below):

- a. an executed confidentiality agreement, in form and substance satisfactory to the Debtors (the “Confidentiality Agreement”); and
- b. sufficient evidence, as reasonably determined by the Debtors, that the bidder intends to obtain due diligence and participate in the sale process for a bona fide purpose consistent with the Bidding Procedures.

Any Potential Bidder identified by the Debtors as reasonably likely to be a Qualified Bidder (as defined below), upon execution of a confidentiality agreement, shall be granted access to

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<sup>4</sup> Certain of the Debtors’ assets, including the Debtors’ inventory and the fixtures, furniture and equipment contained in the in the Debtors’ Stores may be sold pursuant to the Store Closing Motion, but any such assets that have not yet been sold may be included in a Qualified Bid. Additionally, individual leases may be assumed and assigned pursuant to the Contract Rejection and Assumption Procedures Motion but, to the extent not yet rejected or assigned, such leases may be included in a Qualified Bid.

information regarding the relevant Assets. The Debtors shall be entitled to revoke due diligence access to any Potential Bidder that fails to become a Qualified Bidder.

The Debtors will work to accommodate all reasonable requests for additional information and due diligence access from Potential Bidders.

**The Debtors have designated their proposed investment banker, Jefferies LLC, 520 Madison Ave, New York, NY 10022 Attn: Jefferies Debt Advisory & Restructuring ([project.coin.rx@jefferies.com](mailto:project.coin.rx@jefferies.com)), and their proposed real estate agent, Hilco Real Estate, LLC, 5 Revere Drive, Suite 410, Northbrook, Illinois 60062, Attn: Adam Surkis ([asurkis@hilcoglobal.com](mailto:asurkis@hilcoglobal.com)), to coordinate all reasonable requests for additional information and due diligence access.**

#### IV. INDICATIONS OF INTEREST

The deadline to submit a non-obligatory non-binding indication of interest (an “Indication of Interest”) setting forth all Assets proposed to be purchased, including any real property leases the Potential Bidder wishes to be assumed and assigned in connection with such transaction, the other material terms of the transaction (including the purchase price and its allocation among the target Assets), and any expected due diligence that would be required is April 29, 2024 at 4:00 p.m. (prevailing Eastern Time).

#### V. CONSULTATION PARTIES AND DETERMINATION BY THE DEBTORS

The Debtors will inform the Consultation Parties<sup>5</sup> of any person or entity that becomes a Potential Bidder and shall consult with the Consultation Parties (a) with respect to any due diligence disputes that arise concerning any such entity and (b) prior to revoking due diligence access to any such entity. After a Potential Bidder enters into a Confidentiality Agreement with the Debtors and provides preliminary proof, the adequacy of which the Debtors and their advisors will determine in their reasonable business judgment, of its bona fide interest in purchasing some or all of the Assets and its financial capacity to potentially consummate a proposed Sale, the Debtors shall deliver or make available (unless previously delivered or made available) to each Potential Bidder certain designated information with respect to the Assets. To the extent the Debtor provides any material written information to a Potential Bidder that the Debtor had not previously provided to a Consultation Party, the Debtor shall make such information available to such Consultation Party, subject, in the case of any Consultation Party that is not already party to a confidentiality agreement with the Debtor, to execution of a confidentiality agreement in form and substance reasonably satisfactory to the Debtors.

<sup>5</sup> The “Consultation Parties” are, collectively: (a) any statutory committee appointed in the Chapter 11 Cases (a “Committee”) and such Committee’s counsel, (b) the DIP Lenders and their counsel, (c) Royal Bank of Canada, as ABL Facility Agent, and its counsel, (d) Sixth Street Specialty Lending, Inc., as FILO Agent, and its counsel (e) the Ad Hoc Group of 2026 Noteholders, and its counsel, and (f) solely with respect to the sale of PropCo Priority Collateral (as defined in the Interim DIP Order), RCB Equities #1, LLC, as lender pursuant to the PropCo Promissory Note, and its counsel; *provided* that no Potential Bidder, Qualified Bidder, Stalking Horse Bidder, a Successful Bidder, or a Backup Bidder (each as defined herein) (as determined by the Debtors, in their reasonable discretion and in consultation with a Committee) shall be deemed a Consultation Party for so long as such person constitutes a Potential Bidder, Qualified Bidder, Stalking Horse Bidder, Successful Bidder, or Backup Bidder.

Following consultation with the Consultation Parties, the Debtors shall: (a) coordinate with Potential Bidders regarding the conduct of their respective due diligence; (b) evaluate Bids from Potential Bidders on any Assets; (c) negotiate any Bid made to acquire any Assets; and (d) make such other determinations as are provided in these Bidding Procedures; *provided* that, notwithstanding anything to the contrary contained herein, the Debtors shall not consult with any Consultation Party (or its advisors) that is actively participating as a Potential Bidder for the Assets. Neither the Debtors nor their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets to any party that is not a Potential Bidder or a Consultation Party.

## VI. STALKING HORSE DESIGNATION

The Debtors may, at any time prior to the Auction in accordance with the procedures set forth below, and with the consent of the relevant Consultation Parties unless otherwise ordered by the Court, designate one or more stalking horse bidders (each, a “Stalking Horse Bidder”), whose Qualified Bid shall serve as a stalking horse bid (a “Stalking Horse Bid”) for all or a portion of the Assets. Any Stalking Horse Bid shall satisfy the requirements of a Qualified Bid (as set forth below, including by providing a Bid Deposit). Any asset purchase agreement memorializing the proposed transaction set forth in a Stalking Horse Bid (the “Stalking Horse APA”), which shall be in form and substance acceptable to the DIP Agent, will be binding on the Stalking Horse Bidder and set the floor for all Qualified Bids to purchase the Assets subject to such Stalking Horse APA, subject to higher or otherwise better Qualified Bids. Notwithstanding any of the foregoing, the Debtors are not obligated to select a Stalking Horse Bidder and may proceed to the Auction without one.

In the event that the Debtors designate a Stalking Horse Bidder and seek to enter into a Stalking Horse APA on or prior to May 1, 2024, at 4:00 p.m. (prevailing Eastern Time) (the “Stalking Horse Supplement Deadline”), the Debtors shall file a supplement to the Bidding Procedures Motion (a “Stalking Horse Supplement”) seeking approval of the same, and serve the Stalking Horse Supplement by email, where available, or otherwise by first class mail, with no less than three (3) business days’ notice of the objection deadline (the “Stalking Horse Objection Deadline”) to: (a) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”); (b) the Consultation Parties; and (c) those parties who have requested notice of all pleadings filed in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002 (collectively, the “Stalking Horse Notice Parties”) with no further notice being required; *provided* that with respect to each Stalking Horse Bid, the Stalking Horse Supplement: (a) sets forth the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly-formed entity, then the Stalking Horse Bidder’s parent company or sponsor); (b) sets forth the amount of the Stalking Horse Bid and what portion is cash; (c) specifies any proposed bid protections (the “Bid Protections”) which, for the avoidance of doubt, shall solely be payable from the proceeds of the successful bid, if not the Stalking Horse Bidder (the “Bid Protections Condition”); (d) attaches the Stalking Horse APA, including all exhibits, schedules or attachments thereto; and (e) sets forth the deadline to object to the Stalking Horse Bidder designation and Bid Protections. The Stalking Horse Supplement shall also include any evidence the Debtors would like the Court to consider in connection with any request to approve any breakup fee and/or expense reimbursement and/or any other Bid Protections as an administrative expense under section 503(b) of the Bankruptcy Code, subject to the Bid Protections Condition. If the Debtors designate one or more Stalking Horse Bidders by the

Stalking Horse Supplement Deadline, the Debtors will file the proposed form of the Sale Order agreed to by each such Stalking Horse Bidder, which shall be in form and substance acceptable to the DIP Agent, on or before the Stalking Horse Supplement Deadline.

In the event the Debtors designate a Stalking Horse Bidder after the occurrence of the Stalking Horse Supplement Deadline, but prior to the Auction, the Debtors may seek Court approval on an expedited basis of the Stalking Horse Bidder and the Stalking Horse APA, including the Bid Protections, and reserve their right to file such a motion at any time after the Stalking Horse Supplement Deadline and prior to the Auction. Prior to the filing of any such motion, the Debtors will consult with the Consultation Parties with respect to the designation of a Stalking Horse Bidder and Stalking Horse APA.

Objections to the designation of a Stalking Horse Bidder or any of the terms of a Stalking Horse Bid (the “Stalking Horse Objection”) shall: (a) be in writing; (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; (c) state, with specificity, the legal and factual bases thereof; and (d) be filed with the Court and served on the Stalking Horse Notice Parties within three (3) business days after the service of the Stalking Horse Supplement.

If a timely Stalking Horse Objection is filed, the Debtors will schedule a hearing regarding such Stalking Horse Objection as soon as reasonably practicable seeking approval of such Stalking Horse Bid on or before May 7, 2024 (but in no event fewer than three (3) business days after the service of the Stalking Horse Supplement). If no Stalking Horse Objection is timely filed or served with respect to the Stalking Horse Bid, upon the expiration of the Stalking Horse Objection Deadline, the Debtors will submit to the Court an order under certification of counsel approving the designation of the Stalking Horse Bidder and Stalking Horse APA (the “Stalking Horse Approval Order”), which may be entered by the Court without a hearing, including with respect to any Bid Protections set forth in the Stalking Horse Supplement.

Upon entry of an order approving a Stalking Horse Bidder, the Debtors’ obligation to pay the Bid Protections shall constitute, pursuant to section 503(b) of the Bankruptcy Code, an administrative expense claim against the Debtors’ estates, subject to the Bid Protection Condition, and shall survive termination of the relevant Stalking Horse APA. In such case, the Bid Protections shall be payable by the Debtors to such Stalking Horse Bidder on the terms and conditions set forth in such Stalking Horse APA from the proceeds of the Assets that were subject to such Stalking Horse APA.

## **VII. BID REQUIREMENTS**

To be eligible to participate in the Auction, a Potential Bidder must deliver to the Debtors and their advisors, a written, irrevocable offer (hereinafter, a “Bid”) that, as determined by the Debtors, in their reasonable business judgment, satisfies each of the following conditions (collectively, the “Bid Requirements”):

- a. **Identity.** Each Bid must fully disclose the identity of each entity that will be participating in connection with such Bid (including any equity owners or sponsors, if the purchaser is an entity formed for the purpose of consummating the acquisition of the Assets), and the complete terms of any such participation, along with

sufficient evidence that the Potential Bidder is legally empowered, by power of attorney or otherwise, to complete the transactions on the terms contemplated by the parties. A Bid must also fully disclose any connections or agreements with the Debtors, any known, potential, Potential Bidder, or Qualified Bidder (as defined herein), or any officer, director, or equity security holder of the Debtors.

- b. **Assets.** Each Potential Bidder must state that the Bid includes an offer by the Potential Bidder to purchase some or all of the Assets and identify the Assets with reasonable specificity, whether individually or in combination.
- c. **Purchase Price.** Each Bid must clearly set forth the purchase price to be paid for the Assets (the “Purchase Price”) and must (i) indicate the source of cash consideration, including funding commitments, and confirm that such consideration is not subject to any contingencies (ii) identify separately the non-cash components of the Purchase Price, which non-cash components shall be limited only to credit bids and assumed liabilities and (iii) allocate the Purchase Price amongst the target Assets. For the avoidance of doubt, a Qualified Bid must at a minimum allocate the purchase price (x) amongst each parcel of owned real property to be purchased, (y) the leases proposed to be assumed and assigned, and (z) any furniture, fixtures, or equipment proposed to be purchased; *provided* that such allocation shall not prejudice the rights of any party in interest to contest such allocation. The Bid should include a detailed sources and uses schedule. The Purchase Price must include the payment of all cure amounts and all other amounts required to affect the assumption and assignment of any applicable executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code.
- d. **No Fees.** Each Bid must provide, other than as may be exclusively applicable to the Stalking Horse Bid, that if designated, the Bid is not subject to any bidding fee, break-up fee, termination fee, transaction fee, expense reimbursement (including for legal fees), or any similar type of reimbursement, and include an express waiver of any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code related to bidding for the Assets; *provided, however*, that nothing in these Bidding Procedures shall limit, alter, or impair the rights of any party to payment and reimbursement of expenses set forth in the DIP Orders, and parties entitled to payment or reimbursement of expenses under the DIP Orders shall be entitled to payment or reimbursement of expenses incurred in connection with these Bidding Procedures and any Sale.
- e. **Minimum Bid.** There is no minimum bid for any of the Assets *provided* that, in the event a Stalking Horse Bidder is designated, all Bids for Assets contained in such Stalking Horse Bid must provide consideration to the Debtors of at least the sum of (i) the Stalking Horse Bid, (ii) the amount of any Bid Protections, and (iii) a reasonable minimum overbid amount equal to or greater than an amount determined by the Debtors, in consultation with the Consultation Parties, upon entry of the Stalking Horse Approval Order (the “Incremental Overbid”) over the Starting Bid or Leading Bid (as defined below).

- f. **Bid Deposit.** Each Bid, other than a credit bid, must be accompanied by a cash deposit (made by wire transfer or certified or cashier's check) equal to the greater of the aggregate amount of rent required to be paid through the proposed Closing Date and ten percent (10%) of the aggregate value of the cash consideration of the Bid (the "Good Faith Deposit"), which funds will be deposited, prior to the Bid Deadline, into a segregated account established by the Debtors. The Debtors reserve the right to increase the amount of the Good Faith Deposit for a particular Asset or group of Assets.
- g. **Committed Financing.** If a Bid is not accompanied by evidence of the Potential Bidder's capacity to consummate the Sale set forth in its Bid with cash on hand, each Bid must include committed financing documented to the Debtors' satisfaction, in consultation with the Consultation Parties, that demonstrates that the Potential Bidder has received sufficient debt and/or equity funding commitments to satisfy the Potential Bidder's Purchase Price and other obligations (including any assumed liabilities) under its Bid. Such funding commitments or other financing must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants, conditions, and term and termination provisions acceptable to the Debtors.
- h. **Pro Forma Capital Structure.** To the extent that a Bid is made by a special purpose vehicle, such Bid must include a description of the Bidder's pro forma capital structure.
- i. **Good Faith Offer.** Each Bid must constitute a good faith, bona fide offer to purchase the Assets set forth in such Bid.
- j. **Marked Agreement.** Each Bid must be accompanied by clean and duly executed transaction documents including, at a minimum, a draft asset purchase agreement, including the exhibits and schedules related thereto, and any related material documents integral to such Bid pursuant to which the Potential Bidder proposes to effectuate the Sale, along with redlines of such agreements marked to reflect any amendments and modifications from the Form of Asset Purchase Agreement (if no Stalking Horse APA has been entered into at the time of the Bid with respect to the target Assets) or the Stalking Horse APA (if a Stalking Horse APA has been entered into at the time of the Bid that includes some or all of the target Assets), which amendments and modifications may not be inconsistent with these Bidding Procedures. If a Stalking Horse APA has been entered into at the time of the Bid, each such draft purchase agreement must provide for payment to the Stalking Horse Bidder in cash at Closing in respect of the Bid Protections.
- k. **Contracts and Leases.** Each Bid must identify a schedule of executory contracts and unexpired leases to be assumed and assigned to the Potential Bidder in connection with the Sale.
- l. **No Contingencies.** A Bid must contain a clear statement that it is not conditioned on any contingency, including, among others, on obtaining any of the following (i)

financing, (ii) shareholder, board of directors, or other approvals (including regulatory approvals), and/or (iii) the outcome or completion of a due diligence review by the Potential Bidder.

- m. **Binding and Irrevocable.** A Potential Bidder's Bid must be irrevocable unless and until the Debtors accept a higher Bid and such Potential Bidder is not selected as the Backup Bidder. In the event a Bid is chosen as the Backup Bid, it must remain irrevocable until the Debtors and the Successful Bidder consummate the Sale.
- n. **Joint Bids.** The Debtors will be authorized to approve joint Bids in their reasonable discretion, on a case-by-case basis, in consultation with the Consultation Parties.
- o. **Adequate Assurance Information.** Each Bid must be accompanied by sufficient and adequate financial and other information (the "Adequate Assurance Information") to demonstrate, to the reasonable satisfaction of the Debtors, that such Potential Bidder (i) has the financial wherewithal and ability to consummate the acquisition of the Assets covered by the Bid (the "Closing"), and (ii) can provide adequate assurance of future performance in satisfaction of the requirements under section 365(f)(2)(B) of the Bankruptcy Code, and the Potential Bidder's willingness to perform, under any contracts that are proposed to be assumed and assigned to such party (any executory contracts and unexpired leases that are not assumed and assigned will be deemed rejected at closing). Such evidence may also include audited and unaudited financial statements, tax returns, bank account statements, a description of the proposed business to be conducted at the premises and/or any other documentation that the Debtors further request. The Bid must also identify a contact person that parties may contact to obtain additional Adequate Assurance Information.
- p. **Authorization.** Each Bid must contain evidence that the Potential Bidder has obtained authorization or approval from its board of directors and, if required, its shareholders (or a comparable governing body reasonably acceptable to the Debtors) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
- q. **Adherence to Bidding Procedures.** By submitting its Bid, each Potential Bidder is agreeing to (i) abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction and (ii) serve as Backup Bidder, if its Bid is selected as the next highest or next best bid after the Successful Bid with respect to the applicable Assets.
- r. **Regulatory Approvals and Covenants.** A Bid must set forth each governmental, regulatory, and third-party approval required, if any, for the Potential Bidder to consummate the applicable Sale and the time period within which the Potential Bidder expects to receive such approvals (and in the case that receipt of any such approval is expected to take more than 30 days following execution and delivery of the asset purchase agreement, those actions the Potential Bidder will take to ensure

receipt of such approvals as promptly as possible) and satisfy the carrying costs of the Debtors' estates with respect to such assets.

- s. **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the Potential Bidder (i) has had an opportunity to conduct any and all due diligence regarding the Assets and liabilities prior to making its Bid, (ii) has relied solely upon its own or its advisors' independent review, investigation, and/or inspection of any documents and/or the Assets and liabilities 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 Assets, liabilities, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Potential Bidder's proposed purchase agreement for the Assets.
- t. **Time Frame for Closing.** A Bid by a Potential Bidder must be reasonably likely (based on experience other considerations) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame reasonably acceptable to the Debtors. To the extent a Bid includes any unexpired leases, the Bid must (i) provide for the Closing of the Sale of such leases no later than June 1, 2024 and (ii) provide that the Potential Bidder will pay rent and other amounts due and payable to the landlords under such leases on or after June 1, 2024 in the event that the Closing has not occurred .
- u. **Consent to Jurisdiction.** The Potential Bidder must submit to the jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to the Debtors' qualification of Bids, the Auction, the construction and enforcement of these Bidding Procedures, the Sale documents, and the Closing, as applicable.

Bids fulfilling each of the preceding Bid Requirements, as determined by the Debtors and their advisors, in their reasonable business judgment and in consultation with the Consultation Parties, will be deemed to be "Qualified Bids," and those parties submitting Qualified Bids will be deemed to be "Qualified Bidders;" *provided*, that notwithstanding anything to the contrary herein, any Bid submitted by the DIP Agent, Prepetition Administrative Agent, or Prepetition FILO Agent or their respective designees shall be a Qualified Bid. The Debtors shall promptly provide to the applicable Consultation Parties copies of all Bids received by the Debtors. The Debtors shall inform the Qualified Bidders that their Bids have been designated as Qualified bids no later than May 21, 2024.

Any Stalking Horse Bid will be deemed a Qualified Bid, and the Stalking Horse Bidder will be deemed a Qualified Bidder, for all purposes and requirements herein, notwithstanding the requirements that a Potential Bidder must satisfy to become a Qualified Bidder. If the Stalking Horse Bid is chosen as the Successful Bid for any Assets, the rights and obligations of the Stalking Horse Bidder shall be as set forth in the Stalking Horse APA (as the same may be modified in connection with the Auction). If a Stalking Horse Bid is selected as the Backup Bid for any Assets, it must remain irrevocable only for so long as is required under the Stalking Horse APA.

The Debtors reserve the right, in consultation with the Consultation Parties, to (a) waive any of the Qualified Bid requirements set forth above and deem a Bid to be a Qualified Bid notwithstanding any non-compliance with such requirements and (b) alter the Incremental Overbid

**The Bid Deadline by which Qualified Bids must be received by each of the Debtors' advisors so as to be actually received is May 15, 2024 at 4:00p.m., prevailing Eastern Time.**

### **VIII. NO QUALIFIED BIDS**

If the Debtors receive only one Qualified Bid (which may be a Stalking Horse Bid) by the Bid Deadline for an Asset or group of Assets, the Debtors, after consultation with the Consultation Parties, may cancel the Auction and decide, in the Debtors' reasonable business judgment, to designate such Qualified Bid as the Successful Bid for such Asset or group of Assets, and pursue entry of a Sale Order approving such Sale.

### **IX. CREDIT BIDDING**

Any Qualified Bidder that has a valid and perfected lien on any Assets of the Debtors' estates (a "Secured Party") shall be entitled to credit bid all or a portion of the face value of such Secured Party's claims against the Debtors toward the Purchase Price specified in such Qualified Bidder's Bid; *provided* that a Secured Party shall be entitled to credit bid its claim(s) only with respect to Assets that are subject to a valid and perfected first priority lien in favor of such Secured Party as to such claim(s). Any Qualified Bid that contains a Credit Bid for some portions of the Assets included in such bid shall otherwise be required to comply with all other requirements of a Qualified Bid including without limitation with respect to the purchase price allocation and Bid Deposits. Notwithstanding anything to the contrary herein, each of the Prepetition Agents, subject to section 363(k) of the Bankruptcy Code, and the DIP Agent may submit a credit bid of all or any portion of the aggregate amount of their respective secured claims, including, with respect to the DIP Agent, any postpetition financing claims for Assets over which such Secured Party has a perfected first priority lien. Any credit bid timely submitted by a Prepetition Agent, subject to section 363(k) of the Bankruptcy Code, or the DIP Agent shall be deemed a Qualified Bid regardless of whether it meets the other requirements set forth herein. Notwithstanding anything to the contrary herein, the DIP Agent and Prepetition Agents shall not be subject to the Good Faith Deposit requirement. Any credit bid submitted by a Secured Party (other than the DIP Agent) must contain a cash component sufficient to pay the cash expenses allocable to such Sale, including any M&A or transaction fees allocable to such Sale.

The rights and defenses of the Debtors and any other party in interest with respect to whether any assertion that any liens, claims, encumbrances, or interests, if any, will attach to the proceeds of the Sale transaction(s) are expressly preserved.

### **X. AUCTION**

If at least two Qualified Bids (including any Stalking Horse Bid) are received by the Bid Deadline with regard to any particular Asset(s), the Debtors will conduct the Auction with respect to such Asset(s) and shall determine, after consultation with the Consultation Parties, which Qualified Bid is the highest or otherwise best Qualified Bid for purposes of constituting the

opening bid at the Auction for the relevant Assets (the “Starting Bid(s)”). In the event a Stalking Horse Bidder is selected for a given Asset or group of Assets, the Starting Bid shall include the amount provided for in the Stalking Horse Bid plus the amount of any Bid Protections. The Starting Bid(s) will be communicated and provided to the Qualified Bidders prior to the commencement of the Auction.

The Auction, if any, will commence on **May 21, 2024, at 10:00 a.m., prevailing Eastern Time**, at the offices of Milbank LLP, 55 Hudson Yards, New York, NY 10001, telephonically, or by video via Zoom, or such later time or other place as the Debtors will timely notify all other Qualified Bidders for such Asset(s).

The Auction will be conducted in accordance with the following procedures (the “Auction Procedures”):

- a. the Auction will be conducted openly;
- b. only the Qualified Bidders will be entitled to bid at the Auction;
- c. the Qualified Bidders must appear in person, telephonically, or by video via Zoom, or through duly authorized representatives at the Auction;
- d. only the Consultation Parties and duly authorized representatives of each of the Qualified Bidders will be permitted to attend the Auction; *provided* that any party in interest may request permission to attend the Auction, and the Debtors may permit such party to attend the Auction;
- e. bidding at the Auction will begin at the Starting Bid;
- f. subsequent Bids at the Auction, including any Bids by the Stalking Horse Bidder, must be made in minimum increments as the Debtors, in consultation with the Consultation Parties, determine is appropriate for the subject Asset or Assets;
- g. upon a Qualified Bidder’s declaration of its bid, it shall commit on the record that, if such bid is to be the Successful Bid or the Backup Bid, it shall, following the Auction, pay the additional Good Faith Deposit, calculated on the basis of the increased Purchase Price (the “Incremental Deposit Amount”);
- h. each Qualified Bidder will be informed of the terms of the previous Bids and the Debtors shall, during the course of the Auction, promptly inform each Qualified Bidder of which subsequent Bids reflect, in the Debtors’ reasonable business judgment, in consultation with the Consultation Parties, the highest or otherwise best Bid(s) for the subject Assets (the “Leading Bid”);
- i. the Auction will be transcribed to ensure an accurate recording of the bidding at the Auction;
- j. each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the Sale;

- k. the Auction for such Assets will not close unless and until all Qualified Bidders for such Asset have been given a reasonable opportunity to submit an overbid at the Auction to the then prevailing highest or otherwise best Bid, subject to the Debtors' right, in consultation with the Consultation Parties, to require last and final Bids to be submitted on a "blind" basis;
- l. the Debtors reserve the right, in their reasonable business judgment and in consultation with the Consultation Parties, to adjourn the Auction with respect to any Asset or group of Assets one or more times to, among other things, (i) facilitate discussions between the Debtors and Qualified Bidders, (ii) allow Qualified Bidders to consider how they wish to proceed, and (iii) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, may require to establish that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing amount; and
- m. each Auction will be governed by such other Auction Procedures as may be announced by the Debtors and their advisors, in consultation with the Consultation Parties, from time to time on the record at the Auction; *provided* that such other Auction Procedures are (i) not inconsistent with the Bidding Procedures Order, the Bankruptcy Code, or any other order of the Bankruptcy Court, (ii) disclosed orally or in writing to all Qualified Bidders and other attendees at the Auction and recorded on the record, and (iii) determined by the Debtors, in good faith, to further the goal of attaining the highest or otherwise best offer for the Assets.

To remain eligible to participate in the Auction for an Asset or group of Assets, in each round of bidding for an Asset or group of Assets, (a) each Qualified Bidder must submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding highest or otherwise best Bid submitted by a Qualified Bidder in such round of bidding for such Assets, and (b) to the extent a Qualified Bidder fails to submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding highest or otherwise best Bid submitted by a Qualified Bidder in such round of bidding, as determined by the Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, such Qualified Bidder shall be disqualified from continuing to participate in the Auction for such Assets.

For the avoidance of doubt, nothing in the Auction Procedures will prevent the Debtors from exercising their respective fiduciary duties under applicable law (as reasonably determined in good faith by the Debtors in consultation with their outside legal counsel).

#### **XI. ACCEPTANCE OF SUCCESSFUL BID(S)**

Upon the conclusion of the Auction (if any), the Debtors, in the exercise of their reasonable business judgment and in consultation with the Consultation Parties, will identify the highest or otherwise best Qualified Bid for a specific Asset or group of Assets (the "Successful Bid," and the person or entity submitting a Successful Bid, the "Successful Bidder"), which will be determined by considering, among other things, (a) the total expected consideration to be received by the

Debtors for the Asset together with any other Assets to be acquired as part of such Bid, (b) the Qualified Bidder's ability to close a transaction and the timing thereof (including any anticipated delays to closing and the cost to the Debtors of such delays), and other matters affecting the execution risk associated with a particular Bid, (c) the expected net benefit to the estates, (d) the impact on customers, vendors, and employees, and (e) any other criteria as may be considered by the Debtors in their reasonable business judgment. The Successful Bidder or Successful Bidders and the Debtors shall, as soon as commercially reasonably practicable after the conclusion of the Auction, complete and sign all agreements, contracts, instruments, or other documents evidencing and containing the terms upon which such Successful Bid was made.

The Debtors shall file a notice in substantially the form annexed to the Bidding Procedures Order as Exhibit 4 (the "Notice of Successful Bidder") identifying the Successful Bidder(s) and attaching the proposed asset purchase agreement with the Successful Bidder(s), no later than one (1) business day after the conclusion of the Auction. Such Notice of Successful Bidder shall also identify the applicable Backup Bidder (as defined below) and contain either (a) a summary of the material terms of the applicable Backup Bid or (b) proposed asset purchase agreement with such Backup Bidder.

The Debtors will present the results of the Auction to the Bankruptcy Court at the Sale Hearing, at which certain findings will be sought from the Bankruptcy Court regarding the Auction, including, among other things, that (a) the Auction was conducted, and the Successful Bidder was selected, in accordance with these Bidding Procedures, (b) the Auction was fair in substance and procedure, and (c) consummation of the Successful Bid will provide the highest or otherwise best value for the applicable Assets (taken as a whole) and is in the best interests of the Debtors' estates.

If an Auction is held, the Debtors will be deemed to have accepted a Qualified Bid only when (a) such Qualified Bid is declared a Successful Bid at the Auction, and (b) definitive documentation has been executed in respect thereof. Such acceptance is conditioned upon approval by the Bankruptcy Court of the Successful Bid and entry of an order approving such Successful Bid (the "Sale Order"), which shall be in form and substance acceptable to the DIP Agent.

## **XII. SALE HEARING**

A hearing before the Bankruptcy Court to consider approval of the Successful Bid or Successful Bids (the "Sale Hearing"), pursuant to which the Debtors and the applicable Successful Bidder will consummate the Sale, will be held on **May 23, 2024 at 10:00 a.m. (prevailing Eastern Time)**, before the Bankruptcy Court. At the Sale Hearing, the Debtors will present the Successful Bid to the Bankruptcy Court for approval.

**The Sale Hearing may be continued to a later date by the Debtors by sending notice prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party.**

## **XIII. DESIGNATION OF BACKUP BIDDER(S)**

Prior to the conclusion of the Auction, the Debtors shall (a) determine, in consultation with the Consultation Parties, which Qualified Bid is the next highest or otherwise best Qualified Bid after the Successful Bid for the applicable Assets (each, a “Backup Bid”) and (b) notify all Qualified Bidders bidding for the applicable Assets of the identity of the relevant Backup Bidder(s) and the amount of the Purchase Price and other material terms of its Backup Bid. Each Backup Bidder shall wire to the Debtors, in immediately available funds, the Incremental Deposit Amount, based on the Purchase Price of its Backup Bid, no later than one (1) business day following the date on which the applicable Backup Bid is announced. Notwithstanding anything to the contrary herein, any Bid by the DIP Agent, Prepetition Administrative Agent, and Prepetition FILO Agent, or their respective designees, shall not be a Backup Bid unless such agent so agrees in writing.

The Backup Bid(s) shall remain binding on the Backup Bidder(s) until the earlier of (a) the closing of the Sale for the applicable Assets and (b) 60 days after the date of the Sale Hearing. If the Successful Bidder(s) for the applicable Assets fail to consummate the Sale(s), the Backup Bidder(s) shall be deemed the new Successful Bidder(s) for the applicable Assets, and the Debtors shall be authorized, but not required, to consummate the Sale(s) of the applicable Assets to the Backup Bidder(s).

#### **XIV. RETURN OF GOOD FAITH DEPOSIT**

The Good Faith Deposits of all Qualified Bidders shall be held in escrow by the Debtors in a non-interest-bearing escrow or trust account and shall not become property of the Debtors’ estates. The Good Faith Deposits shall be retained by the Debtors, notwithstanding Court approval of any Sale(s) for the applicable Assets, until no later than five (5) business days after the conclusion of the Auction, except for the Good Faith Deposit(s) of Successful Bidder(s) and Backup Bidder(s); *provided* that, if a Stalking Horse Bidder is not the Successful Bidder or Backup Bidder, its Good Faith Deposit shall be returned to such Stalking Horse Bidder in accordance with the applicable Stalking Horse APA(s). The Debtors shall retain the Good Faith Deposits of Backup Bidders until the earlier of (a) five (5) business days after the Closing of the Sale(s) of the applicable Assets and (b) 60 days after the date of the Sale Hearing.

At the Closing, the Successful Bidder shall be entitled to a credit for the amount of its Good Faith Deposit. If a Successful Bidder fails to consummate a Sale because of a breach that entitles the Debtors to terminate the applicable asset purchase agreement, the Debtors shall be entitled to retain such Successful Bidder’s Good Faith Deposit as partial compensation for the damages caused to the Debtors and their estates as a result of such breach or failure to perform.

#### **XV. MODIFICATION OF BIDDING PROCEDURES**

The Debtors may, in any manner consistent with the Debtors’ fiduciary duties and applicable law, in consultation with the Consultation Parties, modify the procedures and deadlines set forth herein (including, without limitation, extending the Bid Deadline, modifying the Bid Requirements, modifying the procedures for conducting the Auction, rescheduling the Auction or adjourning the Sale Hearing) or adopt new rules, procedures, and deadlines in order to, in their sole and reasonable discretion, better maximize value for their estates; *provided* that the Debtors may not amend these Bidding Procedures or the bidding process to reduce or otherwise modify their obligations to consult with any Consultation Party without the consent of such Consultation

Party or further order of the Court. All such modifications and additional rules shall be communicated to each of the Consultation Parties, the Sale Notice Parties (as defined below), Prospective Bidders and Qualified Bidders; *provided that*, to the extent such modifications occur at the Auction, disclosure of such modifications may be limited to those in attendance at the Auction.

## **XVI. FIDUCIARY OUT**

Nothing in these Bidding Procedures will require any director, manager, or officer of any Debtor to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, that would violate his or her fiduciary duties to any Debtor.

## **XVII. NOTICING**

**Bid Notice Parties.** Qualified Bids shall be submitted in writing to (i) proposed co-counsel for the Debtors, (1) Milbank LLP, 55 Hudson Yards, New York, New York, 10001, Attn: Dennis F. Dunne, Esq. (ddunne@milbank.com), Michael W. Price (mprice@milbank.com), Lauren C. Doyle (ldoyle@milbank.com), Brian Kinney (bkinney@milbank.com); and James A. McIntyre (jmcintyre@milbank.com)), and (2) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware, 19899-1347, Attn: Robert J. Dehney, Sr. (rdehney@morrisnichols.com), Matthew O. Talmo (mtalmo@morrisnichols.com), and Jonathan M. Weyand (jweyand@morrisnichols.com); (ii) the Debtors' proposed investment banker, Jefferies LLC, **520 Madison Ave, New York, NY 10022 Attn: Jefferies Debt Advisory & Restructuring ([project.coin.rx@jefferies.com](mailto:project.coin.rx@jefferies.com))** and (iii) the Debtors' proposed real estate agent, Hilco Real Estate, LLC, 5 Revere Drive, Suite 410, Northbrook, Illinois 60062, Attn: Adam Surkis ([asurkis@hilcoglobal.com](mailto:asurkis@hilcoglobal.com)) (the foregoing entities in clauses (i) through (iii), the "Bid Notice Parties").

- a. **Sale Notice Parties.** The "Sale Notice Parties" shall include the following: (i) the Consultation Parties, (ii) counsel to any Stalking Horse Bidder(s), (iii) all Counterparties, (iv) all persons and entities known by the Debtors to have expressed an interest in the Assets during the past 12 months, (v) all persons and entities known by the Debtors to have asserted any lien, claim, interest, or encumbrance with respect to the Assets (for whom identifying information and addresses are available to the Debtors), (vi) any governmental authority known to have a claim against the Debtors, (vii) the United States Attorney General, (viii) the Antitrust Division of the United States Department of Justice, (ix) the United States Attorney for the District of Delaware, (x) the Office of the Attorney General in each state in which the Debtors operate, (xi) the Federal Trade Commission, (xii) the U.S. Trustee, (xiv) counsel for any official committee appointed in these cases, (xv) the Internal Revenue Service, (xvi) the United States Securities and Exchange Commission, (xvii) all of the Debtors' known creditors (for whom identifying information and addresses are known to the Debtors), (xviii) all parties who have filed a notice of appearance and request for service of papers in these Cases pursuant to Bankruptcy Rule 2002 and (xix) all other persons and entities as directed by the Court.

- b. **Objection Recipients.** Sale objections shall be filed in accordance with these Bidding

Procedures and served on: (i) counsel to the Debtors, Milbank LLP, 55 Hudson Yards, New York NY, 10001, Attn: Dennis F. Dunne, Esq. (ddunne@milbank.com), Michael W. Price, Esq. (mprice@milbank.com), Lauren C. Doyle, Esq. (ldoyle@milbank.com), and Brian Kinney (bkinney@milbank.com); (ii) counsel to any Stalking Horse Bidder; (iii) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Rasa Sierra-Fox (rasa.sierra-fox@usdoj.gov); (iv) counsel to any Committee; and (v) counsel to the DIP Agent, Proskauer Rose LLP, 11 Times Square, New York, NY 10036, Attn: David M. Hillman (dhillman@proskauer.com) and Megan R. Volin (mvolin@proskauer.com) (the parties identified in (i) through (v), collectively, the “Objection Notice Parties”).

- c. **Assumption and Assignment**. The Debtors shall provide all notices regarding the proposed assumption and assignment of executory contracts in accordance with the Assumption and Assignment Procedures set forth in the Bidding Procedures Order.

\* \* \* \* \*

Dated: April 16, 2024  
Wilmington, Delaware

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

/s/ DRAFT

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Robert J. Dehney, Sr. (No. 3578)  
Matthew O. Talmo (No. 6333)  
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- and -

**MILBANK LLP**

Dennis F. Dunne, Esq. (admitted *pro hac vice*)  
Michael W. Price, Esq. (admitted *hac vice*)  
Lauren C. Doyle, Esq. (admitted *pro hac vice*)  
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55 Hudson Yards  
New York, New York 10001  
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Email: ddunne@milbank.com  
mprice@milbank.com  
ldoyle@milbank.com  
bkinney@milbank.com

*Proposed Co-Counsel for Debtors in Possession*

**Exhibit 2**

**Sale Notice**

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

|                                                    |   |                         |
|----------------------------------------------------|---|-------------------------|
| In re:                                             | ) |                         |
|                                                    | ) | Chapter 11              |
| NUMBER HOLDINGS, INC. <i>et al.</i> , <sup>1</sup> | ) |                         |
|                                                    | ) | Case No. 24-10719 (JKS) |
| Debtors.                                           | ) | (Jointly Administered)  |
|                                                    | ) |                         |
|                                                    | ) |                         |
|                                                    | ) |                         |

**NOTICE OF SALE, BIDDING PROCEDURES, AUCTION, AND SALE HEARING**

**PLEASE TAKE NOTICE** that the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the “Court”) on April 7, 2024 (the “Petition Date”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that, on April 16, 2024, the Debtors filed a motion (the “Motion”) <sup>3</sup> with the Court seeking entry of orders, among other things, (a) approving the Debtors’ bidding procedures (the “Bidding Procedures”) in connection with the proposed auction (the “Auction”) for the sale (the “Sale”) of substantially all of the Debtors’ remaining assets (the “Assets”), (b) approving procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale, including notice of proposed cure amounts (the “Assumption Procedures”), (c) approving the form and manner of notices related to the Sale and Assumption Procedures, and (d) establishing dates and deadlines in connection with the Sale.

**PLEASE TAKE FURTHER NOTICE** that a hearing is scheduled to be held on May 7, 2024, at 11:00 a.m. (prevailing Eastern Time) for the Court to consider entry of an order (the “Bidding Procedures Order”) granting certain of the relief sought in the Motion, including, among other things, approving the (a) Bidding Procedures, which establish the key dates and times related to the Sale and the Auction, and (b) Assumption Procedures. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.<sup>4</sup>

<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: (i) Number Holdings, Inc. (1463); (ii) 99 Cents Only Stores LLC (1605); (iii) 99 Cents Only Stores Texas, Inc. (1229); (iv) 99 Cents PropCo LLC (7843); (v) 99 Cents HoldCo LLC (3987); and (vi) Bargain Wholesale LLC (8030). The Debtors’ principal offices are located at 1730 Flight Way, Suite 100, Tustin, CA 92782.

<sup>2</sup> Certain of the Debtors’ voluntary petitions were filed on the docket shortly after midnight (ET) on April 8, 2024.

<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

<sup>4</sup> To the extent of any inconsistencies between the Bidding Procedures and the summary descriptions of the Bidding Procedures in this notice, the terms of the Bidding Procedures shall control in all respects.

**CONTACT PERSON FOR PARTIES INTERESTED IN SUBMITTING A BID**

The Bidding Procedures set forth the requirements for becoming a Qualified Bidder and submitting a Qualified Bid, and any party interested in making an offer to purchase the Assets must comply strictly with the Bidding Procedures. Only Qualified Bids will be considered by the Debtors, in accordance with the Bidding Procedures.

**Any interested bidder should contact, as soon as possible:**

**Jefferies LLC  
520 Madison Avenue  
New York, New York 10022  
Attn: Jefferies Debt Advisory & Restructuring (project.coin.rx@jefferies.com)**

**and**

**Hilco Real Estate, LLC  
5 Revere Drive, Suite 410  
Northbrook, Illinois 60062  
Attn: Adam Surkis (asurkis@hilcoglobal.com)**

**OBTAINING ADDITIONAL INFORMATION**

Copies of the Motion, the Bidding Procedures, and the Bidding Procedures Order, as well as all related exhibits, including the Form of Asset Purchase Agreement and all other documents filed with the Court, are available free of charge on the Debtors' case information website, located at <https://cases.ra.kroll.com/99only/> or by calling (844) 712-1933 (Domestic) or (646) 777-2513 (International).

**IMPORTANT DATES AND DEADLINES<sup>5</sup>**

The Debtors have requested that the Court establish the following dates and deadlines to govern the Debtors' sale process:

1. **Indication of Interest Deadline.** The deadline for tendering a non-binding Indication of Interest is: **April 29, 2024 at 4:00 p.m. (prevailing Eastern Time).**
2. **Bid Deadline.** The deadline to submit a Qualified Bid is: **May 15, 2024 at 4:00 p.m. (prevailing Eastern Time).**
3. **Auction.** If at least two Qualified Bids (including the Stalking Horse Bid) is received by the Bid Deadline, the Debtors will conduct the Auction with respect to such Assets. The Auction will be held **on or before May 21, 2024 at 10:00 a.m. (prevailing Eastern Time)** at the offices of Milbank LLP, 55 Hudson Yards, New York, NY 10001, telephonically, or by video via Zoom, or such later time or other place as the Debtors will timely notify all Qualified

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<sup>5</sup> The following dates and deadlines may be extended by the Debtors or the Court pursuant to the terms of the Bidding Procedures and the Bidding Procedures Order.

Bidders. Only the Debtors, Qualified Bidders, and/or other parties as the Debtors may determine to include in their discretion, in each case, along with their representatives and advisors, shall be entitled to attend the Auction, and only Qualified Bidders will be entitled to make Overbids at the Auction. **All interested or potentially affected parties should carefully read the Bidding Procedures and the Bidding Procedures Order.**

4. **Sale Objection Deadline.** The deadline to file an objection (the “Sale Objection Deadline”) to (i) the Sale and/or (ii) the potential assumption or assumption and assignment of the Assigned Contracts and cure amounts related thereto (except as otherwise set forth in the Assumption Procedures) is **May 14, 2024 at 4:00 pm. (prevailing Eastern Time)**.
5. **Auction Objection Deadline.** If the Auction is held, the deadline to file an objection to the conduct of the Auction, the choice of Successful Bidder and/or Backup Bidder and Adequate Assurance Objections with respect to a Successful Bidder and/or Backup Bidder other than the Stalking Horse Bidder is **May 22, at 4:00 pm. (prevailing Eastern Time)** (the “Auction Objection Deadline”).
6. **Sale Hearing.** A hearing (the “Sale Hearing”) to consider approval of the proposed Sale **free and clear of all liens, claims, interests and encumbrances** will be held on **May 23, 2024 at 10:00 a.m. (prevailing Eastern Time)** before the Honorable J. Kate Stickles, Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, at District of Delaware, at 824 Market Street North, 5th Floor, Wilmington, Delaware 19801, or at such other place (which may be by video conference) and time as the Debtors shall notify all Qualified Bidders and all other parties entitled to attend the Auction. The Debtors have the right to adjourn or cancel the Auction at or prior to the Auction.

The foregoing dates and deadlines are displayed on the Debtors’ case website maintained by their claims and noticing agent, Kroll Restructuring Administration LLC, located at <https://cases.ra.kroll.com/99only/>. Any modifications to the foregoing dates and deadlines will be reflected on the case website.

**The foregoing dates and deadlines may be modified by the Bidding Procedures Order or other order of the Court, and you should review the case website for any modifications.**

### **FILING OBJECTIONS**

The Debtors have requested that Sale Objections and Auction Objections, if any, must (a) be in writing; (b) state, with specificity, the legal and factual bases thereof; (c) be filed with the Court and served on the following parties so as to actually be received by no later than **the Sale Objection Deadline or Auction Objection Deadline**, as applicable: (i) the Debtors, 1730 Flight Way, Suite 100, Tustin, CA 92782; (ii) proposed counsel to the Debtors, (a) Milbank LLP, 55 Hudson Yards, New York, NY 10001, Attn: Dennis F. Dunne (ddunne@milbank.com); Michael W. Price (mprice@milbank.com); Lauren C. Doyle (ldoyle@milbank.com); Brian Kinney (bkinney@milbank.com); and James McIntyre (jmcintyre@milbank.com), and (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney, Sr. (rdehney@morrisnichols.com); Matthew O. Talmo (mtalmo@morrisnichols.com); and Jonathan M. Weyand (jweyand@morrisnichols.com);

(iii) counsel to the DIP Agent, DIP Lender, and FILO Agent, Proskauer Rose LLP, Eleven Times Square, New York, NY 10036, Attn: David M. Hillman (dhillman@proskauer.com); (iv) counsel to the ABL Facility Agent, Sidley Austin LLP, One South Dearborn, Chicago, IL 60603, Attn: Dennis M. Twomey (dtwomey@sidley.com) and Jackson T. Garvey (jgarvey@sidley.com), and 350 South Grand Avenue, Los Angeles, CA 90071, Attn: Anna Gumport (agumport@sidley.com); (v) counsel to the Ad Hoc Group of 2026 Noteholders, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Jeffrey D. Saferstein (jeffrey.saferstein@weil.com) and Chase Bentley (chase.bentley@weil.com); (vi) counsel to certain 2026 Noteholders, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019, Attn: Brian S. Hermann (bhermann@paulweiss.com) and Brian Bolin (bbolin@paulweiss.com); (vii) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); and (viii) any statutory committee appointed in these Chapter 11 Cases.

### **CONSEQUENCES OF FAILING TO TIMELY ASSERT AN OBJECTION**

*Any party who fails to make a timely Sale Objection on or before the Sale Objection Deadline in accordance with the Bidding Procedures Order and this Notice shall be forever barred from asserting any Sale Objection, including with respect to the transfer of the assets free and clear of all liens, claims, encumbrances and other interests.*

*Any party who fails to make a timely Auction Objection on or before the Auction Objection Deadline in accordance with the Bidding Procedures Order and this Notice shall be forever barred from asserting any Auction Objection, including with respect to the transfer of the assets free and clear of all liens, claims, encumbrances and other interests.*

### **NO SUCCESSOR LIABILITY**

*The Sale will be free and clear of, among other things, any claim arising from any conduct of the Debtors prior to the closing of the Sale, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent or otherwise, so long as such claim arises out of or relates to events occurring prior to the closing of the Sale. Accordingly, as a result of the Sale, any Successful Bidder will not be a successor to any of the Debtors by reason of any theory of law or equity, and such Successful Bidder will have no liability, except as expressly provided in such Successful Bidder's asset purchase agreement, for any liens, claims, encumbrances and other interests against or in any of the Debtors under any theory of law, including successor liability theories.*

*[Remainder of page intentionally left blank]*

Dated: April 16, 2024  
Wilmington, Delaware

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

/s/ DRAFT

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Robert J. Dehney, Sr. (No. 3578)  
Matthew O. Talmo (No. 6333)  
Jonathan M. Weyand (No. 6959)  
Erin L. Williamson (No. 7286)  
1201 N. Market Street, 16th Floor  
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Telephone: (302) 658-9200  
Facsimile: (302) 658-3989  
Email: rdehney@morrisnichols.com  
mtalmo@morrisnichols.com  
jweyand@morrisnichols.com  
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- and -

**MILBANK LLP**

Dennis F. Dunne, Esq. (admitted *pro hac vice*)  
Michael W. Price, Esq. (admitted *pro hac vice*)  
Lauren C. Doyle, Esq. (admitted *pro hac vice*)  
Brian Kinney, Esq. (admitted *pro hac vice*)  
55 Hudson Yards  
New York, New York 10001  
Telephone: (212) 530-5000  
Facsimile: (212) 530-5219  
Email: ddunne@milbank.com  
mprice@milbank.com  
ldoyle@milbank.com  
bkinney@milbank.com

*Proposed Co-Counsel for Debtors in Possession*

**Exhibit 3**

**Assumption Notice**

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

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In re:

NUMBER HOLDINGS, INC. *et al.*,<sup>1</sup>

Debtors.

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)  
) Chapter 11  
)  
) Case No. 24-10719 (JKS)  
)  
) (Jointly Administered)  
)  
)  
)

**NOTICE OF POTENTIAL ASSUMPTION OF EXECUTORY  
CONTRACTS OR UNEXPIRED LEASES AND CURE AMOUNTS**

**PLEASE TAKE NOTICE** that the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the “Court”) on April 7, 2024 (the “Petition Date”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that, on April 16, 2024, the Debtors filed a motion (the “Motion”) <sup>3</sup> with the Court seeking entry of orders, among other things, (a) approving the Debtors’ bidding procedures (the “Bidding Procedures”) in connection with the proposed auction (the “Auction”) for the sale (the “Sale”) of substantially all of the Debtors’ remaining assets (the “Assets”), (b) approving procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale, including notice of proposed cure amounts (the “Assumption Procedures”), (c) approving the form and manner of notices related to the Sale and Assumption Procedures, and (d) establishing dates and deadlines in connection with the Sale.

**PLEASE TAKE FURTHER NOTICE** that, a hearing is scheduled to be held on May 7, 2024 at 11:00 a.m. (prevailing Eastern Time) for the Court to consider entry of an order (the “Bidding Procedures Order”) granting certain of the relief sought in the Motion, including, among other things, approving the (a) Bidding Procedures, which establish the key dates and times related to the Sale and the Auction, and (b) Assumption Procedures.

**PLEASE TAKE FURTHER NOTICE** that the Debtors have requested that a hearing (the “Sale Hearing”) for the Court to consider approval of the proposed Sale free and clear of all liens, claims, interests and encumbrances will be held **on before May 23, 2024 at 10:00 a.m.**

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: (i) Number Holdings, Inc. (1463); (ii) 99 Cents Only Stores LLC (1605); (iii) 99 Cents Only Stores Texas, Inc. (1229); (iv) 99 Cents PropCo LLC (7843); (v) 99 Cents HoldCo LLC (3987); and (vi) Bargain Wholesale LLC (8030). The Debtors’ principal offices are located at 1730 Flight Way, Suite 100, Tustin, CA 92782.

<sup>2</sup> Certain of the Debtors’ voluntary petitions were filed on the docket shortly after midnight (ET) on April 8, 2024.

<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

**(prevailing Eastern Time)** before the Honorable J. Kate Stickles, Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, at District of Delaware, at 824 Market Street North, 5th Floor, Wilmington, Delaware 19801, or at such other place (which may be by video conference) and time as the Debtors shall notify all Qualified Bidders and all other parties entitled to attend the Auction. The Debtors have the right to adjourn or cancel the Auction at or prior to the Auction.

**PLEASE TAKE FURTHER NOTICE** that the Bidding Procedures Order, among other things, will establish procedures for (a) the assumption of certain executory contracts and unexpired leases that the Debtors believe they might seek to assume and assign to the Stalking Horse Bidder or another Successful Bidder in connection with a Sale (collectively, the “Assigned Contracts”) and (b) the determination of related Cure Payments (as defined below). The Debtors are parties to numerous Assigned Contracts and hereby file this notice identifying (x) the Assigned Contracts, which may be assumed and assigned to a Stalking Horse Bidder or another Successful Bidder in connection with a Sale and (y) the proposed amounts, if any, the Debtors believe are owed to the counterparty to the Assigned Contract to cure any defaults or arrears existing under the Assigned Contract (the “Cure Payments”), both as set forth on Schedule 1 attached hereto. Other than the Cure Payments listed on Schedule 1, the Debtors are not aware of any amounts due and owing under the Assigned Contracts listed therein.

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A COUNTERPARTY TO A CONTRACT OR LEASE THAT MAY BE ASSUMED AND ASSIGNED AS PART OF THE SALE.** *The presence of an Assigned Contract listed on Exhibit 1 attached hereto does not constitute an admission that such Assigned Contract is an executory contract or unexpired lease or that such Assigned Contract will be assumed and assigned as part of the Sale. The Debtors reserve all of their rights, claims and causes of action with respect to the Assigned Contracts listed on Exhibit 1 attached hereto.*

Pursuant to the Debtors’ proposed Assumption Procedures, objections to the proposed assumption and assignment of an Assigned Contract (a “Contract Objection”), including any objection relating to the Cure Payment or adequate assurance of the Stalking Horse Bidder’s future ability to perform, must (a) be in writing; (b) comply with the Bankruptcy Rules and Bankruptcy Local Rules; (c) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under Bankruptcy Code sections 365(b)(1)(A) and (B) for the applicable Assigned Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto; (d) be filed with the Court and served so as to actually be received by the foregoing parties by no later than **May 14, 2024 at 4:00 pm. (prevailing Eastern Time)**: (i) proposed co-counsel to the Debtors, (1) Milbank LLP, 55 Hudson Yards, New York, NY 10001, Attn: Dennis F. Dunne (ddunne@milbank.com); Michael W. Price (mprice@milbank.com); Lauren C. Doyle (ldoyle@milbank.com); Brian Kinney (bkinney@milbank.com); and James A. McIntyre (jmcintyre@milbank.com), and (2) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney, Sr. (rdehney@morrisnichols.com); Matthew O. Talmo (mtalmo@morrisnichols.com), and Jonathan M. Weyand (jweyand@morrisnichols.com); (ii) counsel to any Stalking Horse Bidder, (iii) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Rosa

Sierra-Fox (rosa.sierra-fox@usdoj.gov); (iv) counsel to any Committee; and (v) counsel to the DIP Agent, Proskauer Rose LLP, 11 Times Square, New York, NY 10036, Attn: David M. Hillman (dhillman@proskauer.com) and Megan R. Volin (mvolin@proskauer.com) (the parties identified in (i) through (v), collectively, the “Objection Notice Parties”)

**IF A COUNTERPARTY TO AN ASSIGNED CONTRACT FILES A CONTRACT OBJECTION IN A MANNER THAT IS CONSISTENT WITH THE REQUIREMENTS SET FORTH ABOVE, AND THE PARTIES ARE UNABLE TO CONSENSUALLY RESOLVE THE DISPUTE PRIOR TO THE SALE HEARING, THE AMOUNT TO BE PAID OR RESERVED WITH RESPECT TO SUCH OBJECTION WILL BE DETERMINED AT THE SALE HEARING, SUCH LATER HEARING DATE AT THE DEBTORS’ DISCRETION, OR SUCH OTHER DATE DETERMINED BY THE COURT. ALL OTHER OBJECTIONS TO THE PROPOSED ASSUMPTION OR PROPOSED ASSUMPTION AND ASSIGNMENT OF THE DEBTORS’ RIGHT, TITLE, AND INTEREST IN, TO, AND UNDER THE ASSIGNED CONTRACTS WILL BE HEARD AT THE SALE HEARING.**

**PLEASE TAKE FURTHER NOTICE** that although the Debtors have made a good-faith effort to identify all Assigned Contracts that might be assumed and assigned in connection with a Sale, the Debtors or any Successful Bidder may identify certain other executory contracts that should be assumed and assigned in connection with a Sale. Accordingly, the Debtors are reserving the right to (A) up until one (1) day prior to the Sale Hearing, (i) add previously omitted Assigned Contracts to the Assigned Contracts List as contracts that may be assumed and assigned to a Successful Bidder in accordance with the definitive agreement for the Sale, or (ii) modify the previously stated Cure Payment associated with any Assigned Contract; and (B) up until closing, remove an Assigned Contract from the Assigned Contract List that a successful bidder proposes be assumed and assigned in connection with the Sale.

**PLEASE TAKE FURTHER NOTICE** that the Debtors have proposed that (A) Contract Objections to Assigned Contracts added to the Assigned Contract List up until ten (10) days prior to the Sale Hearing shall be heard and resolved at the Sale Hearing; and (B) Contract Objections to Assigned Contracts added to the Assigned Contract List less than ten (10) days prior to the Sale Hearing (or for which a previously stated Cure Payment associated with any Assigned Contract is modified) (collectively, the “Subsequently Designated Assigned Contracts”) shall be heard and resolved at a subsequent hearing before the Court at such day and time as may be fixed by the Court.

**PLEASE TAKE FURTHER NOTICE** that the Debtors have requested that June 3, 2024, at 4:00 p.m., prevailing Eastern Time (the “Subsequently Designated Assigned Contracts Objection Deadline”) is the deadline by which Contract Objections with respect to the Subsequently Designated Assigned Contracts shall be filed. Such objections must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, and (c) be filed with the Court and served so as to be actually received by the Objection Notice Parties. Any party or entity who fails to timely make an objection with respect to the Subsequently Designated Assigned Contracts on or before the Subsequently Designated Assigned Contracts Deadline shall be forever barred from asserting any objection with respect to the Subsequently Designated Assigned Contracts.

**OBTAINING ADDITIONAL INFORMATION**

Copies of the Motion, the Bidding Procedures, and the Bidding Procedures Order, as well as all related exhibits, including the Form of Asset Purchase Agreement and all other documents filed with the Court, are available free of charge on the Debtors' case information website, located at <https://cases.ra.kroll.com/99only/> or by calling (844) 712-1933 (Domestic) or (646) 777-2513 (International).

**CONSEQUENCES OF FAILING TO TIMELY ASSERT AN OBJECTION**

***UNLESS YOU FILE AN OBJECTION TO THE CURE AMOUNT AND/OR THE ASSUMPTION OR ASSIGNMENT OF YOUR CONTRACT OR LEASE IN ACCORDANCE WITH THE INSTRUCTIONS AND DEADLINES SET FORTH HEREIN, YOU SHALL BE (A) BARRED FROM OBJECTING TO THE CURE AMOUNT SET FORTH ON EXHIBIT 1, (B) ESTOPPED FROM ASSERTING OR CLAIMING ANY CURE AMOUNT AGAINST THE DEBTORS, A STALKING HORSE BIDDER OR SUCH OTHER SUCCESSFUL BIDDER THAT IS GREATER THAN THE CURE AMOUNT SET FORTH ON EXHIBIT 1, AND (C) DEEMED TO HAVE CONSENTED TO THE ASSUMPTION AND/OR ASSIGNMENT OF YOUR CONTRACT OR LEASE.***

*[Remainder of page intentionally left blank]*

Dated: April 16, 2024  
Wilmington, Delaware

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

/s/ DRAFT

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*Proposed Co-Counsel for Debtors in Possession*

**Exhibit 4**

**Notice of Successful Bidder**

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

|                                                    |   |                         |
|----------------------------------------------------|---|-------------------------|
| In re:                                             | ) |                         |
|                                                    | ) | Chapter 11              |
| NUMBER HOLDINGS, INC. <i>et al.</i> , <sup>1</sup> | ) |                         |
|                                                    | ) | Case No. 24-10719 (JKS) |
| Debtors.                                           | ) | (Jointly Administered)  |
|                                                    | ) |                         |
|                                                    | ) |                         |
|                                                    | ) |                         |

**NOTICE OF SUCCESSFUL BIDDER AND BACKUP BIDDER  
WITH RESPECT TO THE AUCTION OF THE DEBTORS' ASSETS**

**PLEASE TAKE NOTICE** that the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the “Court”) on April 7, 2024 (the “Petition Date”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that, on April 16, 2024, the Debtors filed a motion (the “Motion”) <sup>3</sup> with the Court seeking entry of orders, among other things, (a) approving the Debtors’ bidding procedures (the “Bidding Procedures”) in connection with the proposed auction (the “Auction”) for the sale (the “Sale”) of substantially all of the Debtors’ remaining assets (the “Assets”), (b) approving procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale, including notice of proposed cure amounts (the “Assumption Procedures”), (c) approving the form and manner of notices related to the Sale and Assumption Procedures, and (d) establishing dates and deadlines in connection with the Sale.

**PLEASE TAKE FURTHER NOTICE** that, on \_\_\_\_\_, 2024, the Court entered an order (the “Bidding Procedures Order”) [Docket No. [●]] granting certain of the relief sought in the Motion, including, among other things, approving the (a) Bidding Procedures, which establish the key dates and times related to the Sale and the Auction, and (b) Assumption Procedures.

**PLEASE TAKE FURTHER NOTICE** that on [●], 2024 pursuant to the Bidding Procedures Order, the Debtors conducted the Auction and that, at the conclusion thereof, the

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: (i) Number Holdings, Inc. (1463); (ii) 99 Cents Only Stores LLC (1605); (iii) 99 Cents Only Stores Texas, Inc. (1229); (iv) 99 Cents PropCo LLC (7843); (v) 99 Cents HoldCo LLC (3987); and (vi) Bargain Wholesale LLC (8030). The Debtors’ principal offices are located at 1730 Flight Way, Suite 100, Tustin, CA 92782.

<sup>2</sup> Certain of the Debtors’ voluntary petitions were filed on the docket shortly after midnight (ET) on April 8, 2024.

<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Debtors selected the following Successful Bidder(s) and Backup Bidder(s) with respect to the applicable Assets.:

| Asset(s) | Successful Bidder | Backup Bidder |
|----------|-------------------|---------------|
|          |                   |               |

**PLEASE TAKE FURTHER NOTICE** that a hearing (the “Sale Hearing”) to consider approval of (i) the Sale(s), (ii) transfer of the applicable Assets to the Successful Bidder(s), **free and clear of all liens, claims, interests, and encumbrances**, in accordance with section 363(f) of the Bankruptcy Code, and (iii) approval of the releases contemplated by the asset purchase agreements will be held **on May 23, 2023 at 10:00 a.m. (prevailing Eastern Time)** before the Honorable J. Kate Stickles, Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, at District of Delaware, at 824 Market Street North, 5th Floor, Wilmington, Delaware 19801, or pursuant to the Court’s video hearing procedures. The Sale Hearing may be adjourned from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court or by notice filed on the docket in these Chapter 11 Cases.

**PLEASE TAKE FURTHER NOTICE** that any objections (a) to the manner in which the Auction was conducted, (b) to the identity of any Successful Bidder or Backup Bidder, and/or (c) the ability of any Successful Bidder or Backup Bidder (other than the Stalking Horse Bidder) to provide adequate assurance of future performance to counterparties to executory contracts and unexpired leases contemplated to be assumed and assigned must be filed with the Court and served on the Objection Notice Parties (defined below) so as to be received no later than **May 22, 2024 at 4:00 p.m. (prevailing Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that the “Objection Notice Parties” are: (i) proposed co-counsel to the Debtors, (1) Milbank LLP, 55 Hudson Yards, New York, NY 10001, Attn: Dennis F. Dunne (ddunne@milbank.com); Michael W. Price (mprice@milbank.com); Lauren C. Doyle (ldoyle@milbank.com); Brian Kinney (bkinney@milbank.com); and James A. McIntyre (jmcintyre@milbank.com), and (2) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney, Sr. (rdehney@morrisnichols.com); Matthew O. Talmo (mtalmo@morrisnichols.com), and Jonathan M. Weyand (jweyand@morrisnichols.com); (ii) counsel to any Stalking Horse Bidder, (iii) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); (iv) counsel to any Committee; and (v) counsel to the DIP Agent, Proskauer Rose LLP, 11 Times Square, New York, NY 10036, Attn: David M. Hillman (dhillman@proskauer.com) and Megan R. Volin (mvolin@proskauer.com) (the parties identified in (i) through (v), collectively, the “Objection Notice Parties”)

**PLEASE TAKE FURTHER NOTICE** that, at the Sale Hearing, the Debtors will seek Court approval of any Successful Bids, and the assumption and assignment of the Assigned Contracts (as defined in the Bidding Procedures Order) to any Successful Bidders. Unless the Court orders otherwise, the Sale Hearing shall be an evidentiary hearing on matters relating to the sale of the Debtors’ assets and there will be no further bidding at the Sale Hearing. In the event that

any Successful Bidder cannot or refuses to consummate any Sale because of the breach or failure on the part of such Successful Bidder, the applicable Backup Bidder will be deemed the new Successful Bidder and the Debtors shall be authorized, but not required, upon approval of such Backup Bid following notice and a hearing, to close with such Backup Bidder on such Backup Bid upon further order of the Court.

**PLEASE TAKE FURTHER NOTICE** that this Notice is subject to the terms and conditions of the Bidding Procedures Order, with such Bidding Procedures Order controlling in the event of any conflict, and the Debtors encourage parties in interest to review the Bidding Procedures Order in its entirety. Parties with questions regarding this Notice should contact the Debtors' counsel at the contact information provided herein.

**PLEASE TAKE FURTHER NOTICE** that parties interested in receiving more information regarding the contemplated sale and/or copies of any related documents may visit the websites maintained by Kroll Restructuring Administration LLC, the Debtors' claims and noticing agent, at <https://cases.ra.kroll.com/99only/>.

*[Remainder of page intentionally left blank]*

Dated: April 16, 2024  
Wilmington, Delaware

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

/s/ DRAFT

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