

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS
TOPEKA DIVISION**

In re

LODGING ENTERPRISES, LLC,

Debtor.¹

Case No. 24-40423-11

Related to Docket No. 450

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
TO THE DEBTOR’S MOTION FOR ENTRY OF ORDER: (I) APPROVING BID
PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S
ASSETS, (II) SCHEDULING CERTAIN DATES WITH RESPECT THERETO;
(III) AUTHORIZING THE DEBTOR TO DESIGNATE STALKING HORSE BIDDERS;
(IV) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (V) APPROVING THE
FORM AND MANNER OF NOTICE OF THE SALE HEARING AND ASSUMPTION
AND ASSIGNMENT PROCEDURES; AND (VI) GRANTING RELATED RELIEF**

The official committee of unsecured creditors (the “Committee”) appointed in the chapter 11 case of Debtor Lodging Enterprises, LLC (the “Debtor”) files this objection (the “Objection”) to the *Debtor’s Motion for Entry of Order: (I) Approving Bid Procedures for the Sale of Substantially all of the Debtor’s Assets, (II) Scheduling Certain Dates with Respect Thereto; (III) Authorizing the Debtor to Designate Stalking Horse Bidders; (IV) Approving Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases; (V) Approving the Form and Manner of Notice of the Sale Hearing and Assumption and Assignment Procedures; and (VI) Granting Related Relief [Docket No. 450]* (the “Bid Procedures Motion”)² filed by the Debtor, and in support thereof, respectfully states as follows:

¹ The last four digits of the Debtor’s federal tax identification number are 9343. The Debtor’s primary mailing address is 8535 East 21st St. N., Suite 250, Wichita, KS 67206.

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Bid Procedures Motion.

I.
PRELIMINARY STATEMENT

1. Although, the Committee does not oppose, in principle, a marketing and auction process that culminates in the sale of substantially all of the Debtor's assets, it nevertheless objects to the motion seeking approval of the proposed bid procedures (the "Bid Procedures").

2. The Bid Procedures, as currently structured, include provisions that are unlikely to maximize value for the Debtor's estate. Specifically, the Lenders (as defined below) are granted broad, unchecked credit bidding rights, and insiders are permitted to submit bids without restriction—both of which, when combined with the exclusion of the Committee from any meaningful role in the process, will deter rather than attract competitive, value-maximizing bids in the Debtor's Sale Process (as defined below).

3. Moreover, the sale envisioned by the Bid Procedures is designed to serve the interests of the Debtor's secured creditors exclusively, to the detriment of general unsecured creditors who could recover little, if anything, from a process that threatens to dramatically increase the amount of unsecured claims against the estate. Such a result is inequitable, not in the best interests of the estate, and should not be sanctioned by the Court. Accordingly, the Committee objects to the Bid Procedures Motion for the reasons set forth herein.

4. *First*, the proposed Bid Procedures raise serious concerns due to the Committee's lack of oversight in the Sale Process. The process currently before the Court is one that is structured to benefit the Lenders exclusively, at the expense of general unsecured creditors.

5. *Second*, the Bid Procedures fail to impose any limitations on the Lenders' ability to credit bid. In the absence of competing bids for the Portfolio (as defined below), the Lenders could theoretically credit bid as little as \$1, calling into question the integrity and fairness of the proposed Sale Process. What's worse, the Lenders' credit bid rights are proposed to be enshrined *prior* to

any judicial determination that the Lenders hold valid and perfected liens and security interests in property of the estate. As the Court will recall, a mere two days before the instant motion was filed, the Court entered the *Stipulation and Agreed Order Between the Official Committee of Unsecured Creditors and the Prepetition Secured Parties to Extend the Challenge Period* [Docket No. 440] (the “Stipulation and Agreed Order”) extending the Committee’s deadline to challenge the Lenders’ liens and security interests to June 2, 2025. The Committee believes that there are legitimate grounds for such a challenge. The Bid Procedures short circuit that process entirely solely to benefit the Lenders and prejudice the estate. Moreover, nothing in the Bid Procedures limits the Lenders to bidding on *their collateral*. Indeed, if approved, the Lenders would have an unfettered ability to credit bid on all assets of the estate, even unencumbered assets such as estate causes of action against insiders. In turn, the Lenders agree to *release* those insiders in the related Settlement Agreement (as defined below), thereby burying potentially valuable assets that rightfully should be available to pay unsecured claims. Such a result is grossly unfair to unsecured creditors and the estate.

6. *Third*, the lack of restrictions on insider participation in the bidding process is highly problematic. Given the proposed settlement releases of both insiders and the Lenders, there exists a legitimate risk of collusion aimed at manipulating the outcome of the Sale Process to the detriment of unsecured creditors.

7. *Fourth*, the Bid Procedures do not appear to exclude cash from the pool of assets subject to sale.

8. *Fifth*, and lastly, as the Bid Procedures are currently drafted, the Broker (as defined below) is entitled to a commission even if the Lenders submit a credit bid. This is problematic because there is little value added to the estate by surrendering the estate’s assets to an existing creditor through a credit bid.

9. For these reasons and those set forth herein, the Court should deny the Bid Procedures Motion in its current form.

II.

RELEVANT BACKGROUND

A. Commencement of Chapter 11 Case and Appointment of the Committee.

10. On June 26, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Kansas (the “Court”). The Debtor is authorized to continue to operate its business and manage its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

11. On July 17, 2024, the United States Trustee appointed the Committee, which consists of the following members: (i) American Hotel Income Properties REIT LP; (ii) Rub a Tub Tub; and (iii) Baymont Franchise Systems, Inc. *See United States Trustee’s Notice of Appointment of Committee of Unsecured Creditors* [Docket No. 96].

B. Capital Structure and the Loan Agreement.

12. VCM Lodging Enterprises, LP (“VCM Lodging”) owns one hundred percent (100%) of the membership interests in the Debtor. In turn, VCM Global Asset Management LTD f/k/a Vukota Capital Management Ltd. (“VCM Global”) is the parent of VCM Lodging, and Tom Vukota (“Mr. Vukota”) holds one hundred percent (100%) of the equity interests in VCM Global (Mr. Vukota together with VCM Global are the “Equity Owners”). Mr. Vukota is also President of the Debtor.

13. The Debtor’s primary secured debt stems from that certain Wyndham National Hotel Portfolio Loan (Loan No. 323000003) as evidenced by that certain Loan Agreement between the Debtor, as borrower, and UBS AG, dated as of November 27, 2019 (the “Loan Agreement”), as assigned in part to Wilmington Trust, National Association (“Master Servicer”), as Trustee for

the benefit of the Registered Holders of UBS Commercial Mortgage Trust 2019-C18, Commercial Mortgage Pass-Through Certificates, Series 2019-C18 (the “Prepetition Lender”), in connection with which Rialto Capital Advisors, LLC is the Special Servicer (“Special Servicer,” and together with the Prepetition Lender and the Master Servicer, the “Lenders”). The Equity Owners guaranteed \$72.5 million of the Loan Agreement pursuant to that certain Payment Guaranty executed November 27, 2019 by Mr. Vukota for the benefit of UBS AG.

C. The Lenders Agreed to Extend the Committee’s Challenge Period to June 2, 2025.

14. On March 25, 2025, the Court entered Stipulation and Agreed Order at Docket No. 440. The Stipulation and Agreed Order was negotiated and executed by the Committee and the Lenders under the Loan Agreement.

15. Among other things, the Stipulation and Agreed Order extended the deadline for the Committee to file an adversary complaint challenging the validity, enforceability, priority, or extent of the Lenders’ liens (the “Challenge Period”) to June 2, 2025.

D. The Sale Process.

16. On March 27, 2025, the Debtor filed the Bid Procedures Motion [Docket No. 450] requesting approval of, among other things, the proposed Bid Procedures, attached to the Bid Procedures Motion as Exhibit A, through which the Debtors will conduct a marketing and auction process (the “Sale Process”) for the sale of substantially all of the Debtor’s assets, including 40 of its hotels and 27 restaurants (collectively, the “Portfolio”).

17. On March 27, 2025, the Debtor filed with the Court a notice [Docket No. 451] (the “Notice”), requiring objections to the Bid Procedures Motion to be filed by April 10, 2025 (the “Objection Deadline”). In accordance with the Notice, if any objections or responses are filed by the Objection Deadline, the Court will hold a hearing on the Bid Procedures Motion on April 17, 2025 at 10:00 a.m. (prevailing Central Time) (the “Hearing”).

18. On April 8, 2025, counsel for the Committee circulated comments to the proposed Bid Procedures and the related proposed order in an effort to engage with the Debtor regarding significant deficiencies contained in the Bid Procedures.

19. On April 8, 2025, counsel for the Debtor extended the Objection Deadline for the Committee to Monday, April 14, 2025 at 5:00 p.m. (prevailing Central Time).

20. Contemporaneously with the Bid Procedures Motion, the Debtor filed the *Debtor's Amended Motion for Entry of an Order (I) Approving a Settlement Pursuant to Fed. R. Bankr. P. 9019; and (II) Granting Related Relief* [Docket No. 448] (the "Settlement Agreement Motion"), requesting approval of the terms of a Settlement Agreement between the Debtor and the Lenders (the "Settlement Agreement"). The Settlement Agreement contains terms that govern the rights between the Debtor and the Lenders, among others, relative to the Sale Process contemplated by the Bid Procedures Motion.

III. **OBJECTION**

21. The goal of a sale in bankruptcy should be to "enhance the value of the estate." *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564–65 (8th Cir. 1997); see *In re Dura Auto. Sys.*, 2007 Bankr. LEXIS 2764, at *253–54 (Bankr. D. Del. Aug. 15, 2007) (debtor "had a fiduciary duty to protect and maximize the estate's assets") (citing *In re Mushroom Transp. Co., Inc.*, 382 F.3d 325, 339 (3rd Cir. 2004)).

22. Courts have consistently held that bid procedures must be crafted to "facilitate an open and fair public sale designed to maximize value for all creditors." *In re Nashville Senior Living*, 2008 Bankr. LEXIS 3197, at *1; see also *In re Wintz Co.*, 219 F.3d 807, 812 (8th Cir. 2000) ("[B]ankruptcy courts have wide discretion in structuring sales of estate assets") (citing *Food Barn Stores*, 107 F.3d at 565); *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998)

(“[B]ankruptcy courts are necessarily given discretion and latitude in conducting [a] sale”). In particular, bidding and sale procedures must be designed to encourage, rather than chill, bidding. *See In re Chrysler LLC*, 405 B.R. 84, 109 (Bankr. S.D.N.Y. 2009) (bidding procedures were approved where the court found that “the bidding procedures would encourage bidding from any interested party with the wherewithal and interest to consummate a purchase transaction to ensure that the highest and best offer was attained”); *In re Bidermann Indus. U.S.A., Inc.*, 203 B.R. 547, 551–53 (Bankr. S.D.N.Y. 1997) (rejecting proposed bidding procedures where “the whole bidding arrangement [was] designed not to encourage but to stifle bidding”).

23. Accordingly, a debtor seeking authority to sell an asset (or the approval of related bidding procedures) under section 363(b) bears the burden of proving that it has a “sound business purpose” for the requested procedures and has adhered to its fiduciary duties in connection with the proposed transaction. *See In re Innkeepers USA Trust*, 448 B.R. 131, 146 (Bankr. S.D.N.Y. 2011) (holding that the court should evaluate a debtor’s decision in seeking approval of a stalking horse bid through the lens of whether a “sound business purpose” justifies the sale of the property); *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (noting that the officers and directors of the debtor “have a duty . . . to attract the highest price for the estate.”).

24. Here, the Debtor cannot meet the burden in light of certain deficiencies in the proposed Bid Procedures. For the reasons set forth more specifically herein, the requested Bid Procedures should be denied unless modified as set forth herein.

A. The Debtor’s Exclusion of the Committee from Decision Making Is Unjustified and Undermines the Integrity and Transparency of the Sale Process.

25. The Committee generally supports a market-tested sale process governed by bid procedures that incorporate appropriate limitations, safeguards, and ongoing involvement of the

Committee in critical decision-making. However, the proposed Bid Procedures were developed without any input from the Committee and are intentionally structured to exclude the Committee from participating in the decision-making process altogether.

26. As a threshold matter, the Committee must hold an active and substantive role in the Sale Process—particularly where, under the current structure, the Lenders are positioned to be made whole regardless of the sale’s outcome, due to the existing guaranty provided by Mr. Vukota.

27. The proposed Bid Procedures grant extensive notice and consultation rights to the Lenders, as well as CBRE, Inc. (the “Broker”), who the Debtor intends to retain to assist with the Sale Process and who the Debtor has “engaged extensively with ... in crafting the Bid Procedures,” see Bid Procedures Motion, at ¶ 2, while conspicuously omitting the Committee from any comparable role. This exclusion is consistent with the Debtor’s broader pattern of conduct in this chapter 11 case, where the Committee has been repeatedly and deliberately sidelined from key discussions and negotiations. The Committee is particularly concerned that the Debtor filed the Bid Procedures Motion without any prior consultation or engagement with the Committee. Such conduct is unacceptable and must be addressed immediately.

28. Attached as **Exhibit A** is a marked-up version of the Bid Procedures and the related Order incorporating the Committee’s comments.

29. With the Lenders’ claims expected to be satisfied in full, the Committee represents the fulcrum constituency in this chapter 11 case. As such, the Committee must be afforded full notice and consent or consultation rights regarding all material aspects of the Sale Process.

B. The Lack of Limitations on the Lenders' Credit Bidding and Insider Participation Erodes the Fairness of the Sale Process.

30. The Committee further objects to the Bid Procedures on the grounds that they fail to impose essential restrictions on both (i) the Lenders' ability to credit bid and (ii) participation by insiders in the bidding process.

31. The proposed Bid Procedures are fundamentally flawed in that they do not place any limitations on the Lenders' ability to credit bid—including for assets that are not collateral for the Lenders' claim, such as potential estate claims against insiders. The Portfolio also includes certain tangible assets (specifically, cash and hotels) that do not appear to be subject to perfected liens. Non-collateralized assets cannot be credit bid on by the Lenders and must remain available for liquidation to benefit the estate's unsecured creditors.

32. In an illustrative and deeply troubling scenario, if no competing bids are submitted, the Lenders could effectively credit bid for as little as \$1. Such an outcome would undermine the fairness and legitimacy of the Sale Process, and strongly suggests that the Bid Procedures are structured to benefit a select group of parties at the expense of the estate and its general unsecured creditors.

33. Moreover, the Bid Procedures clearly violate the Stipulation and Agreed Order, which was negotiated and entered into by the Lenders and the Committee and approved by the Court. Under the Stipulation and Agreed Order, the Committee's Challenge Period continues through and including June 2, 2025. However, only two days after the Court entered the Stipulation and Agreed Order, the Debtor filed the Bid Procedures Motion seeking approval of the Bid Procedures with the Lenders that completely undermines the Stipulation and Agreed Order.

34. The Lenders should not be permitted to exercise any credit bidding rights until the expiration of the Court-ordered Challenge Period on June 2, 2025, or, alternatively, until the Court

adjudicates any pending Challenge. Allowing the Lenders to credit bid before resolution of these matters is premature and prejudicial to the Committee's rights to assert a timely Challenge.

35. By effectively disregarding the Court-approved Challenge Period, the Bid Procedures attempt to insulate the Lenders' claims from a Challenge—the estate's most significant liability. This approach improperly facilitates credit bidding by the Lenders before the validity, enforceability, and extent of their alleged liens and security interests have been judicially determined. The Lenders should not be allowed to evade the consequences of the agreements they voluntarily entered into, particularly where doing so would be to the detriment of the estate's unsecured creditors.

36. Equally concerning is the complete absence of restrictions on insider participation in the bidding process. In light of the proposed Settlement Agreement releases benefiting both the Lenders and insiders, there is a very real and credible risk of collusion designed to manipulate the outcome of the Sale Process in a manner that would severely prejudice unsecured creditors. This concern is made manifest by the fact that nothing in the proposed procedures prevents the Lenders from bidding on estate causes of action against insiders, which would permit the Lenders to acquire those actions subject to the releases set forth in the Settlement Agreement at the expense of unsecured creditors.

37. Permitting the Lenders to credit bid without restriction, while simultaneously allowing insiders to submit bids free of oversight or limitation, would confer an unfair and inappropriate advantage. Such an imbalance would irreparably compromise the integrity of the Sale Process and must not be allowed to proceed.

C. Failure to Exclude Cash from Sale Assets Generates Risk of Unfair Distribution.

38. The proposed Bid Procedures are defective because they fail to exclude cash from the assets to be sold. This is a significant and unacceptable omission. Cash is not a typical asset in

a sale of operating or distressed assets—it is the ultimate liquid form of value meant to be distributed in accordance with the Bankruptcy Code’s priority scheme, not treated as a saleable item.

39. Moreover, permitting cash to be sold as part of the Sale Process without clear limitations or oversight by the Committee would allow the Lenders to effectively recover value from the estate without demonstrating the validity of their liens on those proceeds—particularly in light of the pending Challenge Period. This undermines the integrity of the Sale Process and the rights of general unsecured creditors, who would be stripped of any opportunity to assert claims or challenge the propriety of such distributions.

D. Premature Allocation of Sale Proceeds Creates Uncertainty into the Sale Process.

40. The Sale Process contemplated under the Bid Procedures is premised on an agreement with the Lenders concerning the allocation of sale proceeds from a sale that has not yet occurred. This premature and speculative approach puts the proverbial “cart before the horse” and introduces substantial uncertainty into the Sale Process. Rather than presenting a clear, Court-approved framework for how sale proceeds will be distributed and in what amount, the Bid Procedures allow for an arrangement that lacks transparency, excludes creditor input, and is susceptible to manipulation, particularly given the uncertainty around the amount of proceeds.

41. This is especially troubling in a context where competitive bidding may not materialize. In such a scenario, the Lenders could credit bid a nominal amount, acquire not only the Debtor’s assets but also any cash on hand, and then divide those proceeds to the detriment of the unsecured creditors.

E. **The Broker Should Not Be Entitled to a Commission if the Lenders Successfully Credit Bid.**

42. The Committee objects to the proposed Bid Procedures insofar as they contemplate the payment of a commission to the Broker even in the event of a credit bid by the Lenders. Specifically, the Bid Procedures provide the following, in relevant part, “[t]he Debtor shall be under no obligation to pay any commissions, fees, or expenses to any bidder’s agent, advisor, or broker, **other than the Broker.**” See Bid Procedures, § XVII “Commissions” (emphasis added).

43. It is well-established in bankruptcy law that a broker must demonstrate its services have benefitted the estate to be entitled to a commission. See, e.g., *Matter of Inter Urban Broadcasting of St. Louis, Inc.*, 174 B.R. 441 (E.D. La. 1994) (establishing that a broker who does not produce a buyer is not entitled to a commission, and an unauthorized broker who produced a buyer but did not complete the transaction was not entitled to a commission because it produced no benefit to the estate); *In re Eastern Inns of New Hampshire, Inc.*, 72 B.R. 418 (Bankr. D. Me. 1987) (same).

44. The payment of a broker’s commission is designed to incentivize and reward brokers for facilitating the sale of assets to an independent third party. In contrast, a credit bid by the Lenders involves no such facilitation or market-tested process. The Lenders would simply acquire the Portfolio by virtue of their existing secured interests. The Broker is not providing any meaningful service or generating any additional value for the Debtor’s estate in this scenario. To allow the Broker to collect a commission in such an instance would be unfair to the estate and its creditors, who would bear the cost without receiving any corresponding benefit.

45. Any commission paid to the Broker should be tied directly to the facilitation of a market-driven sale process, not a credit bid that eliminates competition and fails to maximize value. Therefore, the Committee respectfully requests that the Court modify the proposed

provisions in the Bid Procedures that would allow the Broker to receive a commission in the event of a credit bid by the Lenders. Such a payment is not warranted by the facts of this case and would contravene the principle of maximizing value for the estate and its creditors.

46. The combination of these deficiencies—including unlimited credit bidding rights of the Lenders, unrestrained insider participation, inclusion of cash in the asset pool, premature allocation of proceeds, and an unrestricted broker commission—creates a Sale Process that is skewed in favor of the Lenders and insiders, leaving the Committee and unsecured creditors at a significant disadvantage. Accordingly, the Bid Procedures Motion should be denied unless the proposed form of Bid Procedures Order and related Bid Procedures are revised subject to the Committee’s comments, which are attached hereto as **Exhibit A** for the Court’s convenience.

IV. RESERVATION OF RIGHTS

47. The Committee expressly reserves and preserves all rights to amend, modify, or supplement this Objection at any time and for any reason. The Committee also expressly reserves and preserves all rights to make additional arguments at or prior to any hearing(s), including the Hearing, on the Debtor’s Bid Procedures Motion.

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WHEREFORE, the Committee respectfully requests that the Court enter an order (i) sustaining this Objection and denying the Bid Procedures Motion unless it is modified to address the Committee's concerns identified above; and (ii) granting such other and further relief as the Court deems just and equitable.

Dated: April 14, 2025.

Respectfully submitted,

By: /s/ Andrea M. Chase

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*Counsel for the Official Committee of
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 14, 2025, I caused a copy of the foregoing to be served on all parties eligible to receive service through the Electronic Case Filing System for the United States Bankruptcy Court for the District of Kansas by electronic mail.

/s/ Andrea M. Chase

Andrea M. Chase

EXHIBIT A

Redline of the Bid Procedures Order and related Bid Procedures

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS (TOPEKA DIVISION)**

In re:	§	
	§	Chapter 11
	§	
LODGING ENTERPRISES, LLC,	§	Case No. 24-40423
	§	
Debtor.	§	

**ORDER (I) APPROVING THE BID PROCEDURES FOR THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS; (II) SCHEDULING CERTAIN
DATES WITH RESPECT THERETO; (III) AUTHORIZING THE DEBTOR TO
DESIGNATE STALKING HORSE BIDDERS; (IV) APPROVING PROCEDURES FOR THE
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED
LEASES; (V) APPROVING THE FORM AND MANNER OF NOTICE OF THE SALE
HEARING AND ASSUMPTION AND ASSIGNMENT PROCEDURES;
AND (VI) GRANTING RELATED RELIEF**

[RELATES TO DOCKET NO. __]

Upon the motion (the “Motion”)¹ of Lodging Enterprises, LLC as a debtor and debtor in possession (the “Debtor”) for entry of an order (this “Order”) (a) authorizing and approving the Bid

¹ Capitalized terms used but not otherwise defined herein have the meanings given to them in the Motion.

Procedures, attached hereto as **Exhibit A**, (b) scheduling certain related dates and deadlines, (c) authorizing, but not directing, the Debtor to select one or more Stalking Horse Bidder(s), (d) approving procedures for the assumption and assignment of certain executory contracts and unexpired leases in connection with any sale and approving the form and manner of notice thereof, attached as **Exhibit C** hereto, (e) approving the form and manner of notice of the Auction and the Sale Hearing, attached hereto as **Exhibit B** granting related relief, all as more fully set forth in the Motion, and (f) granting related relief; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; 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 is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties in interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court, if any, and this Court having determined that the legal and factual bases set forth in support of the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **FOUND AND DETERMINED THAT:**

1. Jurisdiction and Venue. The Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334, and venue is proper before this Court

pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Findings and Conclusions. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

3. Bases for Relief. The bases for the relief requested in the Motion are sections 105, 363, 365, 503, and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 6003, 6004, 6006(a), 9007, and 9014. The Debtor has articulated good and sufficient reasons for the Court to grant the relief requested in the Motion.

4. Notice of the Bid Procedures Motion. Good and sufficient notice of the Motion, the Bid Procedures, and the relief sought in the Motion has been given under the circumstances, and no other or further notice is required except as set forth herein and in the Bid Procedures. The notice of the Motion and opportunity for hearing is reasonable and sufficient in light of the circumstances and nature of the relief requested in the Motion, and no other or further notice is necessary. A reasonable and fair opportunity to object to the Motion and the relief granted in this Order has been afforded under the circumstances.

5. Bid Procedures. The Debtor has articulated good and sufficient reasons for authorizing and approving the Bid Procedures, which are fair, reasonable, and appropriate under the circumstances and designed to maximize value for the benefit of the Debtor's estate, its creditors, and other parties in interest. The Bid Procedures are designed to permit the robust

marketing process necessary to maximize the value of the Portfolio. The Bid Procedures and all such steps and expenses incurred by the Debtor in connection with the implementation of the Bid Procedures and this Order shall be deemed reasonable and appropriate and within the sound business judgment of the Debtor pursuant to section 363(b) of the Bankruptcy Code.

6. Designation of Stalking Horse Bidders. The Debtor's right to (a) select Stalking Horse Bidder(s), and (b) enter into a Stalking Horse Agreement(s) are approved to the extent set forth in this Order. If the Debtor selects any Stalking Horse Bidder(s) and enters into any Stalking Horse Agreement(s), the Debtor shall provide prompt notice thereof by filing a notice with the Court. No later than one (1) business day after selecting a Stalking Horse Bidder, the Debtor shall file with the Court and serve a notice (a "Stalking Horse Notice") (a) identifying such Stalking Horse Bidder, the material terms of the Stalking Horse Bid (including the purchase price and Portfolio (or subset thereof) subject to such Stalking Horse Bid), and (b) attaching a copy of the relevant Stalking Horse Agreement. If the Debtor seeks to offer Bid Protections to any Stalking Horse Bidders, the Debtor shall file a separate motion seeking approval of any such Bid Protections.

7. Any objection to the designation of a Stalking Horse Bidder set forth in the applicable Stalking Horse Notice (a "Stalking Horse Objection") shall be filed no later than the date that is ~~five~~seven (~~5~~7) business days after the date of filing the applicable Stalking Horse Notice. If a timely Stalking Horse Objection is filed, the proposed designation of such Stalking Horse Bidder shall not be deemed approved unless approved by separate order of the Court. If no Stalking Horse Objection is timely filed and served with respect to a Stalking Horse Bid, the designation of such Stalking Horse Bidder shall be deemed approved without further order of the Court upon the expiration of ~~five~~seven (~~5~~7) business days after filing the Stalking Horse Notice.

8. Sale Notice. The Sale Notice, substantially in the form attached hereto as **Exhibit B**, is reasonably calculated to provide interested parties with timely and proper notice of the Auction and the Sale Hearing, including, without limitation: (a) the date, time, and place of the Auction (if any); (b) the Bid Procedures; (c) reasonably specific identification of the property to be potentially be sold as part of a Sale Transaction; and (d) a description of any Sale Transaction as being free and clear of liens, claims, encumbrances, and other interests (except as set forth in the applicable purchase agreement), with all such liens, claims, encumbrances, and other interests (if any) attaching with the same validity and priority to the proceeds of such Sale Transaction, and no other or further notice of the Auction or the Sale Hearing shall be required.

9. Assumption and Assignment Procedures. The Potential Assumption Notice, substantially in the form attached hereto as **Exhibit C**, is reasonably calculated to provide all non-Debtor counterparties to the Potential Transferred Contracts with proper notice of the potential assumption and assignment of their Potential Transferred Contract, the proposed Cure Costs relating thereto, and the related Assumption and Assignment Procedures, and no other or further notice of such intention, the Cure Costs, or the Assumption and Assignment Procedures shall be required; *provided* that the mere listing of any Potential Transferred Contract on the Potential Assumption Notice does not require or guarantee that such Potential Transferred Contract will be assumed and assigned, and all rights of the Debtor with respect to such Potential Transferred Contracts are reserved. The Assumption and Assignment Procedures are reasonable and appropriate.

IT IS HEREBY ORDERED THAT:

I. Important Dates and Deadlines.

10. The following dates and deadlines are approved, subject to the right of the Debtor to modify the following dates and applicable consent rights in any Stalking Horse Agreement, provided notice is given in accordance with the terms of this Order:

Event or Deadline	Date
Deadline to File Stalking Horse Notice(s)	June 25, 2025
Deadline to Object to Designation of any Stalking Horse Bidder(s)	~~Five~~ <u>Seven</u> (~~5~~ <u>7</u>) business days following filing of the applicable Stalking Horse Notice
Bid Deadline	August 14, 2025
Deadline to File Potential Assumption Notice	August 21, 2025
Auction (if necessary)	August 28, 2025
Deadline to Announce Winning Bidder(s)	September 2, 2025
Cure Objection Deadline	September 16, 2025
Sale Objection Deadline	September 16, 2025
Sale Hearing	Approximately twenty-one (21) days after Winning Bidder(s) Announced

11. All objections must: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Bankruptcy Rules; (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Court so as to be ***actually received*** no later than the Cure Objection Deadline or Sale Objection Deadline, as applicable, by Clerk of Court.

12. If any party fails to timely file a Cure Objection or Sale Objection by the Cure Objection Deadline or Sale Objection Deadline, as applicable, or otherwise abide by the procedures set forth in the Bid Procedures, regarding an objection to a Sale Transaction, such party shall be barred from asserting, at the Sale Hearing or otherwise, any objection to the relief

requested in the Motion or to the approval, consummation, and performance of a Sale Transaction, including the transfer of the Portfolio (or applicable subset thereof) to the Winning Bidder(s), free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and shall be deemed to “consent” for the purposes of section 363(f) of the Bankruptcy Code.

13. The Debtor shall present the results of the Auction (if any) or otherwise present any Winning Bidder(s) to the Court by filing a notice on the docket as soon as practicable after the Auction (if any) or at such point as the Winning Bidder(s) have been selected, but in no event later than two (2) business days after the conclusion of the Auction.

II. Auction, Bid Procedures, Designation of Stalking Horse Bidder(s), and Related Relief.

14. The Bid Procedures, substantially in the form attached hereto as Exhibit A, are approved in their entirety and incorporated by reference as though fully set forth herein. The Debtor is authorized to solicit bids and conduct an Auction, if necessary, on the terms set forth in the Bid Procedures and to take all actions as are necessary or appropriate to implement the Bid Procedures.

15. For the avoidance of doubt, an insider of the Debtor, as defined by section 101(31) of the Bankruptcy Code, is prohibited from bidding on any of the Debtor’s assets to be sold as contemplated by these Bid Procedures and cannot be considered a Potential Bidder and/or a Qualified Bidder.

16. ~~15.~~ The Debtor may, with the consent of the Committee, (a) determine which Qualified Bid is the highest or otherwise best offer; (b) reject, at any time before entry of an Order of the Bankruptcy Court approving the Winning Bid(s), any bid (other than a Stalking

Horse Bid, if any) that, ~~in the discretion of~~ the Debtor determines, with the consent of the Committee, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bid Procedures, or the terms and conditions of a Sale Transaction, (iii) not on better terms than a Stalking Horse Bid, if any, (iv) contrary to the best interests of the Debtor, its estate, its creditors, and other stakeholders; and (c) at or before the conclusion of the Auction, may impose additional terms and conditions upon Qualified Bidders as the Debtor determines, with the consent of the Committee, to be in the best interests of the Debtor's estate in this Chapter 11 Case.

17. ~~16.~~ The Stalking Horse Bidder(s), if any, shall be deemed a Qualified Bidder, and the Stalking Horse Bid(s), if any, shall be deemed a Qualified Bid.

18. ~~17.~~ If the Debtor determines not to conduct an Auction, then the Debtor shall file a notice with the Court of such determination within two (2) business days of such determination.

19. ~~18.~~ If the Debtor does not receive any Qualified Bids (other than a Stalking Horse Bid, if any): (a) the Debtor will not hold the Auction; (b) the Stalking Horse Bidder(s) will be deemed the Winning Bidder(s) for the Portfolio (or applicable subset thereof); and (c) the Debtor shall be authorized to seek approval of the Stalking Horse Purchase Agreement(s) at the Sale Hearing.

20. ~~19.~~ If the Debtor receives one or more Qualified Bids from Qualified Bidders (other than the Stalking Horse Bidder(s), if any), then the Debtor shall conduct the Auction in accordance with the Bid Procedures.

21. ~~20.~~ If one or more Qualified Bid(s) exist for acquiring a subset of the Portfolio, then the Debtor may, in the exercise of its reasonable business judgment and after consultation

| with the Committee, first conduct a sub-Auction for such subset of the Portfolio that has at least one Qualified Bid pursuant to the Bid Procedures.

22. ~~21.~~ The Auction, if any, shall be conducted openly and the Auction shall be transcribed or otherwise recorded.

23. ~~22.~~ No person or entity other than the Stalking Horse Bidder(s), to the extent any Bid Protections are approved for such Stalking Horse Bidder(s), if any, shall be entitled to any expense reimbursement, break-up fees, “topping,” termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or to file with this court any request for expense reimbursement or any fee of any nature, whether by virtue of section 503(b) of the Bankruptcy Code or otherwise.

24. ~~23.~~ Except as otherwise provided in this Order, the Debtor, in its business judgment, further reserves the right, as it may reasonably determine with the consent of the Committee to be in the best interests of its estate, subject to the terms and conditions under the Bid Procedures, to: (i) determine which Potential Bidders are Qualified Bidders; (ii) determine which Bids are Qualified Bids; (iii) waive terms and conditions set forth herein with respect to all Qualified Bidders to the extent permissible under this Order or the Bid Procedures; (vi) modify the Bid Procedures or withdraw the request to sell the Portfolio, as applicable, to the Winning Bidder(s) or Backup Bidder(s), as applicable, at any time with or without prejudice.

III. Sale Notice.

25. ~~24.~~ The Sale Notice, substantially in the form attached hereto as Exhibit B, is approved and the manner of service of the Sale Notice set forth in the Motion is approved.

IV. Assumption and Assignment Procedures.

26. ~~25.~~ The Assumption and Assignment Procedures set forth in the Motion are approved.

- a. **Potential Assumption Notice.** No later than seven (7) days after to the Bid Deadline, the Debtor shall file with the Court and serve via first class mail, electronic mail, or overnight delivery, the Potential Assumption Notice, as attached as **Exhibit C** to the proposed Bid Procedures Order, on certain contract counterparties (collectively, the “Contract Counterparties” and each, a “Contract Counterparty”).
- b. **Content of Potential Assumption Notice.** The Potential Assumption Notice shall notify the applicable Contract Counterparties that their Potential Transferred Contract may be subject to assumption and assignment in connection with a Sale Transaction, and contain the following information: (i) a list of the applicable Potential Transferred Contracts that may be assumed and assigned in connection with the Sale Transaction; (ii) the applicable Contract Counterparties; (iii) the Debtor’s good faith estimate of the proposed amount necessary, if any, to cure all monetary defaults, if any, under each of the Potential Transferred Contracts (the “Cure Costs”); and (iv) the deadline by which any Contract Counterparty to a Potential Transferred Contract on the Potential Assumption Notice must file an objection to the proposed assumption, assignment, cure, and/or adequate assurance and the procedures relating thereto (the “Cure Objection”); provided that service of a Potential Assumption Notice does not constitute an admission that such Potential Transferred Contract is an executory contract or unexpired lease or that such Potential Transferred Contract will be assumed at any point by the Debtor or assumed and assigned pursuant to any Winning Bid.
- c. **Cure Objections.** Cure Objections must: (i) be in writing; (ii) comply with the applicable provisions of the Bankruptcy Rules, the Local Bankruptcy Rules, and any order governing the administration of this Chapter 11 Case; (iii) state with specificity the nature of the objection and, if the Cure Objection pertains to the proposed Cure Costs, state the cure amount alleged to be owed to the objecting Contract Counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Court prior to **September 16, 2025, at 4:00 p.m. (prevailing Central Time)** (the “Cure Objection Deadline”); provided that the Debtor may extend the Cure Objection Deadline by filing a notice of such extension on the Court’s docket or by written agreement, email being sufficient, with a Contract Counterparty.
- d. **Effect of Filing a Cure Objection.** A properly filed Cure Objection will reserve such objecting party’s rights against the Debtor only with respect

to assumption and assignment of the Potential Transferred Contract at issue, and/or objection to the accompanying Cure Costs, as set forth in the Cure Objection, but will not constitute and objection to the remaining relief request in the Motion.

- e. **Dispute Resolution.** Any Cure Objection to the proposed assumption and assignment of a Potential Transferred Contract or Cure Costs that remains unresolved after the Sale Hearing shall be heard at such later date as may be agreed upon by the parties or fixed by the Court. To the extent that any Cure Objection cannot be resolved by the parties, such Potential Transferred Contract shall be assumed and assigned only upon satisfactory resolution of the Cure Objection, to be determined in the applicable Winning Bidder's reasonable discretion. To the extent a Cure Objection remains unresolved, the Potential Transferred Contract may be conditionally assumed and assigned, subject to the consent of the applicable Winning Bidder, pending a resolution of the Cure Objection after notice and a hearing. If a Cure Objection is not satisfactorily resolved, the applicable Winning Bidder may determine that such Potential Transferred Contract should be rejected and not assigned, in which case the Winning Bidder will not be responsible for any Cure Costs in respect of such Potential Transferred Contract. Notwithstanding the foregoing, if a Cure Objection relates solely to the Cure Costs (any such objection, a "Cure Dispute"), the applicable Potential Transferred Contract may be assumed by the Debtor and assigned to the applicable Winning Bidder provided that the cure amount the Contract Counterparty asserts is required to be paid under Bankruptcy Code Section 365(b)(1)(A) and (B) (or such lower amount as agreed to by the Contract Counterparty) is deposited into a segregated account by the Debtor pending the Court's adjudication of the Cure Dispute or the parties' consensual resolution of the Cure Dispute.
- f. **No Cure, or other Objection.** If there are no Cure Objections, or if a Contract Counterparty does not file and serve a Cure Objection in a manner that is consistent with the requirement set forth above, and absent a subsequent order of the Court establishing an alternative Cure Cost, (i) the Cure Costs, if any, set forth in the Potential Assumption Notice shall be controlling, notwithstanding anything to the contrary in any Potential Transferred Contract or any other document, (ii) the Contract Counterparty will be deemed to have consented to the Cure Costs, if any, and will be forever barred from objecting to the Cure Costs, if any, and from asserting any other claims related to such Potential Transferred Contract against the Debtor or the applicable Winning Bidder, or the property of either of them; (iii) the assumption will be effective notwithstanding anything to the contrary in any Potential Transferred Contract or any other document; and (iv) the Contract Counterparty will be deemed to have consented to the assumption and assignment of the Potential Transferred Contract and

will be forever barred from asserting any other claims related to such Potential Transferred Contract against the Debtor or the applicable Winning Bidder, or the property of either of them.

27. ~~26.~~ The inclusion of a Potential Transferred Contract in a Potential Assumption Notice will not: (a) obligate the Debtor to assume such Potential Transferred Contract or a Winning Bidder to take assignment of such Potential Transferred Contract or (b) constitute any admission or agreement of the Debtor that such contract is an executory contract. Only those Potential Transferred Contracts that are included on a schedule of assumed and assigned contracts attached to the executed definitive asset purchase agreement with a Winning Bidder (including amendments or modifications to such schedules in accordance with such asset purchase agreement) will be assumed and assigned to the applicable Winning Bidder.

V. Miscellaneous.

28. On March 25, 2025, the Court entered a Stipulation and Agreed Order between the Official Committee of Unsecured Creditors and the Prepetition Secured Parties to Extend the Challenge Period [Docket No. 440], fixing a period (the “Challenge Period”) that expires June 2, 2025 as the deadline for the Committee to file an adversary complaint challenging the validity, enforceability, priority or extent of the Prepetition Secured Parties’ liens (a “Challenge”). Accordingly, the Prepetition Secured Parties will only have the right to submit a credit bid if, prior to any Auction, (a) the Challenge Period has expired without a Challenge having been brought, or (b) a final order has been entered denying any Challenge that was brought prior to the expiration of the Challenge Period. To the extent that a credit bid is permitted, the Prepetition Secured Parties are prohibited from credit bidding on any assets that are not subject to a prepetition security interest or lien.

29. The Debtor is prohibited from selling estate causes of action.

30. The Debtor is prohibited from selling cash or cash equivalents.

31. ~~27.~~ The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

32. ~~28.~~ Notwithstanding anything to the contrary herein or in the Bid Procedures, the Debtor may determine in its reasonable business judgment to suspend or cancel the sale process with respect to all or any portion of the Portfolio.

33. ~~29.~~ All persons or entities (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 and (b) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

34. ~~30.~~ Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of the Bankruptcy Rules and the Local Bankruptcy Rules are satisfied by such notice.

35. ~~31.~~ Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

36. ~~32.~~ Nothing in this Order or the Bid Procedures shall be deemed a waiver of any rights, remedies, or defenses that the Debtor has under applicable bankruptcy and non-bankruptcy law, under any indemnity agreements, or any rights, remedies or defenses of the Debtor with respect thereto, including seeking relief from the Court with regard to the Auction, the Bid Procedures, the Sale Hearing, and any related items.

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

#####

Respectfully submitted,

/s/ Jonathan A. Margolies

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Co-Counsel to the Debtor and Debtor-in-Possession

Exhibit A

Bid Procedures

Exhibit B

Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS (TOPEKA DIVISION)**

In re:

LODGING ENTERPRISES, LLC,

Debtor.

§
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§
§

Chapter 11

Case No. 24-40423

**NOTICE OF AUCTION FOR THE
SALE OF THE DEBTOR'S ASSETS FREE AND CLEAR
OF ANY AND ALL CLAIMS, INTERESTS, AND ENCUMBRANCES**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On April [●], 2025, the United States Bankruptcy Court for the District of Kansas (the “Court”) entered the *Order (I) Approving the Bid Procedures for the Sale of Substantially All of the Debtor’s Assets; (II) Scheduling Certain Dates with Respect Thereto; (III) Authorizing the Debtor to Designate Stalking Horse Bidders; (IV) Approving Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases; (V) Approving the Form and Manner of Notice of the Sale Hearing and Assumption and Assignment Procedures; and (VI) Granting Related Relief* [Docket No. ●] (the “Bid Procedures Order”),¹ authorizing the Debtor to conduct a marketing and sale process, potentially including an auction (the “Auction”), to sell the Portfolio. **All interested bidders should carefully read the Bid Procedures and the Bid Procedures Order.** To the extent that there are any inconsistencies between this notice and the Bid Procedures or the Bid Procedures Order, the Bid Procedures or the Bid Procedures Order, as applicable, shall govern in all respects.

Copies of the Bid Procedures Order, the Bid Procedures, or other documents related thereto are available on the Court’s website at <https://www.ksb.uscourts.gov/> or free of charge on the website maintained by the Debtor’s Claims and Noticing Agent, Kroll Restructuring Administration LLC, at <https://cases.ra.kroll.com/lodgingenterprises/>.

Any person or entity who wishes to participate in the Auction, **other than an insider of the Debtor, as defined by section 101(31) of the Bankruptcy Code**, must comply with the participation requirements, bid requirements, and other requirements set forth in the Bid Procedures. The Bid Deadline is **August 14, 2025 at 4:00 p.m. (prevailing Central Time)**. The Auction, if required, will be **August 28, 2025 at 9:00 a.m. (prevailing Central Time)**. **For the avoidance of doubt, an insider of the Debtor, as defined by section 101(31) of the Bankruptcy Code, is prohibited from participating in the bidding process and cannot be considered a Potential Bidder.**

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bid Procedures Order or the Bid Procedures, as applicable.

The Debtor expects to seek approval of any Sale Transaction(s) at the Sale Hearing, which is presently scheduled to commence on **September [●], 2025 at [● a.m.] (prevailing Central Time)**, before the Honorable Dale L. Somers in the United States Bankruptcy Court, 444 S.E. Quincy, Ste. 225, Topeka, Kansas 66683.

The Debtor reserves the right to modify the Bid Procedures, in its reasonable business judgment in accordance with the Bid Procedures.

Except as otherwise set forth in the Bid Procedures Order with respect to objections to proposed cure amounts, objections, if any, to a proposed Sale Transaction **must**: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Bankruptcy Rules; (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Court so as to be ***actually received*** no later than **September 16, 2025 at 4:00 p.m. (prevailing Central Time)**.

CONSEQUENCES OF FAILING TO TIMELY MAKE AN OBJECTION

ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO A SALE ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE BID PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO SUCH SALE TRANSACTION, INCLUDING WITH RESPECT TO THE TRANSFER OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, EXCEPT AS SET FORTH IN THE APPLICABLE PURCHASE AGREEMENT(S).

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Dated: April [●], 2025

Respectfully submitted,

/s/ Jonathan A. Margolies

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Co-Counsel to the Debtor and Debtor-in-Possession

Exhibit C

Potential Assumption Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS (TOPEKA DIVISION)**

In re:

LODGING ENTERPRISES, LLC,

Debtor.

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§

Chapter 11

Case No. 24-40423

**NOTICE TO CONTRACT COUNTERPARTIES TO POTENTIALLY
ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU
OR ONE OF YOUR AFFILIATES IS A COUNTERPARTY TO AN
EXECUTORY CONTRACT OR UNEXPIRED LEASE WITH THE DEBTOR AS SET
FORTH ON EXHIBIT A.**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On April [●], 2025, the United States Bankruptcy Court for the District of Kansas (the “Court”) entered the *Order (I) Approving the Bid Procedures for the Sale of Substantially All of the Debtor’s Assets; (II) Scheduling Certain Dates with Respect Thereto; (III) Authorizing the Debtor to Designate Stalking Horse Bidders; (IV) Approving Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases; (V) Approving the Form and Manner of Notice of the Sale Hearing and Assumption and Assignment Procedures; and (VI) Granting Related Relief* [Docket No. ●] (the “Bid Procedures Order”),¹ by which the Court approved procedures for the assumption and assignment of executory contracts and unexpired leases (such executory contracts and unexpired leases to be potentially assumed or assumed and assigned, collectively, the “Potential Transferred Contracts” and each a “Potential Transferred Contract”) and granted related relief, as set forth in the Bid Procedures Order.

Pursuant to the Bid Procedures and the terms of any Winning Bid(s), the Debtor **may** assume and assign to the Winning Bidder(s) certain of the Potential Transferred Contracts listed on **Exhibit A** hereto (the “Potential Assumption List”), which include Potential Transferred Contracts to which you are a counterparty, upon approval of a sale or other transaction. The Debtor has conducted a review of its books and records and has included in the Potential Assumption List the amount of unpaid monetary obligations under each Potential Transferred Contract set forth therein (the “Cure Costs”).

If you disagree with the proposed Cure Costs for the Potential Transferred Contract(s) to which you are a counterparty, your objection must: (i) be in writing; (ii) comply with the applicable provisions of the Bankruptcy Rules, Local Bankruptcy Rules, and any order governing

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bid Procedures Order or the Bid Procedures, as applicable.

the administration of this Chapter 11 Case; (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed Cure Costs, state the cure amount alleged to be owed, together with any applicable and appropriate documentation in support thereof; and (iv) be filed with the Court so that it is **actually received** by **no later than September 16, 2025 at 4:00 p.m. (prevailing Central Time)** (the “Cure Objection Deadline”).

Absent a timely objection, the assumption of each executory contract or unexpired lease may become effective on the date set forth in **Exhibit A**, or such other date as the Debtor and the counterparty or counterparties to such Potential Transferred Contract may agree. If an objection is timely filed and not withdrawn or resolved, such objection will be heard at the Sale Hearing or such other date and time as agreed to by the Debtor and the objecting party or ordered by the Court. If such objection is overruled or withdrawn, the applicable Potential Transferred Contract shall be assumed as of the date set forth in **Exhibit A** or such other date as the Debtor and the counterparty or counterparties to such Potential Transferred Contract may agree.

Dated: August [●], 2025

Respectfully submitted,

/s/ Jonathan A. Margolies

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Co-Counsel to the Debtor and Debtor-in-Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS (TOPEKA DIVISION)**

In re:

LODGING ENTERPRISES, LLC,

Debtor.

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Chapter 11

Case No. 24-40423

BID PROCEDURES

On June 26, 2024 (the “Petition Date”), Lodging Enterprises, LLC (the “Debtor”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Kansas (the “Court”).

On April [●], 2025, the United States Bankruptcy Court for the District of Kansas (the “Court”) entered the *Order (I) Approving the Bid Procedures for the Sale of Substantially All of the Debtor’s Assets; (II) Scheduling Certain Dates with Respect Thereto; (III) Authorizing the Debtor to Designate Stalking Horse Bidders; (IV) Approving Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases; (V) Approving the Form and Manner of Notice of the Sale Hearing and Assumption and Assignment Procedures; and (VI) Granting Related Relief* [Docket No. ●] (the “Bid Procedures Order”),¹ granting the Motion² which, among other things, resulted in the approval of these Bid Procedures. These Bid Procedures set forth the process by which the Debtor is authorized to conduct a marketing and auction process (the “Sale Process”) for the sale of substantially all of the Debtor’s assets, including 40 of its hotels and 27 restaurants (collectively, the “Portfolio”) in furtherance of an asset sale transaction (a “Sale Transaction”).

On ~~April [●]~~ March 25, 2025, the Court entered ~~the Order (I) Approving a Settlement Pursuant to Fed. R. Bankr. P. 9019; and (II) Granting Related Relief [Docket No. ●] (the “Settlement Agreement Order”), approving the terms of a Settlement Agreement between the Debtor a Stipulation and Agreed Order between the Official Committee of Unsecured Creditors and the Prepetition Secured Parties, which are collectively, Wilmington Trust, National Association, as Trustee for the benefit of the Registered Holders of UBS Commercial Mortgage Trust 2019-C18, Commercial Mortgage Pass-Through Certificates, acting by and through Rialto Capital Advisors, LLC (in its capacity as Special Servicer) (the “Settlement Agreement”). The Settlement Agreement contains terms that govern the~~

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bid Procedures Order or the Bid Procedures, as applicable.

² Debtor’s Motion for Entry of Order: (I) Approving Bid Procedures for the Sale of Substantially All of the Debtor’s Assets, (II) Scheduling Certain Dates with Respect Thereto; (III) Authorizing the Debtor to Designate Stalking Horse Bidders; (IV) Approving Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases; (V) Approving the Form and Manner of Notice of the Sale Hearing and Assumption and Assignment Procedures; And (Vi) Granting Related Relief [Docket No. ●]

~~rights between the Debtor and the Prepetition Secured Parties, among others, relative to the sale process contemplated herein. The terms of the Settlement Agreement shall govern if there are any inconsistencies between the Bid Procedures Order and the Settlement Agreement.~~ to Extend the Challenge Period [Docket No. 440], fixing a period (the “Challenge Period”) that expires June 2, 2025 as the deadline for the Committee to file an adversary complaint challenging the validity, enforceability, priority or extent of the Prepetition Secured Parties’ liens (a “Challenge”).

For the avoidance of doubt, the Debtor, in the exercise of its business judgment and after consultation with the Committee, may, subject to the terms of the Settlement Agreement, elect to exclude any portion of the Portfolio from the Bid Procedures and sell such portion(s) of the Portfolio at either a private or public sale, subject to the Court’s approval of any alternative sale method and the terms of the Settlement Agreement. For the avoidance of doubt, the Debtor is prohibited from selling cash or cash equivalents. Further, the Debtor may determine in its discretion, whether to proceed with a Sale Transaction pursuant to the Bid Procedures and the Settlement Agreement.

Copies of the Bid Procedures Order and other related documents are available on the Court’s website at <https://www.ksb.uscourts.gov/> or free of charge on the website maintained by the Debtor’s Claims and Noticing Agent, Kroll Restructuring Administration LLC, at <https://cases.ra.kroll.com/lodgingenterprises/>.

DEBTOR REPRESENTATIVES AND CONTACT INFORMATION	
Counsel to the Debtor	
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Siegfried & Bingham, P.C.	Attn: Jonathan A. Margolies (jmargolies@sb-kc.com) Tel: 816-421-4460

I. KEY DATES AND DEADLINES.

Event or Deadline	Date
Bid Procedures Hearing	April 17, 2025
Deadline to File Stalking Horse Notice(s)	June 25, 2025

Deadline to Object to Designation of any Stalking Horse Bidder(s)	~~Five~~ Seven (~~5~~ 7) business days following filing of the applicable Stalking Horse Notice
Bid Deadline	August 14, 2025
Deadline to File Potential Assumption Notice	August 21, 2025
Auction (if necessary)	August 28, 2025
Deadline to Announce Winning Bidder(s)	September 2, 2025
Cure Objection Deadline	September 16, 2025
Sale Objection Deadline	September 16, 2025
Sale Hearing	Approximately twenty-one (21) days after Winning Bidder(s) Announced

II. SUBMISSIONS TO THE DEBTOR

All submissions to the Debtor required or permitted to be made under the Bid Procedures (including bids) must be directed to each of the following persons or entities unless otherwise provided (collectively, the “Notice Parties”). Unless specifically provided otherwise herein, e-mail shall be sufficient.

- A. Debtor: Tom Wenner, Chief Restructuring Officer (twenner@vcmgam.com).
- B. Debtor’s Counsel: Hunton Andrews Kurth LLP, 600 Travis Street, Ste. 4200, Houston, Texas 77002, Attn: Timothy A. (“Tad”) Davidson II (taddavidson@HuntonAK.com) and Brandon Bell (bbell@HuntonAK.com); Hunton Andrews Kurth LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn: Jason W. Harbour (jharbour@HuntonAK.com); Siegfried & Bingham, P.C., 2323 Grand Boulevard, Ste. 1000, Kansas City, Missouri, Attn: Jonathan A. Margolies (jmargolies@sb-kc.com).

III. MARKETING PROCESS.

The Debtor, in consultation with its real estate broker (the “Broker”)³, is developing a list of buyers whom they believe may be interested in, and whom the Debtor reasonably believes would have the financial resources to consummate, a Sale Transaction (collectively, the “Contact Parties”). The Debtor will continue to develop, and may supplement, the list of Contact Parties throughout the marketing process, as appropriate.

The Debtor may distribute (if not already distributed) to each Contact Party and any other Potential Bidder an “Information Package” consisting of:

- (i) a copy of the Bid Procedures and Bid Procedures Order;

³ The Debtor intends to retain CBRE, Inc.

- (ii) a form confidentiality agreement; and
- (iii) any other materials appropriate under the circumstances.

IV. STALKING HORSE BIDDERS

~~The~~With the consent of the Committee, the Debtor shall be authorized, but not obligated, in the exercise of its business judgment, subject to the notice requirements and objection procedures set forth in the Bid Procedures Order ~~and the Settlement Agreement~~, to:

- (a) select one or more Potential Bidders to act as stalking horse bidders in connection with a Sale Transaction, including a Sale Transaction with respect to a subset of the Portfolio (each, a “Stalking Horse Bidder”) and enter into a purchase agreement with respect to a Sale Transaction with such Stalking Horse Bidder (each such agreement, a “Stalking Horse Agreement”); and
- (b) the Debtor, after consultation with the Prepetition Secured Parties and the Committee, may seek to offer any Stalking Horse Bidder(s) certain customary bid protections, including, but not limited to, a market-driven break-up fee, an expense reimbursement, and a minimum overbid at an Auction (collectively, “Bid Protections”); *provided* that if the Debtor seeks to offer a Stalking Horse Bidder Bid Protections, the Debtor will file a separate motion seeking approval of any such Bid Protections from the Court. No later than one (1) business day after selecting a Stalking Horse Bidder, the Debtor shall file with the Court and serve a notice (a “Stalking Horse Notice”) (a) identifying the Stalking Horse Bidder, the material terms of the Stalking Horse Bid (including the purchase price and the Portfolio (or subset thereof) subject to such Stalking Horse Bid), and (b) attaching a copy of the relevant Stalking Horse Agreement. Any objection to the designation of the Stalking Horse Bidder set forth in the Stalking Horse Notice (a “Stalking Horse Objection”) shall be filed no later than the date that is five (5) business days after the date of service of the applicable Stalking Horse Notice. If a timely Stalking Horse Objection is filed, the proposed designation of the Stalking Horse Bidder shall not be deemed approved unless approved by separate order of the Court. If no Stalking Horse Objection is timely filed and served with respect to a Stalking Horse Bid such Stalking Horse Bidder shall be deemed approved without further order of the Court upon the expiration of ~~five~~seven (~~5~~7) business days after service of the Stalking Horse Notice.

V. PARTICIPATION REQUIREMENTS.

To participate in the bidding process or otherwise be considered for any purpose hereunder, a person or entity interested in consummating a Sale Transaction, other than an insider of the Debtor, as defined by section 101(31) of the Bankruptcy Code, must deliver or have previously delivered to the Notice Parties an executed confidentiality agreement on terms acceptable to the Debtor (a “Confidentiality Agreement”). Such person or entity that has delivered an executed Confidentiality Agreement shall be considered a potential bidder (a “Potential Bidder”). ~~The Prepetition Secured Parties are deemed and approved as~~For the avoidance of doubt, an insider of the Debtor, as defined by section 101(31) of the Bankruptcy Code, is prohibited from participating in the bidding process and cannot be considered a Potential Bidder.

VI. DUE DILIGENCE.

A. Bidder Diligence.

Only Potential Bidders shall be eligible to receive due diligence information and access to the Debtor's electronic data room (the "Data Room") and to additional nonpublic information regarding the Debtor. All due diligence requests must be directed to the Broker. The Debtor will make reasonable efforts to address all reasonable requests for additional information and due diligence access, and the Debtor will endeavor to post substantially all written due diligence provided to any Potential Bidder to the Data Room.

Potential Bidders may also, upon delivery of an executed access agreement on terms acceptable to the Debtor (an "Access Agreement") and in coordination with the Broker regarding the timing of any such on-site inspection, be afforded access to the properties comprising the Portfolio to conduct on-site inspections as part of such Potential Bidder's due diligence.

The Debtor may refuse any party access to due diligence information, including access to the Data Room, in whole or in part and at any time, if the Debtor determines in its reasonable business judgment, in consultation with counsel and the Committee, that (i) access by such party may be harmful to the Debtor or its estate (including due to commercial sensitivity) or (ii) such party has not established, or has raised doubt, that it intends or has the capacity to consummate the proposed Sale Transaction in good faith.

The due diligence period and the Data Room shall be open until the Bid Deadline. After the Bid Deadline, the Debtor shall have no obligation to furnish due diligence information. The Debtor may, in its discretion, extend a party's time to conduct due diligence.

The Debtor makes no representation or warranty as to the information provided through this due diligence process or otherwise, including the documents in the Data Room, except as set forth in any Definitive Sale Documents (as defined below). Nothing herein shall obligate the Debtor or its representatives to furnish information of any kind whatsoever to any person.

Potential Bidders shall not, directly or indirectly, contact any customer, supplier, lender (including, but not limited to, the Prepetition Secured Parties), or contractual counterparty of the Debtor in respect of matters relating to the Debtor or a potential transaction with the Debtor (or otherwise initiate, participate in, or engage in such discussions with such parties) without the prior written consent of the Debtor.

B. Debtor Information Requests.

Each Potential Bidder shall comply with all reasonable requests for additional information and due diligence access requested by the Debtor, the Broker, or the Debtor's other advisors regarding the ability of such Potential Bidder to consummate the proposed Sale Transaction. Failure by a Potential Bidder to comply with such reasonable requests for additional information and due diligence access may be a basis for the Debtor to determine, following consultation with the Committee, that such bidder may no longer participate in

diligence (including access to the Data Room) or that a bid made by such bidder is not a Qualified Bid.

VII. RESTRICTIONS ON COMMUNICATIONS.

There shall be no communications between or among Potential Bidders unless the Debtor's advisors have authorized such communication in writing.

The Debtor reserves the right, in its reasonable business judgment and after consultation with the Committee, to disqualify any Potential Bidders that have communications between or amongst themselves without the prior authorization of the Debtor's advisors.

For the avoidance of doubt, to the extent any Potential Bidders are interested in joining bids, the Debtor's advisors, in consultation with the Committee, will facilitate the communications between such parties and the potential joining of bids.

VIII. BID DEADLINES.

All bids must be transmitted via e-mail (in .pdf or similar format) to the Debtor and its advisors specified herein so as to be actually received on or before **August 14, 2025, at 4:00 p.m. (prevailing Central Time)** (the "Bid Deadline"), which deadline may be extended by the Debtor with the consent of the Committee.

IX. BID REQUIREMENTS.

Only bids and bidders that satisfy the following requirements as determined by the Debtor in its business judgment and with the consent of the Committee (collectively, the "Bid Requirements") will be permitted to participate in the bidding (and Auction, if applicable) and be considered for one or more Sale Transaction(s):

- A. **Written, Binding Bid**. Each bid must be timely and properly submitted in accordance with the bid submission process set forth herein, including successful and timely delivery of the Good Faith Deposit (as defined below). All bids must be binding and irrevocable unless and until the Debtor accepts a higher bid and such bidder is not selected as the Back-Up Bidder (as defined below).
- B. **Identity**. Each bid must fully disclose the identity of each entity and each entity's shareholders, partners, investors, and ultimate controlling entities that will be bidding for or purchasing the Portfolio (or any subset thereof) or otherwise participating in connection with such bid, and the complete terms of any such participation, along with sufficient evidence that the bidder is legally empowered to complete the transactions on the terms contemplated by the parties. "Participation" in a bid includes persons or entities that are equity holders in an entity specially formed for the purpose of effectuating the Sale Transaction. Each bid must also include contact information for the specific person(s) whom the Debtor (and its advisors) should contact regarding such bid. Each such person or

entity shall have delivered an executed Confidentiality Agreement to the Debtor in accordance with the instructions set forth above.

- C. **Proposed Sale Transaction.** Each bid must clearly state whether the bidder seeks to acquire the entirety of the Portfolio or a subset thereof and which liabilities the bidder agrees to assume. Each bid must clearly set forth the purchase price to be paid, including cash and non-cash components, if any, including any assumption of liabilities (collectively, the “Proposed Purchase Price”). The Proposed Purchase Price should be a single point value in U.S. Dollars for the total value of the Portfolio, or subset thereof, the Potential Bidder seeks to acquire on a cash-free, debt-free basis.
- D. **Deposit.** Each bid must be accompanied by a cash deposit equal to ten percent (10%) of the Proposed Purchase Price of such bid, submitted by wire transfer of immediately available funds to an interest-bearing escrow account to be identified and established by the Debtor (the “Good Faith Deposit”). To the extent a Qualified Bid is modified before, during, or after the Auction in any manner that increases the Proposed Purchase Price contemplated by such Qualified Bid, the Debtor reserves the right, after consultation with the Committee, to require that such Qualified Bidder increase its Good Faith Deposit so that it equals ten percent (10%) of the increased Proposed Purchase Price; *provided, however*, that the Debtor may, on a case-by-case basis, elect to waive the requirement that a Qualified Bidder deliver the initial Good Faith Deposit if such Qualified Bidder otherwise provides the Debtor with sufficient evidence satisfactory to the Debtor, in its business judgment, that such Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed Sale Transaction and to fully satisfy the Qualified Bidder’s obligations under its bid.
- E. **Minimum Bid.** In the event the Debtor, with the consent of the Committee, has selected one or more Stalking Horse Bidders, each bid submitted must, either: (a) (i) provide for the payment of aggregate consideration for the same assets that is in excess of at least the sum of (x) the Purchase Price (as defined in the Stalking Horse Agreement), (y) any Bid Protections approved by the Court, and (z) the Initial Bid Increment (as defined below) ((x)-(z), collectively, the “Minimum Overbid”), *plus* (ii) assume the Assumed Liabilities or (b) propose an alternative transaction that, in the Debtor’s business judgment after consultation with the Committee, provides higher value or better terms than the Stalking Horse Bid, if any, including by exceeding the Minimum Overbid, and after taking into account, in light of all the Bids submitted for the Portfolio or any subset of the properties comprising the Portfolio, is determined by the Debtor, in consultation with the Committee, to be in the best interests of the Debtor’s estate. For the avoidance of doubt, as to clause (b) in this Section IX.E, the Debtor may evaluate each Bid in light of each of the factors set forth therein, but a Bid is not required to meet each factor in order to be determined a Qualified Bid.

The Debtor may consider a Bid for a portion of the Portfolio (each such bid, a “Partial Bid”).

If the value of a competing Qualified Bid (whether such Qualified Bid is for all of the Portfolio or is a Partial Bid) relative to the Stalking Horse Bid, if any, includes additional non-cash components (such as fewer contingencies than are in the Stalking Horse Agreement, if any), the bidder should include an analysis or description of the value of any such additional non-cash components, including any supporting documentation, to assist the Debtor in better evaluating the competing Qualified Bid.

“Initial Bid Increment” shall be determined by the Debtor in the Debtor’s good faith business judgment after consultation with the Debtor’s advisors, including the Broker, and the Committee.

- F. **Transaction Documents.** Each bid must be accompanied by an executed purchase agreement with respect to the proposed Sale Transaction, including the exhibits, schedules, and ancillary agreements related thereto and any other related material documents integral to such bid. In addition, the executed purchase agreement accompanying such bidder’s bid must be further accompanied by a redline copy marked to reflect any amendments or modifications to such form purchase agreement or Stalking Horse Agreement.
- G. **Back-Up Bidder Commitment.** Each bid must include a written commitment by the bidder to serve as a Back-Up Bidder in the event that such bidder’s bid is not selected as the Winning Bid but is the next highest or otherwise best bid.
- H. **Proof of Financial Ability to Perform.** Each bid must include written evidence sufficient for the Debtor to reasonably conclude that the bidder has the necessary financial ability to close the proposed Sale Transaction(s). Such information must include the following:
 - 1. contact names and telephone numbers for verification of financing sources;
 - 2. evidence of the bidder’s internal resources and, if applicable, proof of unconditional, fully executed, and effective financing commitments from one or more reputable sources in an aggregate amount equal to the Cash portion of such bid (including, if applicable, the payment of cure amounts), in each case, as are needed to close the Sale Transaction;
 - 3. a description of the bidder’s pro forma capital structure; and
 - 4. any other financial disclosure or credit-quality support information or enhancement reasonably requested by the Debtor to demonstrate that such bidder has the ability to close the proposed Sale Transaction(s).

- I. **Contingencies; No Financing or Diligence Outs.** Each bid shall not be conditioned on the obtaining of, or the sufficiency of, financing or any internal approval, or on the outcome or review of due diligence. Each bid must identify with particularity each and every condition to closing.
- J. **Authorization.** Each bid must contain evidence acceptable to the Debtor, in consultation with the Committee, that (i) the bidder has obtained authorization or approval from its board of directors (or a comparable governing body) with respect to the submission of its bid and the consummation of the Sale Transaction, (ii) no other consent or approval is required for the bid or the consummation of the Sale Transaction, and (iii) there is no other restriction or prohibition on bid or the consummation of the Sale Transaction.
- K. **Contracts and Leases.** Each bid must identify each and every executory contract and unexpired lease to be assumed and assigned in connection with the proposed Sale Transaction (collectively, the “Potential Transferred Contracts”). Each bid must be accompanied by adequate assurance of future performance under all Potential Transferred Contracts, which shall include audited and unaudited financial statements, tax returns, bank account statements, and a description of the business to be conducted at the premises, and such other documentation as the Debtor may request (the “Adequate Assurance Package”). The Adequate Assurance Package should be submitted in its own compiled PDF document.
- L. **As-Is, Where-Is.** Each bid must include a written acknowledgement and representation that the bidder: (1) has had an opportunity to conduct any and all due diligence regarding the Sale Transaction prior to making its offer; (2) has relied solely upon its own independent review, investigation, or inspection of any documents, other diligence materials, and/or the Portfolio in making its bid; and (3) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, by the Debtor or its advisors or other representatives regarding the Sale Transaction or the completeness of any information provided in connection therewith or the Auction (if any).
- M. **No Fees.** Each bidder will bear its own costs and expenses (including legal fees) in connection with the proposed Sale Transaction. Each bid, other than a Stalking Horse Bid, shall indicate that such bidder will not seek any transaction break-up fee, termination fee, expense reimbursement, working fee, broker’s fee or similar type of payment.
- N. **Commitment to Close.** Each bid must provide a commitment to close as soon as practicable, but in no event later than thirty (30) calendar days after the entry of the Order approving such Sale Transaction.
- O. **Joint Bids.** The Debtor, with the consent of the Committee, will be authorized to approve joint bids in its reasonable discretion on a case-by-case basis; *provided*

that the foregoing is subject to the restrictions on communications between Potential Bidders set forth herein.

- P. **Compliance with Bidding Procedures, Bankruptcy Code, and Non-Bankruptcy Law; Acknowledgment.** Each bid must comply in all respects with these Bid Procedures, the Bankruptcy Code, and any applicable non-bankruptcy law. Each bid must also include a written acknowledgment that the bidder agrees to all of the terms of the Sale Transaction set forth in these Bid Procedures and that it has not engaged in any collusion, coordination, or unfair competitive practices with respect to its bid. By submitting its bid, each bidder agrees not to submit a bid or seek to reopen the Sale Process or the Auction (if held) after conclusion of the selection of the Winning Bidder(s) (as defined below).
- Q. **Consent to Jurisdiction.** Each bidder must submit to the jurisdiction of the Court and waive any right to a jury trial in connection with any disputes relating to the Debtor's qualification of bids, the Auction (if held), the construction and enforcement of these Bid Procedures, any Definitive Sale Documents, and consummation of the Sale Transaction, as applicable.

The submission of a bid shall constitute a binding and irrevocable offer (a) for the Winning Bidder(s) and Back-Up Bidder(s), until consummation of the Sale Transaction and (b) for any bidder other than the Winning Bidder(s) and Back-Up Bidder(s), until two business days after entry of the order approving the Winning Bid(s) and (if applicable) the Back-Up Bid(s) for the Portfolio, and each bid must include a written acknowledgement and representation to such effect.

X. QUALIFIED BIDS, QUALIFIED BIDDERS, AND BID PAIRING.

A bid is "Qualified Bid" if the Debtor, in the Debtor's business judgment and after consultation with the Committee, determines that such bid (A) satisfies the Bid Requirements set forth above; and (B) is reasonably likely to be consummated if selected as the Winning Bid (or Back-Up Bid, as applicable) (as defined below) for the Portfolio, no later than the Applicable Outside Date. The "Applicable Outside Date" is **November 30, 2025**. A Potential Bidder that submits a Qualified Bid is a "Qualified Bidder" with respect to the Portfolio or the subset of the properties comprising the Portfolio to which such Qualified Bid relates.

Prior to the Auction (if held), the Debtor shall determine, with the consent of the Committee, which bidders are Qualified Bidders and will notify the bidders whether bids submitted constitute Qualified Bids, which will enable such Qualified Bidders to participate in the Auction (if held). Any bid that is not deemed a Qualified Bid shall not be considered by the Debtor; *provided, however*, that if the Debtor receives a bid that does not satisfy the requirements of a Qualified Bid, the Debtor may, ~~in its discretion~~ with the consent of the Committee, provide the applicable bidder with the opportunity to remedy any deficiencies prior to the Auction.

As soon as reasonably practicable after the Bid Deadline, the Debtor will notify each Potential Bidder whether such party is a Qualified Bidder.

Between the date that the Debtor notifies a Potential Bidder that it is a Qualified Bidder and the date set for the Auction, the Debtor may, in consultation with the Committee, discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtor and the Committee, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the Proposed Purchase Price, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bid Procedures; *provided* that any Qualified Bid may be improved at the Auction (if any) as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bid Procedures.

Notwithstanding anything herein to the contrary, the Debtor reserves the right, with the consent of the Committee, to work with (A) Potential Bidders to aggregate two or more bids into a single consolidated bid prior to the Bid Deadline and (B) Qualified Bidders to aggregate two or more Qualified Bids into a single Qualified Bid prior to the conclusion of the Auction (if any). The Debtor reserves the right, with the consent of the Committee, to cooperate with any Potential Bidder to cure any deficiencies in a bid that is not initially deemed to be a Qualified Bid.

For the avoidance of doubt, a Stalking Horse Bidder, if any, shall be deemed to be a Qualified Bidder, a Stalking Horse Bid shall be deemed a Qualified Bid, and a Stalking Horse Bidder may participate in the Auction.

Notwithstanding the Bid Requirements set forth herein or requirements otherwise approved by the Court, the Prepetition Secured Parties ~~reserve their~~ will only have the right to submit a credit bid ~~for all or any portion of the Portfolio at any time if,~~ prior to any Auction ~~and any credit bid submitted by the Prepetition Secured Parties (or their assignee) that is in an amount in excess of the Purchase Price referenced in IX.E. shall be deemed a Qualified Bid and the Prepetition Secured Parties (or their assignee) shall be a Qualified Bidder with respect thereto.,~~ (a) the Challenge Period has expired without a Challenge having been brought, or (b) a final order has been entered denying any Challenge that was brought prior to the expiration of the Challenge Period.

XI. NO QUALIFIED BIDS.

If no Qualified Bids other than a Stalking Horse Bid are received by the Bid Deadline ~~and if the Prepetition Secured Parties have advised the Debtor in writing that they will not exercise their credit bid rights (as set forth in the Settlement Agreement),~~ then the Debtor, with consent of the Committee, may cancel the Auction, ~~and may decide, in the Debtor's reasonable business judgment,~~ to designate the Stalking Horse Bid as the Winning Bid, and pursue approval of the Sale Transaction to the Stalking Horse Bidder, if any, pursuant to the Stalking Horse Agreement. The Debtor shall promptly file notice of any cancellation of the Auction and designation of the Stalking Horse Bid as the Winning Bid with the Court. ~~In that circumstance, the Prepetition Secured Parties shall be deemed the Back-Up Bidder in the~~

~~amount of the Stalking Horse Bid and may pursue, at their discretion, to close that Back-Up Bidder Sale Transaction should the Stalking Horse Bidder fail to timely close on its Winning Bid.~~

XII. AUCTION.

If the Debtor receives two or more Qualified Bids with respect to the Portfolio, or a subset thereof, the Debtor ~~may~~shall conduct an auction to determine the Winning Bidder (or Back-Up Bidder, as applicable) with respect to the Portfolio or applicable subset thereof (any such auction, an “Auction”). In such event, the Debtor will (A) notify all Qualified Bidders of the highest or otherwise best Qualified Bid with respect to the Portfolio or subset thereof, as determined by the Debtor in its business judgment and with the consent of the Committee (each such Qualified Bid, a “Baseline Bid”) and (B) provide copies of the documents supporting the Baseline Bid(s) to all Qualified Bidders and their respective advisors (if any), in each case, as soon as reasonably practicable after the Bid Deadline. The Debtor’s determination of which Qualified Bid(s) constitute the Baseline Bid(s) shall take into account any factors the Debtor, in its business judgment and consultation with the Committee, deems relevant to the value of the Qualified Bid to the Debtor’s estate.

The Auction (if any) shall take place on **August 28, 2025, at 9:00 a.m. (prevailing Central Time)**, via remote video or in person at the Debtor’s election and at a location to be determined by the Debtor, and shall be conducted in a timely fashion according to the following procedures (the “Auction Procedures”), provided, however, that the Debtor shall have the right, with the consent of the Committee, to adjourn the Auction to a later date by filing a notice of the adjournment on the Court’s docket:

AUCTION PROCEDURES

- A. **The Debtor Shall Conduct the Auction; General Provisions.** The Debtor, with the assistance of its advisors and in consultation with the Committee, shall direct and preside over any Auction. At the commencement of the Auction, the Debtor (1) may announce procedural and related rules governing the Auction, including time periods available to all Qualified Bidders to submit any successive bid(s); and (2) shall describe the terms of the Baseline Bid(s). Only incremental bids that comply with the terms set forth in section XII.B of these Bid Procedures shall be considered “Overbids.” All material terms of each Overbid shall be fully disclosed to all other Qualified Bidders. The Debtor shall determine in its reasonable business judgment and in consultation with the Committee whether an incremental bid is an “Overbid.” The Debtor shall maintain a written transcript of all bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Winning Bid(s) (or Back-Up Bid(s), as applicable) (as defined below). ~~If the Prepetition Secured Parties submit a Qualified Bid and are not the Winning Bidder or the Back-Up Bidder, then the Prepetition Secured Parties shall be deemed a Back-Up Back-Up Bidder, meaning it will have the right to close on its Credit Bid Rights should the Winning Bid(s) and Back-Up Bid(s) fail to timely close.~~

Only Qualified Bidders, the Debtor, the respective legal and financial advisors of the foregoing, counsel to the Committee, and any other parties specifically invited or permitted to attend by the Debtor, shall be entitled to attend the Auction, and the Qualified Bidders shall appear at the Auction remotely or in person in accordance with the Debtor's directions and may speak or bid themselves or through duly authorized representatives. Except as otherwise permitted by the Debtor with consent of the Committee, only Qualified Bidders shall be entitled to bid at the Auction.

The Debtor has the right to request any additional information that will allow the Debtor to make a reasonable determination as to a Qualified Bidder's financial and other capabilities to consummate the transactions contemplated by their proposal and any further information that the Debtor, in consultation with the Committee, believes is reasonably necessary to clarify and evaluate any bid made by a Qualified Bidder during the Auction.

B. Terms of Overbids. Each Overbid must comply with the following terms:

1. Minimum Overbid Increment. At the commencement of the initial solicitation of Overbids, the Debtor shall announce the minimum increment by which any Overbid must exceed the applicable Baseline Bid (the "Bidding Increment"). At the commencement of each subsequent round of solicitation of Overbids, the Debtor shall announce the Bidding Increment by which any Overbid must exceed the Prevailing Highest Bid (as defined below) at such time. The Debtor may, in its reasonable business judgment and with the consent of the Committee, announce increases or reductions to the Bidding Increment at any time during the Auction.
2. Stalking Horse Breakup Fee Credit. When bidding at the Auction, the Stalking Horse Bidder, if any, will receive a cash credit in the amount of the any Bid Protections approved by the Court *plus* the Initial Bid Increment.
3. Conclusion of Each Overbid Round. Upon the solicitation of each round of Overbids, the Debtor may announce a deadline by which time any Overbids must be submitted to the Debtor (an "Overbid Round Deadline"); *provided* that the Debtor, in its reasonable business judgment and with the consent of the Committee, may extend any Overbid Round Deadline.
4. Overbid Alterations. An Overbid may contain alterations, modifications, additions, or deletions of any terms of the bid no less favorable in the aggregate to the Debtor's estate than any prior Qualified Bid or Overbid, as determined in the Debtor's business judgment and with the consent of

the Committee, but shall otherwise comply with the terms of these Bid Procedures.

5. **Announcing Highest Bid.** Subsequent to each Overbid Round Deadline, the Debtor shall announce whether the Debtor has identified an Overbid as being higher or otherwise better than the Baseline Bid, in the initial Overbid round, or, in subsequent rounds, the Overbid previously designated by the Debtor as the prevailing highest or otherwise best bid (the “Prevailing Highest Bid”). The Debtor shall describe to all applicable Qualified Bidders the material terms of any new Overbid designated by the Debtor as the Prevailing Highest Bid, as well as the value the Debtor attributes to such Prevailing Highest Bid.

C. **Consideration of Overbids.** The Debtor reserves the right, in its business judgment and with the consent of the Committee, to adjourn the Auction one or more times, to, among other things (1) facilitate discussions between the Debtor and Qualified Bidders, (2) allow Qualified Bidders the opportunity to consider how they wish to proceed, and (3) provide Qualified Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor, in its business judgment and with the consent of the Committee, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent financing commitments to consummate the proposed Sale Transaction at the prevailing Overbid amount.

D. **No Round-Skipping.** To remain eligible to participate in the Auction, in each round of bidding, each Qualified Bidder, other than the Qualified Bidder that submitted the Prevailing Highest Bid, must submit an Overbid with respect to such round of bidding and to the extent a Qualified Bidder fails to submit an Overbid with respect to such round of bidding, such Qualified Bidder shall be disqualified from continuing to participate in the Auction; *provided* that the Debtor may, waive such requirement in its business judgment and with the consent of the Committee.

E. **Closing the Auction.** The Auction shall continue until the Debtor, in its business judgment and with the consent of the Committee, designates a Qualified Bid to be the highest or otherwise best Qualified Bid for the Portfolio or applicable subset of the properties comprising the Portfolio. Such Qualified Bid or Bids shall be designated the winning bid (the “Winning Bid” and such bidder, the “Winning Bidder”) for the Portfolio (or subset thereof), at which time the Auction with respect to the Portfolio shall be closed; *provided* that (1) such Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid to the then Prevailing Highest Bid; and (2) the Debtor’s designation of a Qualified Bid as a Winning Bid (or Back-Up Bid, as applicable) shall be subject to and conditioned on the Court’s approval of such Winning Bid (or Back-Up Bid, as applicable) and the Sale Transaction contemplated thereby (but, for the avoidance of doubt, any Winning Bid(s) and Back-Up Bid(s) shall be binding and irrevocable pending Court approval).

Notwithstanding the foregoing, the Debtor may require last and final “blind” bids ~~in the Debtor’s discretion~~ with the consent of the Committee.

- F. **No Collusion; Good Faith Offer.** Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that (1) it has not engaged in any collusion, coordination, or unfair competitive practices with respect to the bidding process and (2) its Qualified Bid is a good faith, irrevocable, bona fide offer and it intends to consummate the Sale Transaction contemplated by its Qualified Bid if such Qualified Bid is the Winning Bid (or Back-Up Bid, as applicable) for the Portfolio (or subset thereof); *provided, however,* that two or more Qualified Bidders may coordinate to the extent they wish to provide a combined bid if the Debtor, with the consent of the Committee, approves such coordination in its reasonable discretion.
- G. **Rejection of Bids.** The Debtor, in its business judgment and with the consent of the Committee, may reject, at any time before entry of an order of the Court approving a Winning Bid (or Back-Up Bid, as applicable), any bid that the Debtor determines is (1) inadequate or insufficient, including but not limited to the Debtor’s good faith belief regarding creditworthiness or ability to perform, (2) not in conformity with the requirements of the Bankruptcy Code and/or these Bid Procedures, or (3) contrary to the best interests of the Debtor, its estate, its creditors, and other stakeholders.

For the avoidance of doubt, nothing in the Auction Procedures (if an Auction is held) shall prevent the Debtor from exercising its fiduciary duties under applicable law (as determined in good faith by the Debtor). Further, if the Debtor, after consultation with the Committee, determines that it is not in the best interest of its estate to pursue an Auction, then the Debtor may cancel the Auction. If the Auction is cancelled, the Debtor shall file a notice of cancellation of the Auction with the Court.

XIII. DESIGNATION OF A BACK-UP BIDDER.

The Qualified Bidder(s) with the second highest or otherwise best bid(s) or combination(s) of bids (each, a “Back-Up Bid,” and such bidder, a “Back-Up Bidder”) to purchase any or all of the Portfolio will be determined by the Debtor at the conclusion of the Auction and will be announced at that time to all the Qualified Bidders participating in the Auction. Each Back-Up Bidder shall be required to keep its Back-Up Bid open and irrevocable until the closing of the transaction with the applicable Winning Bidder. The Back-Up Bidder’s Good Faith Deposit shall be held in escrow until the closing of the transaction with the applicable Winning Bidder. If for any reason a Winning Bidder fails to timely consummate the purchase of the Portfolio (or subset thereof), then the Back-Up Bidder will automatically be deemed to have submitted the Winning Bid for the Portfolio (or subset thereof), and the Back-Up Bidder shall be deemed a Winning Bidder for the Portfolio (or subset thereof). The Debtor will be authorized, but not required, to consummate the transaction pursuant to the Back-Up Bid. If the Back-Up Bid has already been approved by the Court, then the Debtor shall be authorized to

close without further order of the Court upon at least twenty-four hours' advance notice, which notice will be filed with the Court. In the event the Back-Up Bidder becomes the Winning Bidder the Sale Transaction for such then-Winning Bid shall close: (i) if the applicable Back-Up Bid has already been approved by the Court, then, consistent with Section IX.N of these Bid Procedures, no later than thirty (30) calendar days after the Debtor providing the Back-Up Bidder written notice (email being sufficient) of intent to consummate the Sale Transaction to the Back-Up Bidder; or (ii) if the applicable Back-Up Bid has not yet been approved by the Court, then, consistent with Section IX.N of these Bid Procedures, no later than thirty (30) calendar days after the Court enters an order approving such Back-Up Bid.

XIV. APPROVAL OF SALE.

The Debtor will present the results of the Auction to the Court for approval at the Sale Hearing, at which certain findings will be sought from the Court regarding the Auction, including, among other things, that: (A) the Auction was conducted, and the Winning Bidder or Winning Bidders were selected, in accordance with these Bid Procedures; (B) the Auction was fair in substance and procedure; (C) the Winning Bid or Winning Bids were Qualified Bids as defined in these Bid Procedures; and (D) consummation of any Sale Transaction(s) as contemplated by the Winning Bid(s) in the Auction will provide the highest or otherwise best offer for the Debtor and the Portfolio and is in the best interests of the Debtor and its estate.

The Sale Hearing is presently scheduled to commence on **September [●] 2025**, at ___:___ a.m/p.m. (prevailing Central Time), or as soon thereafter as counsel may be heard, before the Honorable Dale L. Somers, United States Bankruptcy Court for the District of Kansas.

XV. FIDUCIARY OUT.

Notwithstanding anything to the contrary in these Bid Procedures or any document filed with or entered by the Court, nothing in the Bid Procedures or the Bid Procedures Order shall require the Debtor or its board of directors, board of managers, or similar governing body to take any action or to refrain from taking any action with respect to a Sale Transaction or the Bid Procedures to the extent the Debtor or its governing body determines in good faith, in consultation with counsel, that taking or failing to take such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

Further, notwithstanding anything to the contrary in these Bid Procedures or any document filed with or entered by the Court, until the closing of the Auction (if any), the Debtor and its respective directors, managers, officers, employees, financial advisor, attorneys, accountants, consultants, and other advisors or representatives shall have the right to: (A) consider, respond to, and facilitate alternate proposals for sales or other transactions involving the Portfolio (or subset thereof) (each, an "Alternate Proposal"); (B) provide access to non-public information concerning the Debtor to any entity or enter into confidentiality agreements or nondisclosure agreements with any entity; (C) maintain or continue discussions or negotiations with respect to Alternate Proposals; (D) otherwise cooperate with, assist, participate in, or facilitate any inquiries, proposals, discussions, or negotiations of Alternate Proposals; and (E)

enter into or continue discussions or negotiations with any person or entity regarding any Alternate Proposals.

XVI. “AS IS, WHERE IS,” FREE-AND-CLEAR SALE.

Consummation of a Sale Transaction will be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Debtor or its estate, except as specifically accepted or agreed to by the Debtor in the executed definitive documentation for a Sale Transaction (“Definitive Sale Documents”). Consummation of a Sale Transaction will be without any representations or warranties whatsoever by the Debtor’s representatives or advisors. Unless otherwise specifically accepted or agreed to by the Debtor in Definitive Sale Documents, all of the Debtor’s right, title, and interest in and to the Portfolio (or subset thereof) disposed of in a Sale Transaction will be transferred to the Winning Bidder (or Back-Up Bidder, as applicable) free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests in accordance with sections 363(f) of the Bankruptcy Code. All bidders who submit a bid shall be deemed to be bound by this paragraph, regardless of whether the bid submitted satisfies the Bid Requirement to include an express statement to that effect.

XVII. COMMISSIONS.

The Debtor shall be under no obligation to pay any commissions, fees, or expenses to any bidder’s agent, advisor, or broker, other than the Broker. In no case shall any commissions, fees, or expenses for any bidder’s agent, advisor, or broker be deducted from any proceeds derived from any Sale Transaction(s).

XVIII. RESERVATION OF RIGHTS.

~~The~~With the consent of the Committee, the Debtor shall be entitled to modify these Bid Procedures in its business judgment and in any manner that will best promote the goals of these Bid Procedures, or impose, at or prior to the Auction (if any), additional customary terms and conditions on a Sale Transaction, including: (A) extending the deadlines set forth in these Bid Procedures; (B) adjourning the Auction at the Auction; (C) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction (if any); (D) canceling the Auction; and (E) rejecting any or all bids or Qualified Bids.

XIX. CONSENT TO JURISDICTION.

All bidders who submit a bid shall be deemed to have consented to the exclusive jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction or the construction and enforcement of these Bid Procedures, regardless of whether the bid submitted satisfies the Bid Requirement to include an express statement to that effect.

XX. RETURN OF DEPOSIT.

Any Good Faith Deposits provided by Qualified Bidders shall be held in one or more escrow accounts on terms acceptable to the Debtor. Any such Good Faith Deposits, including

any interest accrued while deposited in the escrow account, will be returned to Qualified Bidders that are not Winning Bidders (or Back-Up Bidders, as applicable) on the date that is three business days after the Auction (if any). Any Good Faith Deposit provided by a Winning Bidder (or Back-Up Bidder, as applicable) shall be applied to the purchase price for the applicable Sale Transaction(s) at closing.

If a Winning Bidder (or Back-Up Bidder, as applicable) fails to consummate the Sale Transaction contemplated by its Winning Bid(s) (or Back-Up Bid(s), as applicable) because of a breach by such Winning Bidder (or Back-Up Bidder, as applicable), the Debtor will not have any obligation to return any Good Faith Deposit, including any interest accrued thereon in the escrow account, provided by such Winning Bidder (or Back-Up Bidder, as applicable), which may be retained by the Debtor as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtor and its estate.