

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

	)	Chapter 11
In re:)	
CHRISTMAS TREE SHOPS, LLC, <i>et al.</i> , ¹	)	Case No. 23-23-10576 (TMH)
Debtors	)	Jointly Administered
	)	Objection Deadline: TBD
	)	Hearing: TBD

MOTION OF DEBTORS FOR ENTRY OF ORDERS (I)(A) APPROVING BIDDING PROCEDURES FOR SALE OF SUBSTANTIALLY ALL OF DEBTORS’ ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (B) AUTHORIZING PROCEDURES TO DESIGNATE STALKING HORSE BIDDER(S), (C) SCHEDULING AN AUCTION AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (D) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES, (E) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (F) GRANTING RELATED RELIEF; AND (II)(A) APPROVING THE SALE OF THE DEBTORS’ ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (C) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby submit this motion (the “Motion”), pursuant to sections 105, 363, 365, 503, and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), for entry of: (a) an order, substantially in the form attached hereto as **Exhibit A** (the “Bidding Procedures Order”): (i) approving bidding procedures, substantially in the form attached to the Bidding Procedures Order as **Exhibit 1** (the “Bidding Procedures”), to be used in connection with a sale (“Sale”) of all or substantially all of the Debtors’ assets (the “Assets”) free and clear of all liens,

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s U.S. tax identification number are as follows: Christmas Tree Shops, LLC (1207), Handil, LLC (1150), Handil Holdings, LLC (2891), Salkovitz Family Trust 2, LLC (8773), and Nantucket Distributing Co., LLC (1640). The notice address for the Debtors is 64 Leona Drive, Middleboro, Massachusetts 02346.



claims, interests, and encumbrances; (ii) authorizing the Debtors to designate one or more Stalking Horse Bidders (as defined herein) for some or all of the Assets, and scheduling a hearing to consider approval of such Stalking Horse Bid(s); (iii) scheduling one or more auctions (each, an “Auction”), if necessary, and scheduling one or more hearings to approve a sale of the Debtors’ Assets (a “Sale Hearing”); (iv) approving the form and manner of notice of the proposed Bidding Procedures, the Auction, and the Sale Hearing, substantially in the form attached to the Bidding Procedures Order as **Exhibit 2** (the “Sale Notice”); (v) authorizing procedures governing the assumption and assignment of certain executory contracts and unexpired leases (the “Assigned Contracts”) in connection with any Sale (the “Assumption and Assignment Procedures”); (vi) approving the form and manner of notice to each relevant non-debtor counterparty to an Assigned Contract (each a “Counterparty”), of (A) the Debtors’ calculation of the amount necessary to cure any default under the applicable Assigned Contract (the “Cure Amounts”); and (B) certain other information regarding the potential assumption and assignment of Assigned Contracts in connection with a Sale, substantially in the form attached to the Bidding Procedures Order as **Exhibit 3** (the “Assumption and Assignment Notice”); and (vii) an orders of the Court: (i) authorizing the sale of the Debtors’ Assets free and clear of all liens, claims, interests, and encumbrances, except as provided in the Sale Order; (ii) authorizing the assumption and assignment of certain Assigned Contracts in connection with the Sale; and (iii) granting related relief (the “Sale Order”).² In further support of this Motion, the Debtors state as follows:

PRELIMINARY STATEMENT

1. The Debtors are in default of its obligations to their post-petition lenders and are unable to cure the default. If the Debtors are able to shortly secure an acceptable initial or stalking

² A copy of the proposed form of Sale Order(s) will be filed in advance of the Sale Hearing.

horse bid, the Debtors believe that a sale of all or substantially all of their assets, as a going concern, will avoid the loss in value of the Debtors' assets and the substantial harm to the Debtors' creditors and numerous employees that would inevitably result from a forced liquidation of the Debtors' assets.

2. Accordingly, by this Motion, the Debtors seek approval of the Bidding Procedures which allow the Debtors to engage a potential Stalking Horse Bidder (as defined below) that will set a guaranteed floor for the value of the Debtors' Assets and which provide notice and opportunity to interested parties to submit counteroffers.

JURISDICTION AND VENUE

3. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over these Chapter 11 Cases, the Debtors and their estates, and this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order with respect to this Motion if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

5. Venue of these Chapter 11 Cases in this District is proper under 28 U.S.C. §§ 1408 and 1409.

6. The statutory bases for the relief requested in this Motion are 105, 363, 365, 503, and 507 of title 11 of the Bankruptcy Code, Rules 2002, 6004, and 6006 of the Bankruptcy Rules, and Local Rule 6004-1.

BACKGROUND

7. On May 5, 2023 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). The Debtors continue to operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

8. On May 17, 2023, the Office of the United States Trustee (the “U.S. Trustee”) appointed the Official Committee of Unsecured Creditors in the Chapter 11 Cases (the “Committee”) [Dkt. No. 100].

9. The Debtors operate a chain of brick-and-mortar home goods retail stores that specializes in the sale of year-round seasonal goods at value pricing. The Debtors’ stores offer a variety of products including home décor, bed and bath products, kitchen and dining products, furniture, food and seasonal products. As of the Petition Date, the Debtors operated 82 stores in 20 states.

10. A description of the Debtors and their business, and the facts and circumstances surrounding the Chapter 11 Cases are set forth in greater detail in the *Declaration of Marc Salkovitz, Executive Chairman, in Support of First Day Relief* [Dkt. No. 12] and the *Supplemental Declaration of Marc Salkovitz, Executive Chairman, in Support of First Day Relief* [Dkt. No. 23].

11. Upon motion by the Debtors, on June 5, 2023, the Court entered the *Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 and 507 (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection to Certain Prepetition Lenders; (III) Authorizing Use of Cash Collateral; (IV) Modifying the Automatic Stay; and (V) Granting Related Relief* [Docket No. 229] (the “Final DIP Order”)³ which, among other things, authorized the Debtors to enter into and obtain credit under a certain Senior Secured, Super-Priority Debtor-In-Possession Revolving Credit Agreement dated as of May 10, 2023.

³ Capitalized terms not defined in this Motion shall have the meanings ascribed to them in them in the Final DIP Order.

12. The Final DIP Order provided, among other things, for the Debtors to meet certain Milestones as a condition of the continuation of the financing provided by the Final DIP Order. Those Milestones included the filing by the Debtors of a plan and disclosure statement acceptable to the DIP Lenders on or before June 7, 2023, approval of a disclosure statement on or before July 7, 2023, and confirmation of a plan on or before August 16, 2023.

13. In accordance with an extension of the Milestone to file a plan granted by the DIP Lenders, on June 7, 2023, the Debtors filed a joint chapter 11 plan [Dkt. No. 242] (the “Plan”), a disclosure statement with respect to the Plan [Dkt. No. 243] (the “Disclosure Statement”), and a solicitation procedures motion [Dkt. No. 244]. The Plan provides for the continuation of the Debtors’ business as a going concern and a restructuring of its obligations with funding from a plan sponsor to be identified. A hearing to consider approval of the Disclosure Statement was scheduled for July 7, 2023. On June 27, 2023, the Debtors filed the Notice of Adjournment of (I) Hearing to Consider Approval of Proposed Disclosure Statement with Respect to Joint Plan of Reorganization of Christmas Tree Shops, LLC, Handil, LLC, Handil Holdings, LLC, Salkovitz Family Trust 2, LLC, and Nantucket Distributing Co., LLC; and (II) Objection Deadline Related Thereto [Dkt. No. 303], which adjourned the deadline to object to the Disclosure Statement and the hearing on the same to a date to be determined.

14. As provided for in the Final DIP Order, the Debtors retained SSG Capital Advisors, LLC (“SSG”) on or about May 31, 2023 to provide investment-banking services in connection with the Debtors’ reorganization efforts including identifying potential investors or buyers and entering into a plan funding agreement with a plan sponsor or an asset purchase agreement with a purchaser for all or substantially all of the Debtor’s assets.

15. Since SSG’s retention three (3) weeks ago, SSG has conducted an extensive marketing process with potential strategic and financial buyers to solicit interest in the Debtors’ business. SSG contacted and sent materials to approximately 350 potential acquirers (collectively, the “Interested

Parties”). Twenty-nine (29) Interested Parties executed non-disclosure agreements with others still in process and have requested and gained access to the Debtors’ electronic data room. The Interested Parties canvassed by SSG included major retailers, private equity firms and other investors. Several Interested Parties have expressed an interest in acquiring substantially all of the Debtors’ assets as a going concern pursuant to Sections 363 and 365 of the Bankruptcy Code.

16. On June 21, 2023, the DIP Agent delivered to the Debtors a Notice of Event of Default, DIP Termination Event and Carve Out Trigger Notice under the Final DIP Order (the “DIP Notice”). Due to the occurrence of a DIP Termination Event and pursuant to the DIP Notice, the DIP Secured Parties are relieved of any obligation to provide financial accommodations to the Debtors under the DIP Facility and the Debtors will be unable to access the funds in their accounts after June 28, 2023 unless the Debtors remedy those Events of Default.⁴

17. The Debtors do not dispute that one or more Events of Default has occurred and the Debtors have informed the DIP Lenders and the Committee that the Debtors are not able to remedy those defaults by June 28, 2023.

18. An expedited sale process is required under the circumstances. The Debtors and their professionals are actively marketing the Debtors’ business and may possibly be able to identify a stalking horse bidder for the Assets (the “Stalking Horse Bidder”) and to negotiate and enter into an acceptable asset purchase agreement with the Stalking Horse Bidder (the “Stalking Horse APA”) the week of July 2, 2023, which Stalking Horse APA together with an acceptable deposit and such other usual and customary documents shall constitute an acceptable stalking horse bid for the Assets (collectively, the “Stalking Horse Bid”).

19. The Debtors shall, on or before July 7, 2023, file a supplement to this Motion, either (i)

⁴ Under the Final DIP Order, the Remedies Notice Period expires five (5) calendar days following delivery of the DIP Notice, or June 26, 2023. The DIP Lenders extended such period through June 28, 2023.

identifying the Stalking Horse Bidder, stating the amount and other material terms of the Stalking Horse Bid, providing a summary of the Assets to be purchased, and attaching the Stalking Horse APA or (ii) stating that no Stalking Horse Bid has been received.

20. The Debtors believe that an Auction process culminating in a Sale, closing on or before July 30, 2023, will maximize the value of the Assets. Contemporaneously with filing of this Motion, the Debtors have filed a motion requesting a hearing to consider entry of the Bidding Procedures Order on July 7, 2023, one of the omnibus hearing dates in these cases.

21. The Debtors will propose the following key dates and deadlines for the Sale process, certain of which dates and deadlines may be subject to extension in accordance with the Bidding Procedures:⁵

DATE	DEADLINE/EVENT
On or before July 7, 2023	Identify Stalking Horse Bidder and File Stalking Horse Supplement
July 7, 2023 at 10:00 a.m. (ET)	Bidding Procedures Hearing
One (1) business day after entry of the Bidding Procedures Order	Deadline to serve Notice of Sale
July 16, 2023 at 5:00 p.m. (ET)	Deadline for the submission of Qualified Bids (i.e., the Bid Deadline)
July 17, 2023 at 5:00 p.m. (ET)	Deadline for Debtors to designate Qualified Bid(s)
July 19, 2023 at 10:00 a.m. (ET)	Auction

⁵ The Debtors reserve the right to modify the proposed sale-related dates and deadlines.

July 19, 2023 at 11:59 p.m. (ET)	Deadline to file and serve Notice of Winning Bid
July 20, 2023, at 11:59 p.m. (ET)	Deadline to file and serve an Assumption and Assignment Notice
July 20, 2023, at 4:00 p.m. (ET)	Deadline to file Sale Objection
July 21, 2023, at __:____.m. (ET)	Sale Hearing
July 27, 2023, at 12:00 p.m. (ET)	Deadline to file Contract Objections (if applicable), with a post-Closing hearing (if necessary)
July 30, 2023	Deadline for Winning Bidder to close the transaction contemplated by its Winning Bid

Bidding Procedures

A. Overview

22. The Bidding Procedures are designed to promote a competitive and efficient Sale process that will maximize the value of the Debtors' estates. The Bidding Procedures will allow the Debtors to solicit and identify bids from potential buyers that constitute the highest or otherwise best offer for the Assets, whether as a going concern or as part of a liquidation sale, on a schedule consistent with the Debtors' chapter 11 objectives.

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23. As the Bidding Procedures are attached to the Bidding Procedures Order, they are not restated in their entirety herein. Pursuant to Local Rule 6004-1, certain of the key terms of the Bidding Procedures are highlighted in the chart below.⁶

MATERIAL TERMS OF THE BIDDING PROCEDURES AND ORDER	
<p>Qualification of Bidders Local Rule 6004-1(c)(A)</p>	<p><u>Section 2 of the Bidding Procedures:</u></p> <p>To become a Qualified Bidder, an Interested Party must submit to the Debtors and their advisors:</p> <p>(a) documentation identifying the Interested Party, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;</p> <p>(b) an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors;</p> <p>(c) a statement and other factual support demonstrating to the Debtors’ reasonable satisfaction that the Interested Party has a <i>bona fide</i> interest in consummating a sale transaction; and</p> <p>(d) sufficient information, as determined by the Debtors and the DIP Lenders, to allow the Debtors and the DIP Lenders to determine that the Interested Party (i) has, or can obtain, the financial wherewithal and any required internal corporate, legal, or other authorizations to close a sale transaction, including, without limitation, current audited financial statements of the Interested Party (or such other form of financial disclosure acceptable to the Debtors and the DIP Lenders in their reasonable discretion); and (ii) can provide adequate assurance of future performance under Assigned Contracts to be assumed by the Debtors and assigned to such bidder, pursuant to section 365 of the Bankruptcy Code, in connection with the Sale.</p>
<p>Stalking Horse APA</p>	<p><u>Section 2 of the Bidding Procedures:</u></p> <p>The Debtors will file the Stalking Horse APA, which will include, among other things, a description of the Assets, representations, warranties, and covenants by and from the Debtors and the Stalking Horse Bidder, and certain conditions to closing and rights of termination related to the Sale. A copy of the Stalking Horse APA will be posted in the Data Room, and may also be obtained by Interested Parties upon request to the Debtors’ advisors.</p>

⁶ To the extent that there is any inconsistency between the terms of the Bidding Procedures and the summary of such terms in this Motion, the terms of the Bidding Procedures shall control. Capitalized terms used but not otherwise defined in this summary shall have the meanings ascribed to such terms in the Bidding Procedures.

**Qualified Bids Local
Rule 6004- 1(c)(i)(B)**

Section 7 of the Bidding Procedures:

Other than in the case of a Stalking Horse Bid, which shall be considered a Qualified Bid, to be deemed a “Qualified Bid,” a bid must be received from a Qualified Bidder on or the Bid Deadline and satisfy each of the following Bid Requirements:

- (a) be in writing;
- (b) fully disclose the identity of the Qualified Bidder (and to the extent that the Qualified Bidder is a newly formed acquisition entity or the like, the identity of the Qualified Bidder’s parent company or sponsor), and provide the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the bid submitted by the Qualified Bidder;
- (c) set forth the Qualified Bidder’s proposed purchase price;
- (d) specify the Assets and assumed liabilities that are included in the bid;
- (e) be accompanied by a Proposed APA, and a marked copy of the Proposed APA that reflects any variations from the Stalking Horse APA;
- (f) state that such Qualified Bidder’s offer is formal, binding, and unconditional, and is irrevocable until two (2) business days after the closing of the Sale;
- (g) state that such Qualified Bidder is financially capable of consummating the transactions contemplated by the Proposed APA and provide written evidence in support thereof;
- (h) contain such financial and other information to allow the Debtors and the DIP Lenders to make a reasonable determination as to the Qualified Bidder’s financial and other capabilities to close the transactions contemplated by the Proposed APA, including, without limitation, Adequate Assurance Information, which Adequate Assurance Information may be shared with the Committee and, upon request, Counterparties;
- (i) identify with particularity any Assigned Contracts the assumption and assignment of which is a condition to close the transactions contemplated by the Proposed APA;
- (j) include a commitment to close the transactions contemplated by the Proposed APA by no later than July 30, 2023;
- (k) not request or entitle such Qualified Bidder to any break-up fee, termination fee, expense reimbursement, substantial contribution claim, or similar type of fee or payment;
- (l) not contain any contingencies of any kind (other than closing

conditions consistent with, and no less favorable to the Debtors than, the closing conditions set forth in the Stalking Horse APA), including, without limitation, contingencies related to financing, internal approval, or due diligence;

- (m) contain a written acknowledgement and representation that the Qualified Bidder (i) has had an opportunity to conduct any and all due diligence regarding the Assets, (ii) has relied solely upon its own independent review, investigation, or inspection of any documents and other information in making its Qualified Bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any documents or other information provided in connection with the Bidding Procedures and the Sale;
- (n) provide for the Qualified Bidder to serve as a Back-Up Bidder if the Qualified Bidder's bid is the next highest or otherwise best bid after the Winning Bid, in accordance with the terms of the Proposed APA as submitted or modified at the Auction;
- (o) include written evidence of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Proposed APA;
- (p) provide a Deposit in an amount equal to the Deposit set forth in Stalking Horse APA; and
- (q) provide that in the event of the Qualified Bidder's breach of, or failure to perform under, the Proposed APA, the Qualified Bidder shall forfeit its Deposit to the Debtors, and the Debtors shall be entitled to pursue all available legal and equitable remedies, including, without limitation, additional damages and/or specific performance.

The Debtors reserve the right to work with any Qualified Bidder in advance of the Auction to cure any deficiencies in a bid that is not initially deemed a Qualified Bid. The Debtors, in consultation with the Notice Parties, may determine that separate bids for less than all of the Assets constitute a single Qualified Bid for all, substantially all, or any portion of the Assets; *provided* that such bids must satisfy the Bid Requirements.

Each Qualified Bidder submitting a bid shall be deemed to:

- (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures; and (b) have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures, and the Sale.

MATERIAL TERMS OF THE BIDDING PROCEDURES AND ORDER	
Provisions Providing Bid Protections to “Stalking Horse” or Initial Bidder Local Rule 6004- 1(c)(i)(C)	<p><u>Section 3 of the Bidding Procedures:</u></p> <p>No bidder or any other party shall be entitled to any termination or “break-up” fee, expense reimbursement, or any other bid protections in connection with the submission of a bid for any Assets, or for otherwise participating in the Auction or the sale process, unless otherwise agreed to by the Debtors and approved by an order of the Court. The DIP Lenders do not consent to the payment of a break-up fee prior to the payment in full in cash of the obligations due under the DIP Facility. The DIP Agent, on behalf of the DIP Lenders, reserves its rights to object to any Sale transaction and payment of any bid protections to the extent it constitutes a surcharge of its collateral.</p>
Modification of Bidding and Auction Procedures Local Rule 6004- 1(c)(i)(D)	<p><u>Section 17 of the Bidding Procedures:</u></p> <p>The Debtors and their estates reserve the right, to modify the Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, modify bidding increments, waive terms and conditions set forth herein with respect to any or all Qualified Bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all Qualified Bidders, adjourn or cancel an Auction at or prior to such Auction, and adjourn the Sale Hearing, without further order of the Court.</p>
Closing with Alternative Back-Up Bidders Local Rule 6004- 1(c)(i)(E)	<p><u>Section 14 of the Bidding Procedures:</u></p> <p>In the event that a Winning Bidder fails to close a Sale on or before July 30, 2023, or such date as may be extended by the Debtors in consultation with the DIP Agent and the DIP Lenders, and a Back-Up Bidder has been previously identified, the Debtors shall be authorized, but not directed, to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any other parties.</p>

B. Noticing and Objection Procedures

24. The chart below sets forth the proposed noticing and objection procedures and requirements established by the Bidding Procedures (collectively, the “Sale Noticing and Objection Procedures”):

SALE NOTICING AND OBJECTION PROCEDURES	
Sale Notice	<p>Within one (1) business day of the entry of the Bidding Procedures Order, the Debtors shall to serve the Sale Notice, substantially in the form attached to the Bidding Procedures Order, on: (a) the Office of the United States Trustee for the District of Delaware; (b) the United States Attorney for the District of Delaware; (c) the United States Department of Justice; (d) the attorneys general for the 20 states in which the Debtors conduct business; (e) the Internal Revenue Service; (f) counsel for the DIP Agent; (g) counsel to Eclipse Business Capital LLC; (h) counsel to Pathlight Capital, LP; (i) counsel for Bed, Bath and Beyond, Inc.; (j) counsel for ReStore Capital (CTS), LLC; (k) those parties asserting liens or other security interests in certain delineated personal property of the Debtors based upon leases or sales of such property to the Debtor; (l) counsel to the Committee, (m) all entities reasonably known to have expressed an interest in a transaction with respect to any of the Assets during the past nine (9) months; (n) all state and local taxing authorities with an interest in the Assets; (o) all other governmental agencies with an interest in the Sale and transactions proposed thereunder; (p) all other parties known or reasonably believed to have asserted an interest in the Assets; (q) the counterparties to contract and leases; (r) the Debtors’ insurance carriers; (s) all known creditors of the Debtors; (t) all known holders of equity interests in the Debtors; (u) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (v) to the extent not included above, all parties in interest listed on Debtors’ creditor matrix.</p> <p>The Debtors shall use best efforts to cause the Sale Notice to be published once in the national edition of USA today and Financial Times Worldwide Edition, with any modifications necessary for ease of publication.</p> <p>The Debtors shall post the Sale Notice and the Bidding Procedures Order on the website of the Debtors’ claims and noticing agent.</p>
Notice of Qualified Bid(s)	<p>On or before July 17, 2023 at 5:00 p.m.: the Debtors shall notify all Bidders whether their bids have been determined to be a Qualified Bid.</p>

Auction Results	On or before July 19, 2023 at 5:00 p.m.: the Debtors shall file a notice with the Court that sets forth: (i) the identity of the Winning Bidder(s) and any Back- Up Bidder(s); (ii) the amount of the Winning Bid and any Back-Up Bid; and (iii) whether the Winning Bidder or the Back-Up Bidder have any connections to the Debtors other than those arising from their respective bids
Sale Objections	Any objection solely with respect to the conduct of the Auction, the Auction results, the selection of the Winning Bid and/or Back-Up Bid, or the terms of any Sale to the Winning Bidder or the Back-Up Bidder shall be filed no later than July 20, 2023, at 4:00 p.m. (ET).

25. The Debtors submit that the Sale Noticing and Objection Procedures, coupled with the Bidding Procedures and Assumption and Assignment Procedures described below, constitute adequate and reasonable notice of the key dates and deadlines and other important information regarding the Sale process, including the objection deadlines, the Bid Deadline, and the time and location of the Auction and Sale Hearing. Accordingly, the Debtors request that the Court approve the form of Sale Notice, substantially in the form attached to the Bidding Procedures Order as **Exhibit 2**, and find that the Sale Noticing and Objection Procedures comply with the requirements of Bankruptcy Rule 2002 and Local Rule 2002-1.

C. Assumption and Assignment Procedures

26. In connection with a Sale transaction, the Debtors may seek to assume and assign to a Winning Bidder one or more Assigned Contracts. The Assumption and Assignment Procedures are designed to, among other things, govern the Debtors' provision of Adequate Assurance Information and notice of Cure Amounts to applicable Counterparties. The chart below sets forth the Assumption and Assignment Procedures:

ASSUMPTION AND ASSIGNMENT PROCEDURES	
Assumption and Assignment Notice	On or before one (1) business day after the selection of a Winning Bid or a Back-Up Bid, the Debtors shall serve the Assumption and Assignment Notice, substantially in the form attached to the Bidding Procedures Order, via overnight delivery and, if possible, via electronic mail, on any Counterparty to an Assigned Contract that the relevant Winning Bidder or Back-Up Bidder desires to assume as part of its Winning Bid. The Assumption Notice shall include: (a) notice that such Counterparty's contract is an Assigned Contract as part of the relevant Winning Bid; (b) the Cure Amount if any, that the Debtors believe is required to be paid to the Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code for such Assigned Contract; and (c) the Adequate Assurance Information of the relevant Winning Bidder and Back-Up Bidder.
Contract Objections	If a Counterparty objects to (a) the proposed assumption and assignment of its Assigned Contract (including, without limitation, including on the basis that the Winning Bidder cannot provide adequate assurance of future performance), or (b) the Cure Amount, the Counterparty must file a Contract Objection on or before July 27, at 12:00 p.m. (ET).
Resolution of Contract Objections	<p>The Debtors, the relevant Winning Bidder, and the objecting Counterparty shall first confer in a good faith attempt to resolve the Contract Objection without Court intervention. If the parties are unable to consensually resolve the Contract Objection, the Debtors may request an emergency hearing for the Court to resolve the Contract Objection.</p> <p>A Contract Objection may be resolved after the closing date of the applicable Sale, subject to the terms of the asset purchase agreement approved in connection with the Sale.</p>
Failure to Timely Object	<p>If no Contract Objection is timely received with respect to an Assigned Contract: (a) the Counterparty to such Assigned Contract shall be deemed to have consented to the assumption by the Debtors and assignment to the Winning Bidder of the Assigned Contract, and be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the Winning Bidder); (b) any and all defaults under the Assigned Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code upon payment of the applicable Cure Amount; and</p> <p>(c) the Cure Amount for such Assigned Contract shall be controlling, notwithstanding anything to the contrary in such Assigned Contract, or any other related document, and the Counterparty shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims related to such Assigned Contract against the Debtors and their estates or the Winning Bidder, or the property of any of them, that existed prior to the entry of the Sale Order.</p>

Reservation of Rights	In the event a Contract Objection is resolved in a manner unfavorable to the Debtors and their estates, the Debtors may withdraw their request to assume and assign such Assigned Contract as part of any Winning Bid.
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RELIEF REQUESTED

27. By this Motion, pursuant to sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and Local Rule 6004-1, the Debtors request entry of the following:

- (a) the Bidding Procedures Order, substantially in the form attached hereto as **Exhibit A**, granting the following relief:
 - i. approving the Bidding Procedures, substantially in the form attached to the Bidding Procedures Order as **Exhibit 1**, to be used in connection with one or more Sales of the Debtors' Assets;
 - ii. scheduling (A) an Auction for the Assets for July 19, 2023; and (B) a Sale Hearing to consider approval of a proposed Sale on July 21, 2023, subject to the availability of the Court;
 - iii. approving the Sale Notice, substantially in the form attached to the Bidding Procedures Order as **Exhibit 2**;
 - iv. approving the Assumption and Assignment Procedures;
 - v. approving the Assumption and Assignment Notice, substantially in the form attached to the Bidding Procedures Order as **Exhibit 3**; and
 - vi. granting related relief; and
- (b) a Sale Order, granting the following relief:
 - i. authorizing the Sale of Assets free and clear of all liens, claims, interests, and encumbrances, except certain permitted encumbrances and assumed liabilities as determined by the Debtors and the Winning Bidder(s), with liens to attach to the proceeds of the applicable Sale;
 - ii. authorizing the assumption and assignment of Assigned Contracts in connection with a Sale; and
 - iii. granting related relief.

BASIS FOR RELIEF

A. The Bidding Procedures Are Fair, Appropriate, and In the Best Interests of the Debtors and Their Stakeholders

28. The Bidding Procedures are designed to maximize the value of the Assets under the circumstances. See Burtch v. Ganz (In re Mushroom Co.), 382 F.3d 325, 339 (3d Cir. 2004) (finding that a debtor “had a fiduciary duty to protect and maximize the estate’s assets”); In re Food Barn Stores, Inc., 107 F.3d 558, 564-65 (8th Cir. 1997) (recognizing that main goal of any proposed sale of property of a debtor’s estate is to maximize value). Courts uniformly recognize that procedures established for the purpose of enhancing competitive bidding are consistent with the fundamental goal of maximizing the value of a debtor’s estate. See Calpine Corp. v. O’Brien Envtl. Energy, Inc. (In re O’Brien Envtl. Energy, Inc.), 181 F.3d 527, 537 (3d Cir. 1999) (noting that bidding procedures that promote competitive bidding provide a benefit to a debtor’s estate); Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.), 147 B.R. 650, 659 (S.D.N.Y. 1992) (observing that sale procedures “encourage bidding and . . . maximize the value of the debtor’s assets”).

29. The Bidding Procedures provide for an orderly, uniform, and competitive process through which interested parties may submit offers or counteroffers to purchase the Assets. Given the case timeline, the Bidding Procedures will allow the Debtors to conduct any Auction in a fair and transparent manner that will encourage participation by financial capable bidders with demonstrated ability to consummate a timely sale or sales.

30. Accordingly, the Bidding Procedures should be approved because they are aligned with the circumstances of these Chapter 11 Cases and are reasonable, appropriate, and in the best interests of the Debtors, their estates, and all parties in interest.

B. Approval of One or More Sales Is Warranted Under Section 363 of the Bankruptcy Code

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

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

(i) The Debtors Have Demonstrated a Sound Business Justification for the Sale(s) of Assets

33. A sound business purpose for the sale of a debtor's assets outside the ordinary course of business exists where such sale is necessary to preserve the value of the estate for the benefit of creditors and interest holders. See, e.g., Cumberland Farms Dairy, Inc. v. Abbotts Dairies of Penn., Inc. (In re Abbotts Dairies of Penn., Inc.), 788 F.2d 143 (3d Cir. 1986); Lionel Corp., 722 F.2d at 1063; Food Barn Stores, 107 F.3d at 564-65 (recognizing the paramount goal of any proposed sale of property of estate is to maximize value).

34. In light of the Debtors' financial condition, an orderly and expeditious sale or sales of the Assets is critical to maximizing the value of the Debtors' estates and recoveries for the Debtors' economic stakeholders. Moreover, the proposed Sale timeline is required under the DIP Facility, without which, the Debtors would not be able to fund the Sale process.

(ii) The Sale Noticing and Objection Procedures Are Appropriate and Comply With Bankruptcy Rules 2002 and 6004

35. Bankruptcy Rules 2002 and 6004 require the Debtors to notify creditors of a proposed sale, provide a description of the assets being sold, and disclose the time and place of the Auction, the terms and conditions of any proposed Sale transaction and any objection deadlines. See Fed. R. Bankr. P. 2002(a), 2002(c), and 6004(a). The Sale Noticing and Objection Procedures set forth above are reasonably calculated to provide all of the Debtors' known creditors and other parties in interest with adequate and timely notice of all of the key dates, deadlines, and other material information related to the Sale process. Accordingly, the Debtors request that the Court approve the Sale Noticing and Objection Procedures, including the Sale Notice, substantially in the form attached to the Bidding Procedures as **Exhibit 2**, and find that no other or further notice of the Bidding Procedures, the Auction (excluding the Auction results), or the Sale Hearing is necessary or required.

(iii) The Bidding Procedures Ensure that the Sale Process Is Conducted in Good Faith and that the Winning Bidder(s) Is Entitled to the Protections Afforded by Section 363(m) of the Bankruptcy Code

36. Section 363(m) of the Bankruptcy Code is designed to protect the sale of a debtor's assets to a good-faith purchaser. Specifically, section 363(m) provides the following:

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

11 U.S.C. § 363(m). Section 363(m) embodies “[the] policy of not only affording finality to the judgment of the bankruptcy court, but particularly to give finality to those orders and judgments upon which third parties rely.” Abbotts Dairies, 788 F.2d 143, 147 (3d Cir. 1986)); see also Reloeb Co. v. LTV Corp. (In re Chateaugay Corp.), No. 92 Civ. 7054 (PKL), 1993 U.S. Dist. LEXIS 6130, at *9 (S.D.N.Y. May 10, 1993); Allstate Ins. Co. v. Hughes, 174 B.R. 884, 888 (S.D.N.Y. 1994) (“Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal.”).

37. While the Bankruptcy Code does not define “good faith,” the Third Circuit has held that “the phrase encompasses one who purchases in ‘good faith’ and for ‘value.’” Abbotts Dairies, 788 F.2d at 147 (to constitute lack of good faith, a party's conduct in connection with the sale must usually amount to fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders); see also In re Bedford Springs Hotel, Inc., 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); In re Perona Bros., Inc., 186 B.R. 833, 839 (D.N.J. 1995).

38. In other words, a party would have to show fraud or collusion between the Debtors and bidders to demonstrate a lack of good faith. See Kabro Assocs. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.), 111 F.3d 269, 276 (2d Cir. 1997) (“[t]ypically, the misconduct that

would destroy a [buyer]’s good faith status at a judicial sale involves fraud, collusion between the [buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders”). Due to the absence of a bright-line test for good faith, the determination is based on the facts of each case, with a focus on the “integrity of [a bidder’s] conduct in the course of the sale proceedings.” In re Pisces Leasing Corp., 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting In re Rock Indus. Mach. Corp., 572 F.2d 1195, 1998 (7th Cir. 1978)).

39. Where the Debtors are in default of their post-petition financing obligations, the Debtors constructed the Bidding Procedures to close a sale by July 30, 2023 while providing a framework for the Debtors to review and compare bids, to engage with bidders and provide an opportunity for counteroffers, and to attempt to obtain a fair and reasonable purchase price representing the highest and best value for the Assets.

40. The Debtors submit that, for any Stalking Horse Bidder that may be selected, the Debtors will seek a finding that such Stalking Horse Bidder is a “good faith purchaser” within the meaning of section 363(b) of the Bankruptcy Code. Further, each Auction Bidder must confirm that it has not engaged in any collusion with respect to the Bidding Procedures, the Auction, or any Sale. Any purchase agreement with a Winning Bidder executed by the Debtors will be negotiated at arm’s length and in good faith. As such, the Debtors request a finding that any Winning Bidder is a good-faith purchaser and is entitled to the full protections afforded under section 363(m) of the Bankruptcy Code.

41. Based on the foregoing, the Debtors submit that they have demonstrated that any proposed Sale is a sound exercise of the Debtors’ business judgment and should be approved as a good faith transaction.

C. A Sale Free and Clear of Liens, Claims, Interests, and Encumbrances Is Appropriate Under Section 363(f) of the Bankruptcy Code

42. In the interest of attracting the best offers, the Court should authorize the Debtors to sell the Assets free and clear of any and all liens, claims, interests, and other encumbrances (other than permitted encumbrances or assumed liabilities in any relevant purchase agreement), in accordance with section 363(f) of the Bankruptcy Code, with any such liens, claims, interests, and encumbrances attaching to the proceeds of the applicable Sale. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances if any one of the following conditions is satisfied:

- a. applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- b. such entity consents;
- c. such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
- d. such interest is in bona fide dispute; or
- e. such entity could be compelled, in legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); see also In re Kellstrom Indus., Inc., 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.”); Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988) (same).

43. Section 363(f) of the Bankruptcy Code is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a); see also Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.), 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (“Authority to conduct such sales [free and clear of

claims] is within the court's equitable powers when necessary to carry out the provisions of [the Bankruptcy Code].”).

44. The Debtors anticipate that any Sale transaction they elect to pursue will satisfy one or more of the requirements under section 363(f) of the Bankruptcy Code to permit a “free and clear” sale of the applicable Assets. Here, the Assets are subject to the liens of the DIP Lenders and the Prepetition Secured Creditors, who the Debtors expect will consent to any Sale. Additionally, parties with junior liens on the assets can be compelled to accept a money satisfaction of their interests. The Bidding Procedures require the Debtors to send the Sale Notice to all purported lienholders. The Debtors request that, unless a party asserting a prepetition lien, claim, or encumbrance on any of the Assets timely objects to the proposed Sale, such party shall be deemed to have consented to any Sale approved at the Sale Hearing. See Hargave v. Twp. of Pemberton, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to a sale motion, a creditor is deemed to consent to the relief requested therein).

45. Accordingly, the Debtors request that the Court authorize the sale of the Assets free and clear of any liens, claims, interests, and encumbrances, in accordance with section 363(f) of the Bankruptcy Code, subject to such liens, claims, interests, and encumbrances (other than permitted encumbrances or assumed liabilities in any relevant purchase agreement), to the fullest extent permitted by section 363(f) of the Bankruptcy Code.

D. The Debtors' Possible Assumption and Assignment of Executed Contracts and Unexpired Leases Is Appropriate Under Section 365 of the Bankruptcy Code

46. The Winning Bidder shall be responsible for designating Assigned Contracts, paying the Cure Amounts associated with the assumption and assignment of the Assigned Contracts, and providing adequate assurance of future performance to Counterparties to Assigned Contracts. The Debtors request authority under section 365 of the Bankruptcy Code to assume and assign the designated Assigned Contracts to the Winning Bidder. Courts employ the business judgment standard in determining whether to approve a debtor's decision to assume or reject an executory

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

47. Assumption of any Assigned Contract is an exercise of the Debtors’ sound business judgment because the transfer of such Assigned Contracts in connection with a Sale is necessary to the Debtors’ ability to obtain the best value for the Assets. Given that consummation of the Sale is critical to the Debtors’ efforts to maximize value for their estates and stakeholders, the Debtors’ assumption of Assigned Contracts is an exercise of sound business judgment and, therefore, should be approved.

48. The Debtors’ assumption and assignment of an Assigned Contracts will be contingent upon payment of the Cure Amounts and effective only upon the closing of the applicable Sale. As set forth above, the Debtors propose to file with the Court and serve on each Counterparty to an Assigned Contract an Assumption Notice, which will set forth the Debtors’ good faith calculations of Cure Amounts with respect any Assigned Contracts listed on such Assumption Notice, and the procedures by which such Counterparty may object to the assumption and assignment of its Assigned Contract at the Sale Hearing or at a separate hearing scheduled prior to closing.

49. Adequate of future performance under an unexpired lease or executory contract is dependent upon such agreement and the circumstances of the case, but should be determined based upon “practical, pragmatic construction.” See Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes,

Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (citation omitted); see also In re Natco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean an absolute assurance that debtor will thrive and pay rent); In re Bon Ton Rest. & Pastry Shop, Inc., 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (finding that, “[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance”). Among other things, adequate assurance may be provided by evidencing the assignee’s financial health and experience in managing the type of enterprise or property assigned. See In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when the prospective assignee of a lease has financial resources and has expressed willingness to devote sufficient funding to the business to give it a strong likelihood of succeeding).

50. The Bidding Procedures expressly specify that any Qualifying Bid that includes the assumption and assignment of any Assigned Contracts must include with information regarding the bidder’s ability to perform any Assigned Contracts that it wishes for the Debtors to assume and assign. The Assumption and Assignment Procedures require the Debtors to furnish all available Adequate Assurance Information to the relevant Counterparties to provide such Counterparties ample opportunity to review such information and object if they so choose. To the extent necessary, the Debtors will present facts at the Sale Hearing to show the financial wherewithal, willingness and ability of the Winning Bidder to perform under any Assigned Contracts that it wishes for the Debtors to assume and assign. In light of the foregoing, the Debtors’ assumption and assignment of any Assigned Contracts in accordance with the Assumption and Assignment Procedures would satisfy the requirements of section 365 of the Bankruptcy Code and should be approved.

WAIVER OF BANKRUPTCY RULES 6004(A), 6004(H) AND 6006(D)

51. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders

otherwise.” Fed. R. Bankr. P. 6004(h). Bankruptcy Rule 6006(d) further provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d).

52. The Debtors believe that any Sale should be consummated as soon as practicable to preserve and maximize value. Accordingly, the Debtors request that any Sale Order approving the sale of the Assets and the assumption and assignment of the Potential Purchased Contracts be effective immediately upon entry of such order and that the fourteen-day stay under Bankruptcy Rules 6004(h) and 6006(d) be waived.

NOTICE

53. Notice of this Motion will be provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) the United States Attorney for the District of Delaware; (c) the United States Department of Justice; (d) the attorneys general for the 20 states in which the Debtors conduct business; (e) the Internal Revenue Service; (f) counsel for the DIP Agent; (g) counsel to Eclipse Business Capital LLC; (h) counsel to Pathlight Capital, LP; (i) counsel for Bed, Bath and Beyond, Inc.; (j) counsel for ReStore Capital (CTS), LLC; (k) those parties asserting liens or other security interests in certain delineated personal property of the Debtors based upon leases or sales of such property to the Debtor; (l) counsel to the Committee, (m) all parties who have requested notice per Bankruptcy Rule 2002, and (n) all persons known or reasonably believed to have asserted an interest in or claim to any of the Assets.

54. The Debtors respectfully submit that, in light of the nature of the relief requested, no further notice of this Motion is required.

No Previous Request

55. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court (i) enter the Bidding Procedures Order, substantially in the form attached hereto as **Exhibit A**; (ii) after a Sale Hearing has taken place, enter a Sale Order; and (iii) grant such other and further relief as the Court may deem just and proper.

Dated: June 28, 2023
Wilmington, Delaware

**TROUTMAN PEPPER HAMILTON
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Exhibit A

Bidding Procedures Order

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

In re:)	
	)	Chapter 11
CHRISTMAS TREE SHOPS, LLC, <i>et al.</i> , ¹	)	Case No. 23-23-10576 (TMH)
Debtors	)	Jointly Administered
)	

ORDER (I) APPROVING BIDDING PROCEDURES FOR SALE OF SUBSTANTIALLY ALL OF DEBTORS’ ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (II) AUTHORIZING PROCEDURES TO DESIGNATE STALKING HORSE BIDDER(S), (III) SCHEDULING AN AUCTION AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (IV) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES, (V) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (VI) GRANTING RELATED RELIEF

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of an order: (i) approving bidding procedures, substantially in the form attached hereto as **Exhibit 1** (the “Bidding Procedures”), to be used in connection with one or more sales (each a “Sale”) of the Debtors’ assets (the “Assets”) free and clear of all liens, claims, interests, and encumbrances; (ii) authorizing the Debtors to designate one or more Stalking Horse Bidders for some or all of the Assets; (iii) scheduling an auction (the “Auction”), if necessary; (iv) scheduling a hearing to approve a sale of the Debtors’ Assets (a “Sale Hearing”); (v) approving the form and manner of notice of the proposed Bidding Procedures, the Auction, and the Sale Hearing, substantially in

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s U.S. tax identification number are as follows: Christmas Tree Shops, LLC (1207), Handil, LLC (1150), Handil Holdings, LLC (2891), Salkovitz Family Trust 2, LLC (8773), and Nantucket Distributing Co., LLC (1640). The notice address for the Debtors is 64 Leona Drive, Middleboro, Massachusetts 02346.

² Capitalized terms used but not defined herein shall have the meanings given them in the Bidding Procedures (as defined below), or to the extent not defined therein, the Motion.

the form attached hereto as **Exhibit 2** (the “Sale Notice”); (vi) authorizing procedures governing the assumption and assignment of certain executory contracts and unexpired leases (the “Assigned Contracts”) in connection with any Sale (the “Assumption and Assignment Procedures”); (vii) approving the form and manner of notice to each relevant non-debtor counterparty to an Assigned Contract (each a “Counterparty”) of (A) the Debtors’ calculation of the amount necessary to cure any default under the applicable Assigned Contract (the “Cure Costs”); and (B) certain other information regarding the potential assumption and assignment of Assigned Contracts in connection with a Sale, substantially in the form attached hereto as **Exhibit 3** (the “Assumption and Assignment Notice”); and (viii) granting related relief; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that this Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having reviewed the Motion; and the Bidding Procedures Hearing (as defined herein) having been held; and this Court having found and determined that the relief set forth herein is in the best interests of the Debtors, their estates and creditors, and all parties in interest, and that the legal and factual bases set forth in the Motion and at the Bidding Procedures Hearing, as applicable, establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby:

FOUND AND DETERMINED THAT³

A. This Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order.

B. Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

C. The statutory and legal predicates for the relief requested in the Motion and provided for herein are sections 105, 363, 365, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

D. In the Motion and at the hearing on the relief set forth herein (the “Bidding Procedures Hearing”), the Debtors demonstrated that good and sufficient notice of the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order (including, without limitation, with respect to the Bidding Procedures) has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and all other interested parties.

E. The Bidding Procedures attached hereto as **Exhibit 1** are fair, reasonable, and appropriate and are designed to maximize the value of the proceeds of Sale of the Debtors’ Assets. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c), and are reasonably designed to promote active bidding and participation in the Auction to ensure that the

³ 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.

highest or otherwise best value is generated for the Assets.

F. The Assumption and Assignment Procedures are fair, reasonable, and appropriate and comply with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

G. The Debtors have articulated good and sufficient business reasons for the Court to approve (i) the Bidding Procedures, (ii) the form and manner of Sale Notice; (iii) the Stalking Horse Designation Procedures; (iv) the form and manner of the Assumption and Assignment Notice; and (v) the Assumption and Assignment Procedures.

H. The Sale Notice, the Assumption and Assignment Notice, and the Notice of Winning Bid, are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale Hearing, the Bidding Procedures, the Assumption and Assignment Procedures, the Debtors' proposed Cure Costs, any proposed assumption of an Assigned Contract in connection with a sale of the Assets, and all relevant and important dates and deadlines with respect to the foregoing, and no other or further notice of the Auction, the sale of the Assets, or the assumption and assignment of Assigned Contracts in connection therewith shall be required.

I. Good and sufficient notice of the relief sought in the Motion has been provided under the circumstances, and no other or further notice is required except as set forth in the Bidding Procedures and the Assumption and Assignment Procedures. A reasonable opportunity to object and be heard regarding the relief granted herein has been afforded to all parties in interest.

J. Entry of this Order is in the best interests of the Debtors, their estates and creditors, and all other interested parties.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein. All objections to the relief granted in this Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits with prejudice.

2. The Bidding Procedures attached hereto as **Exhibit 1** are hereby approved and are incorporated herein by reference. The failure to specifically include or reference any particular provision of the Bidding Procedures in this Order shall not diminish or otherwise impair the effectiveness of such procedures, it being this Court's intent that the Bidding Procedures are approved in their entirety, as if fully set forth in this Order. The Debtors are authorized to take all actions necessary or appropriate to implement the Bidding Procedures.

3. Within one (1) business day of the entry of this Order, the Debtors shall serve the Sale Notice when possible, by electronic mail, or otherwise by regular mail on: (a) the Office of the United States Trustee for the District of Delaware; (b) the United States Attorney for the District of Delaware; (c) the United States Department of Justice; (d) the attorneys general for the 20 states in which the Debtors conduct business; (e) the Internal Revenue Service; (f) counsel for the DIP Agent; (g) counsel to Eclipse Business Capital LLC; (h) counsel to Pathlight Capital, LP; (i) counsel for Bed, Bath and Beyond, Inc.; (j) counsel for ReStore Capital (CTS), LLC; (k) those parties asserting liens or other security interests in certain delineated personal property of the Debtors based upon leases or sales of such property to the Debtor; (l) counsel to the Committee, (m) all entities reasonably known to have expressed an interest in a transaction with respect to any of the Assets during the past nine (9) months; (n) all state and local taxing authorities with an interest in the Assets; (o) all other governmental agencies with an interest in the Sale and transactions proposed thereunder; (p) all other parties known or reasonably believed to have asserted an interest in the Assets; (q) the counterparties to contract and leases; (r) the

Debtors' insurance carriers; (s) all known creditors of the Debtors; (t) all known holders of equity interests in the Debtors; (u) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (v) to the extent not included above, all parties in interest listed on Debtors' creditor matrix.

4. The Debtors shall post the Sale Notice and this Order on the Debtors' claims and noticing agent's website. The Debtors shall use best efforts to cause the Sale Notice to be published once in the national edition of USA today and Financial Times Worldwide Edition, with any modifications necessary for ease of publication. Publication of the Sale Notice as described in this Order conforms to the requirements of Bankruptcy Rules 2002(l) and 9008 and is reasonably calculated to provide notice to any affected party, including, without limitation, any potential bidders, and afford the affected party the opportunity to exercise any rights affected by the Motion and the relief granted by this Order.

5. Subject to this Order and the Bidding Procedures, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, shall have the right, in consultation with the Notice Parties (as defined in the Bidding Procedures), to: (a) determine which bidders qualify as Qualified Bidders, and which bids qualify as Qualified Bids; (b) make final determinations as to whether the Debtors will conduct an Auction; (c) determine the amount of each minimum overbid; (d) determine which Qualified Bid is the highest or otherwise best bid for the Assets, and therefore the Winning Bid, and which Qualified Bid is the next highest and next best bid after the Winning Bid for the Assets, and therefore the Back-Up Bid; (e) reject any bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements of this Order or any other applicable order of the Court, the Bidding Procedures, the Bankruptcy Code, or other applicable law; or (iii) contrary to the best interests of the Debtors and their estates; and (f) adjourn or cancel the Auction or the Sale Hearing

in accordance with the Bidding Procedures.

6. The Debtors shall have the right, in their reasonable discretion and in consultation with the Notice Parties, to withhold or limit access to any due diligence information that the Debtors determine is business-sensitive or otherwise not appropriate for disclosure to a Qualified Bidder. Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality, or similar provisions relating to any due diligence information, the Debtors and their estates shall be authorized to provide due diligence information to Qualified Bidders, *provided* that such Qualified Bidders have delivered an executed confidentiality agreement in form and substance acceptable to the Debtors. The Debtors and their estates are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualified Bidders in connection with the Bidding Procedures or the Sale.

7. In accordance with and subject to the Bidding Procedures, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, in consultation with the Notice Parties, shall have the right to modify the Bidding Procedures, including to (a) extend, modify, adjourn, or waive dates, deadlines or other terms and conditions set forth herein or in the Bidding Procedures; (b) adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are reasonably disclosed to Qualified Bidders; and (c) promote competitive bidding for and maximizing the value of the Assets.

8. A Qualified Bidder, other than a Stalking Horse Bidder, that desires to make a bid shall deliver an electronic copy of its bid, with a copy of a proposed asset purchase agreement in MS-WORD format, so as to be received via email on or before **July 16, 2023, at 5:00 p.m. (ET)** (the "**Bid Deadline**"), by (a) investment banker to the Debtors, SSG Advisors, LLC, Attn: Teresa

C. Kohl (tkohl@ssgca.com) and J. Scott Victor (jsvictor@ssgca.com) and counsel to the Debtors, Murphy & King, P.C., Attn: Harold B. Murphy, Esq. (hmurphy@murphyking.com) and Christopher M. Condon, Esq. (ccondon@murphyking.com) and Troutman Pepper, Attn: Evelyn Meltzer, Esq. (evelyn.meltzer@troutman.com) and Marcy McLaughlin Smith, Esq. (marcy.smith@troutman.com). The Debtors may extend the Bid Deadline without further order of the Court. Any party that does not submit a bid by the Bid Deadline will not be allowed to (i) submit any offer after the Bid Deadline or (ii) participate in the Auction.

9. The Debtors, in consultation with the Notice Parties, shall make a determination regarding whether a timely submitted bid from a Qualified Bidder is a Qualified Bid. On or before **July 17, 2023 at 5:00 p.m.**, the Debtors shall: notify all Qualified Bidders whether their bids have been determined to be a Qualified Bid.

10. If the Debtors do not receive a Qualified Bid other than a Stalking Horse Bid the Debtors may, at their option, and in consultation with the Notice Parties, cancel the Auction for the Assets, deem the Stalking Horse Bid the Winning Bid for the Assets, and shall request at the Sale Hearing that the Court approve such Winning Bid and the transaction contemplated thereunder for the Assets.

11. The Auction Procedures are hereby approved. If the Debtors timely receive one or more Qualified Bids for any Assets, then the Debtors shall conduct an auction (the "Auction") commencing on **July 19, 2023, at 10:00 a.m. (ET)**, which Auction may be conducted virtually via telephone or video conference pursuant to information to be timely provided by the Debtors to the Auction Participants. If held, the Auction proceedings shall be transcribed or video recorded.

12. Following the Auction, the Debtors will determine, in consultation with the Notice

Parties, which Qualified Bid is the highest or otherwise best bid for the Assets, in whole or in part, which will be determined by considering, among other things, the following non-binding factors: (a) the number, type, and nature of any changes to the Stalking Horse APA requested by each bidder, (b) the extent to which such modifications are likely to delay closing of the Sale and the cost to the Debtors and their estates of such modifications or delay; (c) total consideration to be received by the Debtors and their estates; (d) the transaction structure and execution risk, including, without limitation, conditions to, timing of and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, and required governmental or other approval; (e) the net benefit to the Debtors' estates; and (f) any other factors the Debtors may reasonably deem relevant.

13. On or before **July 19, 2023 at 11:59 p.m.**, the Debtors shall file a notice with the Court (the "Notice of Winning Bid") that sets forth: (i) the identity of the Winning Bidder and any Back-Up Bidder; (ii) the amount of the Winning Bid and any Back-Up Bid; (iii) a summary of the Assets subject to the Winning Bid; and (iv) whether the Winning Bidder or the Back-Up Bidder have any connections to the Debtors other than those arising from their respective bids.

14. The Sale Hearing shall be held in this Court on **July [] , 2023 at [] :[] [] .m. (ET)**, unless otherwise determined by this Court. The Sale Hearing may be adjourned by the Debtors, in consultation with the Notice Parties and the Winning Bidder, from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, or by filing a hearing agenda or notice on the docket of the Chapter 11 Cases.

15. Parties may file an objection to the Sale (each, a "Sale Objection"). Any Sale Objection shall be (i) be in writing; (ii) state with specificity the grounds for such objection; (iii)

comply with the Bankruptcy Rules and the Local Rules; (iv) be filed with the Court by no later than **July 20, 2023, at 4:00 p.m. (ET)** (the “Sale Objection Deadline”); and (v) served on the Notice Parties. Any party who fails to file and serve a timely Sale Objection in accordance with the terms of this Order shall be forever barred from asserting, at the Sale Hearing or thereafter, an objection to the relief requested in the Motion or to the consummation or performance of the sale of the Assets, including the transfer of Assets to the applicable Winning Bidder free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and shall be deemed to consent to such sale for purposes of section 363(f) of the Bankruptcy Code.

16. The Sale Notice, substantially in the form attached hereto as **Exhibit 2**, is approved, and no other or further notice of the proposed Sale of Assets, the Auction, the Sale Hearing, the Sale Objection Deadline shall be required if the Debtors serve the Sale Notice in the manner provided in the Bidding Procedures and this Order.

17. The following assumption and assignment procedures (the “Assumption and Assignment Procedures”) are hereby approved:

- a. **On or before July 20, 2023 at 11:59 p.m.**, the Debtors shall file with this Court and serve the Assumption and Assignment Notice, substantially in the form attached hereto as **Exhibit 3**, when possible, via electronic mail, and by via overnight delivery, on any counterparty (a “Counterparty”) to an Assigned Contract that the relevant Winning Bidder or Back-Up Bidder desires to assume as part of its Winning Bid. The Assumption Notice shall include: (a) notice that such Counterparty’s contract is an Assigned Contract as part of the relevant Winning Bid; (b) the cure amount if any, that the Debtors believe is required to be paid to the Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code for such Assigned Contract (each, a “Cure Amount”) in the event such Assigned Contract is assumed and assigned by the Debtors; and (c) the Adequate Assurance Information of the relevant Winning Bidder and Back- Up Bidder.
- b. If a Counterparty objects to (a) the proposed assumption and assignment

of the Counterparty's Assigned Contract (including, without limitation, including on the basis that the Winning Bidder cannot provide adequate assurance of future performance), or (b) the Cure Amount, the Counterparty must file with the Court and serve on the Notice Parties a written objection (a "Contract Objection"). Any Contract Objection shall: (i) be in writing; (ii) state with specificity the grounds for such objection; (iii) comply with the Bankruptcy Rules and the Local Rules; (iv) be filed with the Court **on or before July 27, at 12:00 p.m. (ET)** (the "Contract Objection Deadline"); and (v) served on the Notice Parties.

- c. With respect to any Contract Objection that is timely received, the Debtors, the relevant Winning Bidder, and the objecting Counterparty shall first confer in a good faith attempt to resolve the Contract Objection without Court intervention. If the parties are unable to consensually resolve the Contract Objection, the Debtors may request an emergency hearing for the Court to resolve the Contract Objection. In the event a Contract Objection is resolved in a manner unfavorable to the Debtors and their estates, the Debtors may withdraw their request to assume and assign such Assigned Contract as part of any Winning Bid. A Contract Objection may be resolved after the closing date of the applicable Sale, subject to the terms of the asset purchase agreement approved in connection with the Sale.
- d. If no Contract Objection is timely received with respect to an Assigned Contract: (a) the Counterparty to such Assigned Contract shall be deemed to have consented to the assumption by the Debtors and assignment to the Winning Bidder of the Assigned Contract, and be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the Winning Bidder); (b) any and all defaults under the Assigned Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code upon payment of the applicable Cure Amount; and (c) the Cure Amount for such Assigned Contract shall be controlling, notwithstanding anything to the contrary in such Assigned Contract, or any other related document, and the Counterparty shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims related to such Assigned Contract against the Debtors and their estates or the Winning Bidder, or the property of any of them, that existed prior to the entry of the Sale Order.
- e. The Debtors' decision to assume and assign any Assigned Contract to a Winning Bidder is subject to this Court's approval and the closing of the Sale. Accordingly, absent this Court's approval and the closing of such Sale, the Assigned Contracts shall not be deemed assumed or assumed and assigned and shall in all respects be subject to further administration

by the Debtors and their estates under the Bankruptcy Code in connection with the Chapter 11 Cases.

18. In the event that a Winning Bidder fails to close a Sale on or before July 30, 2023, or such date as may be extended by the Debtors in consultation with the Notice Parties, and a Back- Up Bidder has been previously identified, the Debtors shall be authorized, but not directed, to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any interested parties.

19. In the event that there is a conflict between this Order or the Bidding Procedures, on the one hand, and the Motion or a Qualified Bidder's Proposed APA, on the other hand, this Order and the Bidding Procedures shall control and govern. If there is a conflict between this Order and the Bidding Procedures, this Order shall control and govern. If there is a conflict between this Order or the Bidding Procedures, on the one hand, and any notice served in connection with the Motion or this Order, on the other hand, this Order and the Bidding Procedures shall control and govern.

20. Prior to mailing the Bidding Procedures, Sale Notice or the Assumption Notice as applicable, the Debtors may fill in, or cause to be filled in, any missing dates and other information, correct any typographical errors, conform the provisions thereof to the provisions of this Order, and make such other, non-material changes as the Debtors deem necessary or appropriate.

21. Nothing in this Order, or any of the Exhibits hereto, shall prevent the Debtors from exercising their fiduciary duties in consummating or otherwise pursuing alternative transactions.

22. This Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rules 6004(h) or 6006(d) or any other provision of the Bankruptcy Code, the Bankruptcy Rules or the Local Rules is expressly waived. The Debtors are not subject

to any stay in the implementation, enforcement or realization of the relief granted in this Order, and may, in their sole discretion and without further delay, take any action and perform any act authorized or approved under this Order.

23. The requirements set forth in Local Rules 6004-1, 9006-1, and 9013-1 are hereby satisfied or waived.

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

Exhibit 1

Bidding Procedures

ANY PARTY INTERESTED IN BIDDING ON THE PURCHASED ASSETS SHOULD CONTACT:

Teresa Kohl
tkohl@ssgca.com

J. Scott Victor
jsvictor@ssgca.com

SSG Capital Advisors, LLC
 Proposed Investment Banker
 for the Debtors

Summary of Key Dates Established by Bidding Procedures

DATE	DEADLINE/EVENT
On or before July 7, 2023	Deadline to file and serve Stalking Horse Supplement
July 7, 2023 at 10:00 a.m. (ET)	Bidding Procedures Hearing
One (1) business day after the Bidding Procedures Order	Deadline to serve Notice of Sale
July 16, 2023 at 5:00 p.m. (ET)	Deadline for the submission of Qualified Bids (i.e. the Bid Deadline)
July 17, 2023 at 5:00 p.m. (ET)	Deadline for the Debtors to designate Qualified Bids
July 19, 2023 at 10:00 a.m. (ET)	Auction
July 20, 2023 at 11:59 p.m. (ET)	Deadline to file and serve an Assumption and Assignment Notice
July 20, 2023 at 4:00 p.m. (ET)	Deadline to file Sale Objection
July 21, 2023 at : .m. (ET)	Sale Hearing
July 27, 2023 at 12:00 p.m.	Deadline to file Contract Objections
July 30, 2023	Deadline for Winning Bidder to close the transaction contemplated by its Winning Bid

1. Assets to Be Sold

The Debtors submit these Bidding Procedures, whereby prospective bidders may qualify for and participate in the Auction, thereby competing to make the highest or otherwise best offer for some or all of the Purchased Assets free and clear of all liens, claims, interests, and encumbrances. The Purchased Assets include, among other things, the Debtors' (a) accounts receivable; (b) inventory; and (c) intellectual property, including brand names and customer lists. Qualified Bids (as defined below) may be for some or all of the Purchased Assets, and shall not be conditioned upon the acquisition of any other assets of the Debtors at any other time.

The Debtors have filed a copy of the asset purchase agreement submitted by the designated Stalking Horse Bidder (the “Stalking Horse APA”). A copy of the Stalking Horse APA is posted in the Data Room (as defined below), and may also be obtained by Interested Parties upon request to the Debtors’ advisors.

2. Participation Requirements

A person or entity (an “Interested Party”) that wishes to conduct diligence about the Debtors may request access to the Debtors’ confidential electronic data room concerning the Purchased Assets (the “Data Room”). To gain access to the Data Room, and thus be able to conduct due diligence on the Debtors and participate in the bidding process, an Interested Party must first become a “Qualified Bidder.” To become a Qualified Bidder, an Interested Party must submit to the Debtors and their advisors:

- (a) documentation identifying the Interested Party, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- (b) an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors;
- (c) a statement and other factual support demonstrating to the Debtors’ reasonable satisfaction that the Interested Party has a *bona fide* interest in consummating a sale transaction; and
- (d) sufficient information, as determined by the Debtors, to allow the Debtors to determine that the Interested Party (i) has, or can obtain, the financial wherewithal and any required internal corporate, legal, or other authorizations to close a sale transaction, including, without limitation, current audited financial statements of the Interested Party (or such other form of financial disclosure acceptable to the Debtors in their discretion); and (ii) can provide adequate assurance of future performance under any executory contracts and unexpired leases (the “Assigned Contracts”) to be assumed by the Debtors and assigned to such bidder, pursuant to section 365 of the Bankruptcy Code, in connection with the Sale.

Each Qualified Bidder shall comply with all reasonable requests for information and due diligence access by the Debtors or their advisors regarding the ability of such Qualified Bidder to consummate its contemplated transaction.

3. Stalking Horse Bidder and Break-up Fee

No bidder or any other party shall be entitled to any termination or “break-up” fee, expense reimbursement, or any other bid protections in connection with the submission of a bid for any Assets, or for otherwise participating in the Auction or the sale process, unless otherwise agreed to by the Debtors and approved by an order of the Court.

Notwithstanding anything to the contrary herein, the Stalking Horse Bidder shall be

considered a Qualified Bidder, and the Stalking Horse Bid shall be considered a Qualified Bid (as defined below) without regard to any of the requirements or conditions set forth herein and without any other or further action by the Stalking Horse Bidder.

4. Notice Parties.

The term “Notice Parties” as used in these Bidding Procedures shall mean: (i) the Debtors, 64 Leona Drive, Middleboro, Massachusetts 02346; and (ii) co-counsel to the Debtors, Murphy & King, P.C., 28 State Street, Suite 3101, Boston, MA, 02109 Attn: Harold B. Murphy (hmurphy@murphyking.com) and Christopher M. Condon (ccondon@murphyking.com), and Troutman Pepper Hamilton Sanders LLP, Hercules Plaza, Suite 5100, 1313 N. Market Street, Wilmington, Delaware 19801, Attn: Evelyn J. Meltzer (evelyn.meltzer@troutman.com) and Marcy McLaughlin Smith (marcy.smith@troutman.com); (iii) counsel to the DIP Lenders, Greenberg Traurig, LLP, One Vanderbilt Avenue, New York, NY 10017 Attn: Jeffrey Wolf (Jeffrey.wolf@gtlaw.com) and Gregg M. Galardi, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036 (Gregg.galardi@ropesgray.com); (v) counsel to the Committee, Porzio, Bromberg & Newman, P.C., 100 Southgate Parkway, Morristown, NJ 07960, Attn: Warren J. Martin, Jr. (wjmartin@pbnlaw.com) and Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, DE 19801, Attn: Matthew P. Ward (matthew.ward@wbd-us.com).

5. Bankruptcy Court Jurisdiction

Each Qualified Bidder and any other Interested Party that seeks to become a Qualified Bidder in accordance with Section 2 above, shall: (a) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction, and the construction and enforcement of the contemplated transaction documents of such parties; (b) bring any such action or proceeding in the Court; and (c) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including, without limitation, all appeals, shall be conclusive and may be enforced in other jurisdictions (including, without limitation, any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

6. Due Diligence

The Debtors will provide a Qualified Bidder with reasonable access to the Data Room and any other additional information that the Debtors believe to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to SSG Capital Advisors, LLC, Attn: Teresa Kohl (tkohl@ssgca.com) and J. Scott Victor (jsvictor@ssgca.com).

The due diligence period shall extend through and include the Bid Deadline (as defined below). The Debtors, in their business judgment, may, but shall not be obligated to, furnish any due diligence information after the Bid Deadline. The Debtors reserve the right, in their reasonable discretion, to withhold or limit access to any due diligence information that the

Debtors determine is business-sensitive or otherwise not appropriate for disclosure to a Qualified Bidder. Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality, or similar provisions relating to any due diligence information, the Debtors and their estates shall be authorized to provide due diligence information to Qualified Bidders, *provided* that such Qualified Bidders have delivered an executed confidentiality agreement in form and substance acceptable to the Debtors. The Debtors and their estates are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualified Bidders in connection with the Bidding Procedures and the Sale.

7. **Bid Requirements**

Other than in the case of a Stalking Horse Bid, each of which shall be considered a Qualified Bid, to be deemed a “Qualified Bid,” a bid must be received from a Qualified Bidder on or before the Bid Deadline (as defined below) and satisfy each of the following requirements (each, a “Bid Requirement”):

- (a) be in writing;
- (b) fully disclose the identity of the Qualified Bidder (and to the extent that the Qualified Bidder is a newly formed acquisition entity or the like, the identity of the Qualified Bidder’s parent company or sponsor), and provide the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the bid submitted by the Qualified Bidder;
- (c) set forth the purchase price to be paid by such Qualified Bidder;
- (d) specify the Purchased Assets and assumed liabilities that are included in the bid;
- (e) be accompanied by a Proposed APA, and a marked copy of the Proposed APA that reflects any variations from the Stalking Horse APA;
- (f) state that such Qualified Bidder’s offer is formal, binding, and unconditional, and is irrevocable until two (2) business days after the closing of the Sale; state that such Qualified Bidder is financially capable of consummating the transactions contemplated by the Proposed APA and provide written evidence in support thereof;
- (g) contain such financial and other information to allow the Debtors to make a reasonable determination as to the Qualified Bidder’s financial and other capabilities to close the transactions contemplated by the Proposed APA, including, without limitation, such financial and other information supporting the Qualified Bidder’s ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code, including the Qualified Bidder’s financial wherewithal and willingness to perform under any Assigned Contracts

(“Adequate Assurance Information”). By submitting a Bid, the Qualified Bidders agree that the Debtors may disseminate their Adequate Assurance Information to the official committee of unsecured creditors appointed in the Chapter 11 Cases (the “Creditors’ Committee”) and, upon request, to Counterparties;

- (h) identify with particularity any Assigned Contract, the assumption and assignment of which is a condition to close the transactions contemplated by the Proposed APA;
- (i) include a commitment to close the transactions contemplated by the Proposed APA by no later than July 30, 2023;
- (j) not request or entitle such Qualified Bidder to any break-up fee, termination fee, expense reimbursement, substantial contribution claim, or similar type of fee or payment;
- (k) not contain any contingencies of any kind (other than closing conditions consistent with, and no less favorable to the Debtors than, the closing conditions set forth in the Stalking Horse APA, including, without limitation, contingencies related to financing, internal approval, or due diligence;
- (l) contain a written acknowledgement and representation that the Qualified Bidder has had an opportunity to conduct any and all due diligence regarding the Purchased Assets, (ii) has relied solely upon its own independent review, investigation, or inspection of any documents and other information in making its Qualified Bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, or the completeness of any documents or other information provided in connection with the Bidding Procedures and the Sale;
- (m) provide for the Qualified Bidder to serve as a back-up bidder (the “Back-Up Bidder”) if the Qualified Bidder’s bid is the next highest or otherwise best bid (the “Back-Up Bid”) after the Winning Bid (as defined below), in accordance with the terms of the Proposed APA as submitted or modified at the Auction;
- (n) include written evidence of authorization and approval from the Qualified Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Proposed APA;
- (o) provide a good faith cash deposit (the “Deposit”) in an amount equal to the Deposit provided by the Stalking Horse Bidder; and
- (p) provide that in the event of the Qualified Bidder’s breach of, or failure to perform under, the Proposed APA, the Qualified Bidder shall forfeit its Deposit to the Debtors, and the Debtors shall be entitled to pursue all available legal and equitable remedies, including, without limitation, additional damages and/or

specific performance.

A bid from a Qualified Bidder satisfying all of the above requirements, as determined by the Debtors, in consultation with the Notice Parties, shall constitute a Qualified Bid. The Debtors reserve the right to work with any Qualified Bidder in advance of the Auction to cure any deficiencies in a bid that is not initially deemed a Qualified Bid.

The Debtors, in consultation with the Notice Parties, may determine that separate bids for less than all of the Purchased Assets constitute a single Qualified Bid for all, substantially all, or any portion of the Purchased Assets; *provided* that such bids must satisfy the Bid Requirements.

Each Qualified Bidder submitting a bid shall be deemed to: (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures; and (b) have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures, and the Sale.

8. Bid Deadline

A Qualified Bidder, other than a Stalking Horse Bidder, that desires to make a bid shall deliver an electronic copy of its bid in both PDF and MS-WORD format so as to be received via email on or before **July 16, 2023 at 5:00 p.m. (ET)** (the “**Bid Deadline**”), by (a) proposed investment banker to the Debtors, SSG Advisors, LLC, Attn: Teresa C. Kohl (tkohl@ssgca.com) and J. Scott Victor (jsvictor@ssgca.com) and counsel to the Debtors, Murphy & King, P.C., Attn: Harold B. Murphy, Esq. (hmurphy@murphyking.com) and Christopher M. Condon, Esq. (ccondon@murphyking.com) and Troutman Pepper, Attn: Evelyn Meltzer, Esq. (evelyn.meltzer@troutman.com) and Marcy McLaughlin Smith, Esq. (marcy.smith@troutman.com). The Debtors may extend the Bid Deadline without further order of the Court. **Absent further order of the Court, any party that does not submit a bid by the Bid Deadline will not be allowed to (x) submit any offer after the Bid Deadline or (y) participate in the Auction.**

9. Evaluation of Qualified Bids

The Debtors will deliver, within one (1) business day after receipt thereof, copies of all bids from Qualifying Bidders to the Notice Parties. The Debtors, in consultation with the Notice Parties, shall make a determination regarding whether a timely submitted bid from a Qualified Bidder is a Qualified Bid.

No later than **July 17, 2023 at 5:00 p.m.**, the Debtors shall: notify all Bidders whether their bids have been determined to be a Qualified Bids.

Absent further order of the Court, any party not determined to have submitted a Qualified Bid will not be allowed to participate in the Auction.

10. No Qualified Bids

If the Debtors do not receive a Qualified Bid other than a Stalking Horse Bid, or in the event no Stalking Horse Bid is designated and the Debtors do not receive more than one Qualified Bid for certain of the Purchased Assets, the Debtors may, at their option, and in consultation with the Notice Parties, cancel the Auction for the relevant Purchased Assets, deem such Qualified Bid(s) the Winning Bid for the relevant Purchased Assets, and shall request at the hearing to approve the Sale (the “Sale Hearing”) that the Court approve such Winning Bid and the transactions contemplated thereunder for the relevant Purchased Assets. If the Debtors receive no timely Qualified Bids for certain of the Purchased Assets, the Debtors may, in consultation with the Notice Parties, adjourn or cancel the Auction for the applicable Purchased Assets without further order of the Court.

11. Auction

Except as provided in Section 11, if the Debtors timely receive one or more Qualified Bids for any Purchased Assets, then the Debtors shall conduct one or more Auctions. Following an Auction, the Debtors will determine, in consultation with the Notice Parties, which Qualified Bid is the highest or otherwise best bid for the applicable Purchased Assets, in whole or in part, which will be determined by considering, among other things, the following non-binding factors: (a) the number, type, and nature of any changes to the Stalking Horse APA requested by each bidder, (b) the extent to which such modifications are likely to delay closing of the Sale and the cost to the Debtors and their estates of such modifications or delay; (c) total consideration to be received by the Debtors and their estates; (d) the transaction structure and execution risk, including, without limitation, conditions to, timing of and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, and required governmental or other approval; (e) the net benefit to the Debtors’ estates; and (f) any other factors the Debtors may reasonably deem relevant.

The Auction shall be governed by the following procedures (the “Auction Procedures”):

- (a) the Auction shall be commence on **July 19, 2023, commencing at 10:00 a.m. (ET)**, may be conducted virtually via telephone or video conference pursuant to information to be timely provided by the Debtors to the Auction Participants (as defined below);
- (b) absent further order of the Court only Qualified Bidders with Qualified Bids, including any Stalking Horse Bidder (collectively, the “Auction Bidders,” and each, an “Auction Bidder”) shall be entitled to make any subsequent bids at the Auction;
- (c) the Auction Bidders shall appear at the Auction, or through a duly authorized representative;
- (d) only (i) the Debtors, (ii) the Auction Bidders, (iii) the Notice Parties, (iv) any other creditor of the Debtors who desires to attend the Auction and provides no less than one (1) day advance written notice, together with the advisors to each

of the foregoing parties, may attend the Auction (collectively, the “Auction Participants”). Each Auction Participant shall provide counsel for the Debtors written notice of their intent to attend the Auction no later than 5:00 p.m. (ET), one (1) day prior to the Auction, to counsel to the Debtors, Murphy & King, P.C., Attn: Harold B. Murphy, Esq. (hmurphy@murphyking.com) and Christopher M. Condon, Esq. (ccondon@murphyking.com) and Troutman Pepper, Attn: Evelyn Meltzer, Esq. (evelyn.meltzer@troutman.com) and Marcy McLaughlin Smith, Esq. (marcy.smith@troutman.com).

- (e) the Debtors and their advisors shall direct and preside over the Auction, which shall be transcribed;
- (f) prior to start of the Auction, each Auction Bidder shall confirm that it has not engaged in any collusion with respect to the Bidding Procedures, the Auction, or the Sale;
- (g) the Auction may include individual negotiations with any of the Auction Bidders, but all bids shall be made on the record;
- (h) all material terms of the bid that is deemed to be the highest or otherwise best bid for each round of bidding shall be fully disclosed to the Auction Bidders, and the Debtors shall use reasonable efforts to clarify any questions that the Auction Bidders may have regarding the Debtors’ announcement of the then-current highest or otherwise best bid;
- (i) the Debtors and their advisors, in consultation with the Notice Parties, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, *provided* that such rules (i) are not inconsistent with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or any order of the Court entered in connection with the Chapter 11 Cases; and (ii) are disclosed to the Auction Bidders;
- (j) the Auction Bidders shall (i) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction, and the construction and enforcement of the contemplated transaction documents of the Auction Bidders, (ii) bring any such action or proceeding in the Court, and (iii) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including, without limitation, all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law;
- (k) the Auction Bidders shall have the right to make additional modifications to any Proposed APA in conjunction with each Qualified Bid submitted during the Auction, *provided* that each Qualified Bid shall constitute an irrevocable offer

and shall be binding on the Auction Bidder submitting such bid until the earliest to occur of: (x) such Auction Bidder submits a subsequent Qualified Bid that is accepted by the Debtors as a bid that replaces such Auction Bidder's prior bid; (y) the Auction ends and such Qualified Bid is not chosen by the Debtors as the Winning Bid (as defined below) or the Back-Up Bid; and (z) such Qualified Bid is chosen as the Winning Bid or the Back-Up Bid, in which case such bid shall be binding as set forth in these Bidding Procedures;

- (l) the Debtors and the Notice Parties shall have the right to request any additional financial information that will allow the Debtors and the Notice Parties to make a reasonable determination as to an Auction Bidder's financial and other capabilities to consummate the transactions contemplated its respective bid, as may be amended during the Auction, and any further information that the Debtors may believe is reasonably necessary to clarify and evaluate any bid made by an Auction Bidder;
- (m) A "Winning Bid" shall: (i) if the Auction for the Purchased Assets is cancelled because only one Qualified Bid, including a Stalking Horse Bid, is submitted on or before the Bid Deadline, be the applicable Winning Bid; or (ii) if the Auction is conducted, be the Qualified Bid that the Debtors determine at the conclusion of the Auction, in consultation with the Notice Parties, and subject to Court approval, is the offer for the Purchased Assets that is the highest or otherwise best from among the Qualified Bids submitted at the Auction. In the case of (ii), in making this decision, the Debtors shall consider, in consultation with the Notice Parties, the amount of the purchase price, the assumption of liabilities, the transaction structure, and execution risk, including, without limitation, the likelihood of the bidder's ability to close a transaction and the timing thereof, the number, type, and nature of any changes to the Stalking Horse APA submitted with the Winning Bid, as applicable, requested by each bidder, the total consideration to the Debtors' estates, and any other factors the Debtors may deem relevant. The bidder submitting the Winning Bid shall become the "Winning Bidder," and shall have such rights and responsibilities of the purchaser as set forth in such Winning Bid, with all modifications made at the Auction. The Debtors may, in their business judgment, designate the Back-Up Bid (and the corresponding Back-Up Bidder) to purchase the applicable Purchased Assets in the event that the applicable Winning Bidder does not close the Sale;
- (n) **On or before July 19, 2023 at 11:59 p.m.**, the Debtors shall file a notice with the Court (a "Notice of Winning Bid") that sets forth: (i) the identity of the Winning Bidder and any Back-Up Bidder; (ii) the amount of the Winning Bid and any Back-Up Bid; (iii) a summary of the Purchased Assets subject to the Winning Bid; and (iv) whether the Winning Bidder or the Back-Up Bidder have any connections to the Debtors other than those arising from their respective bids;
- (o) in the event a Winning Bid or Back-Up Bid requires the assumption and assignment of any Assigned Contracts, then the Debtors shall comply with the

Assumption and Assignment Procedures (as defined below);

- (p) prior to the Sale Hearing, any Winning Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Winning Bid was made.

EACH WINNING BID AND BACK-UP BID AND THEIR RELATED PURCHASE AGREEMENTS SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON SUCH BIDDER FROM THE TIME THE BID IS SUBMITTED UNTIL TWO (2) BUSINESS DAYS AFTER THE SALE HAS CLOSED. EACH QUALIFIED BID THAT IS NOT A WINNING BID OR BACK-UP BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.

12. Sale Hearing and Winning Bid Objections

Each Winning Bid and Back-Up Bid will be subject to approval by the Court. The Sale Hearing to approve the Winning Bid and any Back-Up Bid(s) shall take place on **July 21, 2023 at [●]:00 [●].m. (ET)**. At the Sale Hearing, the Debtors will seek entry of an order or orders (each, a “Sale Order”) approving all Winning Bids.

Any objection relating solely to the Sale (each, a “Sale Objection”), must be (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the grounds for such objection, and (d) be filed with the Court and served on the Notice Parties on or before July 20, 2023, at 4:00 p.m. (ET).

Any party who fails to file and serve a timely Sale Objection shall be forever barred from asserting, at the Sale Hearing or thereafter, any Sale Objection, including any such objection to the Bidding Procedures or to the consummation or performance of the sale of the Purchased Assets, including the transfer of Purchased Assets to the applicable Winning Bidder free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and shall be deemed to consent to such sale for purposes of section 363(f) of the Bankruptcy Code.

13. Assumption and Assignment Procedures

In the event a Winning Bid or Back-Up Bid provides for the assumption and assignment of Assigned Contracts, the Debtors shall follow following assumption and assignment procedures (the “Assumption and Assignment Procedures”):

- (a) **On or before July 20, 2023 at 11:59 p.m.**, the Debtors shall file with this Court and serve a notice (the “Assumption and Assignment Notice”), via overnight delivery, on any counterparty (a “Counterparty”) to an Assigned Contract that the relevant Winning Bidder or Back- Up Bidder desires to assume as part of its Winning Bid. The Assumption Notice shall include: (a) notice that such Counterparty’s contract is an Assigned Contract as part of the relevant Winning Bid; (b) the cure amount if any, that the Debtors believe is required to be paid to the Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code for

such Assigned Contract (each, a “Cure Amount”) in the event such Assigned Contract is assumed and assigned by the Debtors; and (c) the Adequate Assurance Information of the relevant Winning Bidder and Back- Up Bidder;

- (b) If a Counterparty objects to (a) the proposed assumption and assignment of the Counterparty’s Assigned Contract (including, without limitation, on the basis that the Winning Bidder cannot provide adequate assurance of future performance) or the Cure Amount, the Counterparty must file with the Court and serve on the Notice Parties a written objection (a “Contract Objection”). Any Contract Objection shall: (i) be in writing; (ii) state with specificity the grounds for such objection; (iii) comply with the Bankruptcy Rules and the Local Rules; and (iv) be filed with the Court, and proof of service of such Contract Objection upon the Notice Parties **on or before July 27, 2023 at 12:00 p.m. (ET)**;
- (b) With respect to any Contract Objection that is timely received, the Debtors, the relevant Winning Bidder, and the objecting Counterparty shall first confer in a good faith attempt to resolve the Contract Objection without Court intervention. If the parties are unable to consensually resolve the Contract Objection, the Debtors may request an emergency hearing for the Court to resolve the Contract Objection. In the event a Contract Objection is resolved in a manner unfavorable to the Debtors and their estates, the Debtors may withdraw their request to assume and assign such Assigned Contract as part of any Winning Bid. A Contract Objection may be resolved after the closing date of the applicable Sale, subject to the terms of the asset purchase agreement approved in connection with the Sale.
- (c) If no Contract Objection is timely received with respect to an Assigned Contract: the Counterparty to such Assigned Contract shall be deemed to have consented to the assumption by the Debtors and assignment to the Winning Bidder of the Assigned Contract, and be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the Winning Bidder); (b) any and all defaults under the Assigned Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code upon payment of the applicable Cure Amount; and (c) the Cure Amount for such Assigned Contract shall be controlling, notwithstanding anything to the contrary in such Assigned Contract, or any other related document, and the Counterparty shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims related to such Selected Contract against the Debtors and their estates or the Winning Bidder, or the property of any of them, that existed prior to the entry of the Sale Order; and
- (d) The Debtors’ decision to assume and assign any Assigned Contract to a Winning Bidder is subject to this Court’s approval and the closing of the Sale. Accordingly, absent this Court’s approval and the closing of such Sale, the

Assigned Contracts shall not be deemed assumed or assumed and assigned and shall in all respects be subject to further administration by the Debtors and their estates under the Bankruptcy Code in connection with the Chapter 11 Cases.

14. Back-Up Bidder

Notwithstanding any of the foregoing, in the event that a Winning Bidder fails to close a Sale on or before July 30, 2023, or such date as may be extended by the Debtors in consultation with the Notice Parties, and a Back-Up Bidder has been previously identified, the Debtors shall be authorized, but not directed, to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any other parties.

15. Return of Deposits

All Deposits not used as part of the consummation of a Sale or not retained by the Debtors as part of damages shall be returned to each bidder not selected as a Winning Bidder no later than five (5) business days following the closing of the Sale. The Deposit of a Winning Bidder shall be applied to the purchase price for the Sale. If the Winning Bidder for a Sale fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Stalking Horse APA or the Proposed APA, the Debtors and their estates shall be entitled to retain the Deposit of the Winning Bidder as part of the damages resulting to the Debtors and their estates for such breach or failure to perform. For the avoidance of doubt, the Debtors' retention of a Deposit shall not constitute a waiver of any of the Debtors' legal or equitable rights relating to a Winning Bidder's breach or failure to perform, and all such rights and remedies are preserved.

16. Reservation of Rights

Notwithstanding any of the foregoing, the Debtors and their estates reserve the right, after consultation with the Notice Parties, to modify the Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, modify bidding increments, waive terms and conditions set forth herein with respect to any or all Qualified Bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all Qualified Bidders, adjourn or cancel an Auction at or prior to such Auction, and adjourn the Sale Hearing.

Exhibit 2

Form of Sale Notice

On [●], 2023, the Court entered the Bidding Procedures Order [Docket No. [●]].

PURCHASED ASSETS FOR SALE

The Debtors intend to sell all, substantially all, or a portion of the Purchased Assets.

Any Qualified Bidder may submit a bid for some or all of the Purchased Assets, subject to the conditions set forth herein. The ability to undertake and consummate a Sale shall be subject to competitive bidding, as set forth herein and in the Bidding Procedures Order, and approval by the Court.

Any party interested in submitting a bid for any of the Debtors' Purchased Assets should contact either (a) the proposed investment banker to the Debtors, SSG Advisors, LLC, Attn: Teresa C. Kohl (tkohl@ssgca.com) and J. Scott Victor (jsvictor@ssgca.com).

KEY DATES AND DEADLINES

A. Bid Deadline

Any Qualified Bidder that intends to participate in the Auction must submit a Qualified Bid in accordance with Sections 7 and 8 of the Bidding Procedures, on or before **July 16, 2023, at 5:00 p.m. (ET)** (the "Bid Deadline").

B. Auction

If the Debtors timely receive one or more Qualified Bids for any Purchased Assets, then the Debtors shall conduct one or more Auctions. If the Debtors do not receive more than one Qualified Bid other than a Stalking Horse Bid, or in the event no Stalking Horse Bid is designated, a single Qualified Bid for certain of the Purchased Assets, the Debtors may, at their option, and in consultation with the Notice Parties, cancel the Auction for the Purchased Assets, deem such Qualified Bid the Winning Bid for the Purchased Assets, and shall request at the Sale Hearing that the Court approve such Winning Bid and the transaction contemplated thereunder for the Purchased Assets. If the Debtors receive no timely Qualified Bids for certain of the Purchased Assets, the Debtors may, in consultation with the Notice Parties, adjourn or cancel the Auction for the applicable Purchased Assets without further order of the Court.

The Auction, if required, will commence on **July 19, 2023, at 10:00 a.m. (ET)**, may be conducted virtually via telephone or video conference pursuant to information to be timely provided by the Debtors to the Auction Participants. The Debtors will provide instructions setting forth how to attend the Auction to the Auction Participants via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time, or location of any Auction to the relevant Qualified Bidders, and will cause publication of such change to occur on the website of the Debtors' claims and noticing agent, www.kccllc.net/christmastreeshops.

On or before July 19, 2023 at 11:59 p.m., the Debtors shall file a Notice of Winning Bid with the Court that sets forth: (i) the identity of the Winning Bidder and any Back-Up Bidder; (ii) the amount of the Winning Bid and any Back-Up Bid; (iii) a summary of the

Purchased Assets subject to the Winning Bid; and (iv) whether the Winning Bidder or the Back-Up Bidder have any connections to the Debtors other than those arising from their respective bids.

C. Sale Objection.

Objections to a Sale of the Purchased Assets, must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the grounds for such objection, and (d) be filed with the Court and served on counsel to the Debtors, Murphy & King, P.C., Attn: Harold B. Murphy, Esq. (hmurphy@murphyking.com) and Christopher M. Condon, Esq. (ccondon@murphyking.com) and Troutman Pepper, Attn: Evelyn Meltzer, Esq. (evelyn.meltzer@troutman.com) and Marcy McLaughlin Smith, Esq. (marcy.smith@troutman.com) on or before **July 20, 2023, at 4:00 p.m. (ET)**.

D. Sale Hearing

The Sale Hearing shall take place on **July 21, 2023, at _ : _m. (ET)**, before The Honorable Thomas M. Horan, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801.

RESERVATION OF RIGHTS TO MODIFY BIDDING PROCEDURES

Notwithstanding any of the foregoing, the Debtors and their estates reserve the right, after consultation with the Notice Parties, to modify the Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, modify bidding increments, waive terms and conditions of the Bidding Procedures with respect to any or all Qualified Bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all Qualified Bidders, adjourn or cancel an Auction at or prior to such Auction, and adjourn the Sale Hearing.

ADDITIONAL INFORMATION

Copies of the Bidding Procedures Motion, the Bidding Procedures, the Bidding Procedures Order, and all other documents filed with the Court may be obtained free of charge by visiting www.kccllc.net/christmastreeshops.

FAILURE TO ABIDE BY THE BIDDING PROCEDURES, THE BIDDING PROCEDURES ORDER, OR ANY OTHER APPLICABLE ORDER OF THE COURT ENTERED IN THESE CHAPTER 11 CASES MAY RESULT IN THE REJECTION OF YOUR BID AND YOUR DISQUALIFICATION FROM PARTICIPATING IN THE BIDDING FOR AND AUCTION OF ANY OF THE PURCHASED ASSETS.

THE FAILURE OF ANY PERSON OR ENTITY TO TIMELY FILE AND SERVE AN OBJECTION IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER, INCLUDING THE FAILURE TO FILE ANY SUCH OBJECTION BY THE APPLICABLE OBJECTION DEADLINE, SHALL FOREVER BAR SUCH PERSON OR ENTITY FROM ASSERTING, AT THE SALE HEARING OR THEREAFTER, ANY SUCH OBJECTION TO THE RELIEF REQUESTED IN THE MOTION, THE CONSUMMATION OF ANY APPLICABLE SALE, INCLUDING THE SALE OF ANY PURCHASED ASSETS TO A SUCCESSFUL BIDDER FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, PURSUANT TO SECTION 363(f) OF THE BANKRUPTCY CODE OR THE TERMS OF ANY STALKING HORSE AGREEMENT OR OTHER ASSET PURCHASE AGREEMENT EXECUTED BY THE DEBTORS.

Exhibit 3

Form of Assumption Notice

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

In re:)	
	)	Chapter 11
CHRISTMAS TREE SHOPS, LLC, <i>et al.</i> , ¹	)	Case No. 23-23-10576 (TMH)
Debtors	)	Jointly Administered
)	

**NOTICE OF CURE AMOUNTS AND POTENTIAL ASSUMPTION AND ASSIGNMENT
OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH
SALE OF THE DEBTOR’S ASSETS**

On May 5, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) a motion [Docket No. [●]] (the “Bidding Procedures Motion”),² seeking entry of (a) an order (the “Bidding Procedures Order”): (i) approving bidding procedures (the “Bidding Procedures”) to be used in connection with one or more sales (each a “Sale”) of the Debtors’ assets (the “Purchased Assets”) free and clear of all liens, claims, interests, and encumbrances, (ii) authorizing procedures to designate one or more Stalking Horse Bidders (iii) scheduling an auction of the Purchased Assets (the “Auction”); (iv) approving the form and manner of service of this Notice of Sale; (v) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, “Assigned Contracts”) in connection with any Sale; (vi) approving the form and manner of service of notice to each relevant non-debtor counterparty to an Assigned Contract (each a “Counterparty”) of the proposed assumption and assignment of such Counterparty’s Assigned Contract; (vii) scheduling a final hearing to consider approval of the proposed Sale (the “Sale Hearing”); and (vi) granting related relief; and (b) one or more orders (each, a “Sale Order”) (i) authorizing a Sale of the Purchased Assets free and clear of all liens, claims, interests, and encumbrances; (ii) authorizing the assumption and assignment of certain Assigned Contracts in connection with the approved Sale; and (iii) granting related relief.

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s U.S. tax identification number are as follows: Christmas Tree Shops, LLC (1207), Handil, LLC (1150), Handil Holdings, LLC (2891), Salkovitz Family Trust 2, LLC (8773), and Nantucket Distributing Co., LLC (1640). The notice address for the Debtors is 64 Leona Drive, Middleboro, Massachusetts 02346.

² Capitalized terms used but not defined herein shall have the respective meanings given to them in the Motion or the Bidding Procedures, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order (or any provision thereof) contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any inconsistency between any summary in this Assumption and Assignment Notice and the terms and conditions of either of the Bidding Procedures or the Bidding Procedures Order, the actual terms and conditions in those documents shall control.

On [●], 2023, the Court entered the Bidding Procedures Order [Docket No. [●]]. In accordance with the Bidding Procedures Order, the Debtors held an Auction for the sale of certain of their Assets. At the conclusion of the Auction, [winning bidder's name] was selected as the Winning Bidder for [list of Purchased Assets] (the "Purchased Assets"), and [Back-Up Bidder's name], as the Back-Up Bidder for the Purchased Assets.

YOU ARE RECEIVING THIS NOTICE BECAUSE THE DEBTORS BELIEVE YOU MAY BE A COUNTERPARTY TO AN ASSIGNED CONTRACT THAT DEBTORS MAY ASSUME AND ASSIGN TO THE WINNING BIDDER OR THE BACK-UP BIDDER AS PART OF THE SALE OF THE PURCHASED ASSETS.

**CURE AMOUNT AND ADEQUATE ASSURANCE
INFORMATION**

In accordance with the Assumption and Assignment Procedures and the Bidding Procedures Order, the Debtors may, in connection with the Sale of certain of their Purchased Assets, seek to assume and assign certain of their Assigned Contracts to the Winning Bidder for such Purchased Assets. Each of the Assigned Contracts that potentially could be assumed and assigned in connection with the Sale, together with the Debtors' calculation of Cure Amount (defined below) with respect to such Assigned Contracts, is set forth on Schedule 1 hereto. The inclusion of any Assigned Contract on Schedule 1 does not constitute an admission by the Debtors, any Winning Bidder, or any other party that such Assigned Contract is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code or require or guarantee that such Assigned Contract ultimately will be assumed or assigned. All rights of the Debtors with respect thereto are reserved. Attached to Schedule 1 is the Winning Bidder's and the Back-Up Bidder's Adequate Assurance Information (as defined in the Bidding Procedures).

In addition, to the extent that any of the Cure Amounts set forth on Schedule 1 do not reflect postpetition payments that have been made by the Debtors in respect of applicable Cure Amounts or (ii) any payments that are made by the Debtors in respect of such Cure Amounts after the filing of this Notice, the respective amounts required to be paid to cure any existing defaults under the applicable Assigned Contracts shall be reduced by any such corresponding postpetition payments, and the Debtors reserve their rights to update the Cure Amount set forth on Schedule 1 accordingly, either by filing a supplemental notice with the Court or by written notice to the applicable Counterparty.

OBJECTIONS

A. Cure Objection Deadline and Adequate Assurance Objection Deadline.

Any Counterparty that wishes to object to (a) the proposed assumption and assignment of the Counterparty's Assigned Contract (including, without limitation, on the basis that the Winning Bidder cannot provide adequate assurance of future performance) or (b) the Cure Amount (each such objection, a "Contract Objection") must file with the Court by no later than **July 27, 2023 at 12:00 p.m. (ET)**, and serve on the Notice Parties its Contract Objection, which must (i) be in writing; (ii) state with specificity the grounds for such objection; (iii) comply with the Bankruptcy Rules and the Local Rules.

B. Resolution of Objections

With respect to any Contract Objection that is timely received, the Debtors, the relevant Winning Bidder, and the objecting Counterparty shall first confer in a good faith attempt to resolve the Contract Objection without Court intervention.

If the parties are unable to consensually resolve the Contract Objection, the Debtors may request an emergency hearing for the Court to resolve the Contract Objection. In the event a Contract Objection is resolved in a manner unfavorable to the Debtors and their estates, the Debtors may withdraw their request to assume and assign such Assigned Contract as part of any Winning Bid. A Contract Objection may be resolved after the closing date of the applicable Sale, subject to the terms of the asset purchase agreement approved in connection with the Sale.

The Debtors' decision to assume and assign any Assigned Contract to a Winning Bidder is subject to this Court's approval and the closing of the Sale. Accordingly, absent this Court's approval and the closing of such Sale, the Assigned Contracts shall not be deemed assumed or assigned and shall in all respects be subject to further administration by the Debtors and their estates under the Bankruptcy Code in connection with the Chapter 11 Cases.

IF NO CONTRACT OBJECTION IS TIMELY RECEIVED WITH RESPECT TO AN ASSIGNED CONTRACT: (A) THE COUNTERPARTY TO SUCH ASSIGNED CONTRACT SHALL BE DEEMED TO HAVE CONSENTED TO THE ASSUMPTION BY THE DEBTORS AND ASSIGNMENT TO THE WINNING BIDDER OF THE ASSIGNED CONTRACT, AND BE FOREVER BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO SUCH ASSUMPTION AND ASSIGNMENT (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO ADEQUATE ASSURANCE OF FUTURE PERFORMANCE BY THE WINNING BIDDER); (B) ANY AND ALL DEFAULTS UNDER THE ASSIGNED CONTRACT AND ANY AND ALL PECUNIARY LOSSES RELATED THERETO SHALL BE DEEMED CURED AND COMPENSATED PURSUANT TO SECTION 365(B)(1)(A) AND (B) OF THE BANKRUPTCY CODE UPON PAYMENT OF THE APPLICABLE CURE AMOUNT; AND (C) THE CURE AMOUNT FOR SUCH ASSIGNED CONTRACT SHALL BE CONTROLLING, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SUCH ASSIGNED CONTRACT, OR ANY OTHER RELATED DOCUMENT, AND THE COUNTERPARTY SHALL BE DEEMED TO HAVE CONSENTED TO THE CURE AMOUNT AND SHALL BE FOREVER BARRED FROM ASSERTING ANY OTHER CLAIMS RELATED TO SUCH SELECTED ASSIGNED CONTRACT AGAINST THE DEBTORS AND THEIR ESTATES OR THE WINNING BIDDER, OR THE PROPERTY OF ANY OF THEM, THAT EXISTED PRIOR TO THE ENTRY OF THE SALE ORDER.

SALE HEARING

The Sale Hearing shall take place on **July 21, 2023, at 10:00 a.m. (ET)**, before The Honorable Thomas M. Horan, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801.

ADDITIONAL INFORMATION

Copies of the Bidding Procedures Motion, the Bidding Procedures, the Bidding Procedures Order, and all other documents filed with the Court may be obtained free of charge by visiting the website of the Debtors' claims and noticing agent, www.kcellc.net/christmastreesshops