

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
: **Chapter 11**
: **Case No. 20-10161 (JLG)**
: **(Jointly Administered)**
: **(ECF No. 21)**
-----X

ORDER (I) APPROVING (A) BIDDING PROCEDURES FOR SALES OF DEBTORS' ASSETS, (B) STALKING HORSE BID PROTECTIONS, (C) FORM AND MANNER OF NOTICE OF SALES, AUCTIONS, AND SALE HEARINGS, AND (D) ASSUMPTION AND ASSIGNMENT PROCEDURES AND FORM AND MANNER OF NOTICE OF ASSUMPTION AND ASSIGNMENT; (II) AUTHORIZING DESIGNATION OF ADDITIONAL STALKING HORSE BIDDERS; (III) SCHEDULING AUCTIONS AND SALE HEARINGS; AND (IV) GRANTING RELATED RELIEF

Upon the motion, dated January 23, 2020 (ECF No. 21) (the “**Motion**”),² of Fairway Group Holdings Corp. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), pursuant to sections 105, 363, 365, 503, and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 6004, 6006, and 9014, for entry of orders (i)(a) approving the bidding procedures attached hereto as **Exhibit 1** (the “**Bidding Procedures**”), in connection with the sale of substantially all of the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Fairway Group Holdings Corp. (2788); Fairway Group Acquisition Company (2860); Fairway Bakery LLC (4129); Fairway Broadway LLC (8591); Fairway Chelsea LLC (0288); Fairway Construction Group, LLC (2741); Fairway Douglaston LLC (2650); Fairway East 86th Street LLC (3822); Fairway eCommerce LLC (3081); Fairway Georgetowne LLC (9609); Fairway Greenwich Street LLC (6422); Fairway Group Central Services LLC (7843); Fairway Group Plainview LLC (8643); Fairway Hudson Yards LLC (9331); Fairway Kips Bay LLC (0791); FN Store LLC (9240); Fairway Paramus LLC (3338); Fairway Pelham LLC (3119); Fairway Pelham Wines & Spirits LLC (3141); Fairway Red Hook LLC (8813); Fairway Stamford LLC (0738); Fairway Stamford Wines & Spirits LLC (3021); Fairway Staten Island LLC (1732); Fairway Uptown LLC (8719); Fairway Westbury LLC (6240); and Fairway Woodland Park LLC (9544). The location of the Debtors’ corporate headquarters is 2284 12th Avenue, New York, New York 10027. Fairway Community Foundation Inc., a charitable organization, owned by Fairway Group Holdings Corp., is not a debtor in these proceedings.

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

Debtors' assets (the "**Assets**"), (b) approving the Stalking Horse Bid Protections proposed to be granted to the Stalking Horse Bidder (as defined herein) in accordance with the terms and conditions set forth in the Bidding Procedures and the Stalking Horse Agreement (as defined herein), (c) authorizing the Debtors to designate one or more Additional Stalking Horse Bidders and offer each such Bidder certain Additional Stalking Horse Bid Protections (each as defined herein), (d) scheduling one or more auctions for the Assets (each, an "**Auction**") and one or more hearings for the approval of proposed Sale Transactions (as defined below) (each, a "**Sale Hearing**"), (e) approving form and manner of (1) notice of Auctions, sales of the Assets (each, a "**Sale Transaction**"), and Sale Hearings substantially in the form annexed hereto as **Exhibit 2** (the "**Sale Notice**") and (2) notice to each non-Debtor counterparty (each, a "**Counterparty**") to an executory contract or unexpired non-residential real property lease of the Debtors (each, a "**Proposed Assumed Contract**") that the Debtors propose to assume and assign to a particular Successful Bidder (including the Stalking Horse Bidder or any Additional Stalking Horse Bidder) setting forth the Debtors' calculation of the amount necessary to cure any monetary defaults under such Proposed Assumed Contract (the "**Cure Costs**") and the applicable proposed assignee, substantially in the form attached hereto as **Exhibit 3** (the "**Assumption and Assignment Notice**"), (f) approving the procedures for the assumption and assignment of Contracts and Leases as set forth herein (the "**Assumption and Assignment Procedures**"), including the procedures for determining Cure Costs; and (g) granting related relief; (ii)(a) authorizing the sale of the Assets (the "**Acquired Assets**") in the Stalking Horse Package (as defined herein) free and clear of all liens, claims, encumbrances, and other interests pursuant to section 363(f) of the Bankruptcy Code, (b) authorizing the assumption and assignment of the Transferred Contracts (as defined herein); and (c) granting related relief, all as more fully set forth in the Motion; and the Court having

jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b) as to which the Bankruptcy Court has the power to enter a final judgment; and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties (as defined in the Motion), and such notice having been adequate and appropriate under the circumstances, and it appearing that no other notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion (the “**Hearing**”); and upon the Moses Declaration, filed contemporaneously with the Motion, and the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. This Court has jurisdiction to hear and determine the Motion and to grant the relief requested herein with respect to the Bidding and Auction Process (as defined in the Bidding Procedures) pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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.

B. The statutory and legal predicates for the relief requested in the Motion are sections 105, 363, 365, 503, and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9014.

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

D. The Debtors and their advisors, including PJ Solomon, L.P., engaged in a robust and extensive marketing and sale process before and after the Commencement Date, over a period of more than eight (8) months, to solicit and develop the highest or best offer for all of their store locations, production and distribution center, inventory, intellectual property, and other assets.

E. The Bidding Procedures are fair, reasonable, and appropriate, and are designed to maximize the value of 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 Stalking Horse Bid as reflected in the Stalking Horse Agreement represents the highest or best offer the Debtors have received to purchase the Acquired Assets included in the Stalking Horse Bid (the “**Stalking Horse Package**”), in accordance with the Bidding Procedures, and the Ad Hoc Group has consented to the sale to the Stalking Horse pursuant to the Stalking Horse Agreement.

H. Village Super Market, Inc. shall act as the stalking horse bidder (the “**Stalking Horse Bidder**” and, its bid, the “**Stalking Horse Bid**”) pursuant to that certain Asset Purchase Agreement, dated as of January 22, 2020, by and between certain of the Debtors, as Sellers, and the Stalking Horse Bidder, as Buyer, substantially in the form attached to the Motion as Exhibit C (as may be amended, supplemented, or otherwise modified by the parties thereto, the “**Stalking Horse Agreement**”), and the Stalking Horse Bid shall be subject to higher or better offers in accordance with the Bidding Procedures.

I. Pursuit of the Stalking Horse Bidder as a “stalking-horse” and its Stalking Horse Agreement as a “stalking-horse” sale agreement is in the best interests of the Debtors and the Debtors’ estates and creditors, and it reflects a sound exercise of the Debtors’ business judgment. The Stalking Horse Agreement provides the Debtors with the opportunity to sell the Acquired Assets in order to preserve and realize their going concern value. The Stalking Horse Agreement will enable the Debtors to continue their operations, preserve jobs, minimize disruption to the Debtors’ business, and secure a fair and adequate baseline price for the Acquired Assets at the Auctions, if any, for the Stalking Horse Package and, accordingly, will provide a clear benefit to the Debtors’ estates, their creditors, and all other parties in interest.

J. The Stalking Horse Bid Protections, including, but not limited to, the Termination Payment (as defined in the Stalking Horse Agreement), (i) have been negotiated by the Stalking Horse Bidder and the Debtors and their respective advisors at arm’s-length and in good faith and (ii) are necessary to ensure that the Stalking Horse Bidder will continue to pursue its Stalking Horse Agreement and the Sale Transaction contemplated thereby. The Termination Payment, to the extent payable under the Stalking Horse Agreement, (a)(x) is an actual and necessary cost and expense of preserving the Debtors’ estates within the meaning of section 503(b)

of the Bankruptcy Code, (y) shall be treated as an allowed administrative expense claim against the Debtors' estates pursuant to sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code, and (z) shall be included in the Carve-Out (as defined in the DIP Orders); (b) is commensurate to the real and material benefits conferred upon the Debtors' estates by the Stalking Horse Bidder; and (c) is fair, reasonable, and appropriate, including in light of the size and nature of the Sale Transaction, the necessity to announce a sale transaction for the Acquired Assets, and the efforts that have been and will be expended by the Stalking Horse Bidder. The Stalking Horse Bid Protections are a material inducement for, and condition of, the Stalking Horse Bidder's execution of the Stalking Horse Agreement. Unless it is assured that the Bid Protections will be available, the Stalking Horse Bidder is unwilling to remain obligated to consummate the Sale Transaction or otherwise be bound under the Stalking Horse Agreement (including the obligations to maintain its committed offer while such offer is subject to higher or better offers as contemplated by the Bidding Procedures).

K. The Debtors have articulated good and sufficient business reasons for the Court to approve (i) the Bidding Procedures, (ii) the Assumption and Assignment Procedures, (iii) the Stalking Horse Bid Protections, and (iv) the form and manner of notice of the Auctions and the Sale Hearings for the Sale Transactions.

L. The Stalking Horse Bidder is not an "insider" or "affiliate" of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders exists between the Stalking Horse Bidder and the Debtors. The Stalking Horse Bidder and its counsel and advisors have acted in "good faith" within the meaning of section 363(m) of the Bankruptcy Code in connection with the Stalking Horse Bidder's negotiation of the Stalking Horse Bid Protections and the Bidding

Procedures and the Stalking Horse Bidder's negotiation and entry into the Stalking Horse Agreement.

M. Good and sufficient business reasons exist for the Court to authorize the Debtors to designate Additional Stalking Horse Bidders and enter into Additional Stalking Horse Agreements, in each case, in accordance with the terms of this Order and the Bidding Procedures.

N. The Assumption and Assignment Procedures, including notice of proposed Cure Costs, are reasonable and appropriate and consistent with section 365 of the Bankruptcy Code and Bankruptcy Rule 6006. The Assumption and Assignment Procedures have been tailored to provide adequate opportunity for all non-Debtor Counterparties to the Transferred Contracts and other Proposed Assumed Contracts to raise any objections to the proposed assumption and assignment or to the Cure Costs.

O. The Sale Notice is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Bidding Procedures, the Assumption and Assignment Procedures, the Auctions, the Sale Hearings, and the Sale Transactions (including the sale of the Acquired Assets as set forth under the Stalking Horse Agreement) free and clear of any liens, claims, encumbrances, or interests pursuant to section 363(f) of the Bankruptcy Code) (with such liens, claims, encumbrances, or interests attaching to the proceeds of any such sale), and any and all objection deadlines related thereto, and no other or further notice shall be required for the Motion, the Sale Transactions, or the assumption and assignment of the Transferred Contracts except as expressly required herein.

P. Nothing contained herein shall prejudice or impair the right to Credit Bid, as set forth in the Bidding Procedures (and subject to the terms of the Prepetition Credit Agreement (and any other "Loan Documents" as such term is defined therein)), of (i) Ankura Trust Company,

LLC, as administrative agent and collateral agent under the Prepetition Credit Agreement, (ii) the Prepetition Secured Lenders under the Prepetition Credit Agreement, and (iii) the DIP Lenders, on such assets that are subject to their respective liens in their respective priorities.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND
DECREED THAT:**

1. The Motion is granted to the extent set forth herein.
2. All objections to the relief granted herein that have not been withdrawn with prejudice, waived, or settled, and all reservations of rights included in such objections, hereby are overruled and denied on the merits with prejudice.
3. The Bidding Procedures are hereby approved in their entirety, are incorporated herein by reference, and shall govern the bids and proceedings related to the sale of the Assets and the Auctions. The failure to specifically include or reference any particular provision of the Bidding Procedures in the Motion or this Order shall not diminish or otherwise impair the effectiveness of such procedures, it being the 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.

Stalking Horse Bid Protections

4. The Debtors are authorized to enter into the Stalking Horse Agreement, and the Stalking Horse Bid shall be subject to higher or better Qualified Bids, in accordance with the terms and procedures of the Bidding Procedures.
5. The Stalking Horse Bid Protections are approved in their entirety, including, without limitation, the Termination Payment payable in accordance with, and subject to the terms of, the Stalking Horse Agreement and the Bidding Procedures. In accordance with the Stalking Horse Agreement, the Stalking Horse Bidder shall be granted the right to a Termination Payment

comprised of a break-up fee in an amount equal to three percent (3%) of the Cash Purchase Price (as such term is defined in the Stalking Horse Agreement). Except as expressly provided for herein, no other termination payments are authorized or permitted under this Order.

6. The Debtors are authorized to pay the Termination Payment, to the extent payable under the Stalking Horse Agreement, without further order of the Court.

7. The Termination Payment, to the extent payable under the Stalking Horse Agreement, shall (a) constitute an allowed administrative expense claim against the Debtors' estates pursuant to sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code, (b) be included in the Carve-Out (as defined in the DIP Orders), and (c) be (i) paid in cash from the proceeds of any approved sale or (ii) credited against the purchase price if, after an Auction, the Stalking Horse Bid, as enhanced at the Auction, is the Successful Bid and the sale contemplated by the Stalking Horse Agreement (as enhanced at the Auction) is consummated.

Designation of Additional Stalking Horse Bidders

8. The Debtors are authorized to, in the exercise of their reasonable business judgment, in consultation with the Consultation Parties, designate one or more Additional Stalking Horse Bidders for one or more of the Assets not included in the Stalking Horse Package and enter into asset purchase agreements with Additional Stalking Horse Bidders (each such agreement, an "**Additional Stalking Horse Agreement**") for the sale of such Assets (each such group of Assets, an "**Additional Stalking Horse Package**"), in each case, in accordance with the terms of this Order and the Bidding Procedures.

9. Subject to the terms of this Order and the Bidding Procedures, the Debtors are authorized to offer each Additional Stalking Horse Bidder Additional Stalking Horse Bid Protections, including a break-up fee (an "**Additional Termination Payment**"); provided that all Additional Termination Payments must be negotiated by the Debtors, in consultation with the

Consultation Parties (as defined in the Bidding Procedures), and no Additional Termination Payment shall exceed three percent (3%) of the Cash Purchase Price in the applicable Additional Stalking Horse Bid, as set forth in the applicable Additional Stalking Horse Agreement executed by the Debtors.

10. The Debtors shall include in the Sale Notice the material terms of any Additional Stalking Horse Agreement, including the terms of any Additional Stalking Horse Bid Protections; provided that if the Debtors already have filed with the Court and served on the Sale Notice Parties (as defined in the Motion) the Sale Notice prior to the execution of an Additional Stalking Horse Agreement, the Debtors shall file with the Court, serve on the Sale Notice Parties, and cause to be published on the website maintained by Omni Agent Solutions, the Debtors' claims and noticing agent in these chapter 11 cases, located at www.omniagentsolutions.com/Fairway (the "**Omni Website**"), an addendum to the Sale Notice setting forth the identity of the Additional Stalking Horse Bidder and the material terms of such Additional Stalking Horse Agreement, including the terms of the applicable Additional Stalking Horse Bid Protections and the Proposed Assumed Contracts in the Additional Stalking Horse Package (each, an "**Additional Stalking Horse Notice**").

11. Objections to the provision of an Additional Termination Payment (each, a "**Bid Protection Objection**") shall (a) be in writing; (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; (c) state, with specificity, the legal and factual bases thereof; and (d) be filed with the Court and served on the Objection Notice Parties (as defined herein) within seven (7) calendar days after service of the Sale Notice or the applicable Additional Stalking Horse Notice.

12. If a timely Bid Protection Objection is filed and served with respect to an Additional Stalking Horse Agreement in accordance with the Bidding Procedures, any Additional Termination Payment provided for under such agreement shall not be deemed approved until the Bid Protection Objection is resolved, either by agreement of the objecting party and the Debtors, or by order of the Court resolving such objection and approving the provision of the Additional Termination Payment.

13. If no timely Bid Protection Objection is filed and served with respect to an Additional Stalking Horse Agreement in accordance with the Bidding Procedures, the Debtors may file with the Court, upon certification of counsel, a proposed order authorizing and approving the Debtors' provision of Additional Stalking Horse Bid Protections, including an Additional Termination Payment, pursuant to the terms and provisions of the applicable Additional Stalking Horse Agreement and the Bidding Procedures, which may be entered without further notice or hearing.

14. Absent further order of the Court, no person or entity (other than the Stalking Horse Bidder and any applicable Additional Stalking Horse Bidder) shall be entitled to any expense reimbursement or break-up, "topping," termination, or other similar fee or payment by the Debtors for submitting a bid for the Assets, or in any way participating in an Auction or the Debtors' sale process. The Stalking Horse Bidder is a party in interest in these chapter 11 cases.

Bidding Procedures and Auction

15. The Bidding Procedures, attached hereto as **Exhibit 1**, are incorporated herein and approved, and shall apply with respect to any bids for, and the auction and sale of, all of the Debtors' Locations and other assets, including the Acquired Assets in the Stalking Horse Package. The Debtors are authorized to take all actions necessary or appropriate to implement the Bidding Procedures.

16. The deadline for submitting Qualified Bids in respect of the Stalking Horse Package (the “**Stalking Horse Bid Deadline**”) is **March 4, 2020 at 4:00 p.m. (Eastern Time)** and the deadline for submitting Qualified Bids in respect of all other assets (the “**Other Assets Bid Deadline**”) and, together with the Stalking Horse Bid Deadline, the “**Bid Deadlines**”) is **March 9, 2020 at 4:00 p.m. (Eastern Time)**; provided that the Debtors shall have the right, after consulting with the Consultation Parties, to extend the Bid Deadlines for any reason whatsoever, in their reasonable business judgment, for all or certain Potential Bidders, without further order of the Court, subject to providing notice to the Stalking Horse, all Potential Bidders, and the Consultation Parties. The Debtors shall promptly provide copies of all bids to each of the Consultation Parties, but in no event later than the next calendar day. Any party that does not submit a Qualified Bid by the applicable Bid Deadline in accordance with the Bidding Procedures will not be allowed to (a) submit any offer after such deadline for the applicable assets or (b) participate in the Auction for the applicable assets; provided that the foregoing shall not preclude the Debtors after the applicable Bid Deadline from marketing to any person, or auctioning, or any parties from bidding on, any Locations or other assets not included in an Auction, including pursuant to the Store Closing Procedures;⁴ provided, further, that to the extent there is no Auction for the Acquired Assets in the Stalking Horse Bid, the prior proviso shall not be applicable to such Acquired Assets.

17. The Stalking Horse Bidder and any Additional Stalking Horse Bidder shall be considered a Qualified Bidder, and the Stalking Horse Bid and any Additional Stalking Horse Bid, as reflected in the Stalking Horse Agreement or an Additional Stalking Horse Agreement, as

⁴ As used herein, “**Store Closing Procedures**” shall have the meaning ascribed to such term in the *Motion of Debtors for (I) Approval of Procedures for Store Closing Sales and (II) Related Relief* (ECF No. 104).

applicable, is a Qualified Bid for all purposes and requirements pursuant to the Bidding Procedures. If the Stalking Horse Bid, as reflected in the Stalking Horse Agreement, is the only Qualified Bid in respect of the assets included in the Stalking Horse Package that is received by the Debtors by the Stalking Horse Bid Deadline, the Debtors shall not conduct an Auction for the Stalking Horse Package, and the Stalking Horse Bidder will be the Successful Bidder for the Stalking Horse Package. If an Additional Stalking Horse Bid is the only Qualified Bid received by the Debtors in respect of the assets included in an Additional Stalking Horse Package by the applicable bid deadline, the Debtors shall not conduct an Auction for such Additional Stalking Horse Package, and the Additional Stalking Horse Bidder shall be deemed the Successful Bidder with respect to the assets included in the Additional Stalking Horse Package.

18. If, in addition to the Stalking Horse Bid, the Debtors receive at least one Qualified Bid in respect of the Stalking Horse Package by the Stalking Horse Bid Deadline, the Debtors shall conduct an Auction of the Acquired Assets in accordance with the Bidding Procedures.

19. If, in addition to an Additional Stalking Horse Bid, the Debtors receive at least one Qualified Bid in respect of the applicable Additional Stalking Horse Package by the Other Assets Bid Deadline, the Debtors shall conduct an Auction of the assets in the Additional Stalking Horse Package in accordance with the Bidding Procedures.

20. The Debtors, after consultation with the Consultation Parties, may also include Assets not included in the Stalking Horse Bid or any Additional Stalking Horse Bid for bidding and sale at an Auction pursuant to the Bidding Procedures.

21. The Auctions will take place at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 on (a) **March 11, 2020**, with respect to the

Stalking Horse Package, if a Qualified Bid for the Stalking Horse Package other than the Stalking Horse Bid is received, and (b) **March 16, 2020**, with respect to any other Auction Package, if one or more Qualified Bids are received that warrant an Auction in the reasonable business judgment of the Debtors, after consulting with the Consultation Parties and providing notice to the Sale Notice Parties.

22. All proceedings of the Auctions shall be conducted openly, and all creditors and other parties in interest shall be permitted to attend; provided that the Debtors may, in their reasonable business judgment, and in consultation with the Consultation Parties, establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of or accompany Qualified Bidders or other parties in interest at the Auctions. The proceedings of the Auctions shall be transcribed.

23. Subject to Paragraph 48 below, each Qualified Bidder (other than the Stalking Horse Bidder) must provide with its bid financial and other information that allows the Debtors, after consultation with the Consultation Parties, to make a reasonable determination as to the Bidder's financial and other capabilities to consummate the Sale Transaction, including, without limitation (and in each case after consultation with the Consultation Parties), such financial and other information setting forth adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code and the Bidder's willingness to perform under any Contracts or Leases that are assumed and assigned to the Bidder, and which may include information of the kinds described in the Bidding Procedures (the "**Adequate Assurance Information**").

24. Each Qualified Bidder participating in an Auction shall confirm in writing and on the record at the Auction that (a) it has not engaged in any collusion with respect to the

submission of any bid, the bidding, or the Auction and (b) its Qualified Bid is a good faith bona fide offer that it intends to consummate if selected as a Successful Bidder.

25. Subject to the rights of the Stalking Horse Bidder under the Stalking Horse Agreement and the rights of any Additional Stalking Horse Bidder under an applicable Additional Stalking Horse Agreement, the Bidding Procedures (including the consultation rights of the Consultation Parties described therein) and this Order, the Debtors shall have the right, as they may reasonably determine to be in the best interests of their estates, to carry out the Bidding Procedures (in consultation with the Consultation Parties), including, without limitation, to: (a) determine which bidders are Qualified Bidders; (b) determine which bids are Qualified Bids; (c) determine which Qualified Bid is a Baseline Bid (as such terms are defined in the Bidding Procedures); (d) determine which bids are the Successful Bid and Back-Up Bid (as such terms are defined in the Bidding Procedures), each as it relates to the Auction; (e) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtors and their estates; (f) adjourn or cancel the Auctions and/or the Sale Hearings in open court without further notice or as provided in the Bidding Procedures; (g) modify the Bidding Procedures consistent with their fiduciary duties and bankruptcy law; and (h) withdraw the Motion at any time with or without prejudice.

26. The Debtors shall have the right, in their reasonable business judgment, after consulting with the Consultation Parties, in a manner consistent with their fiduciary duties and applicable law, to modify the Bidding Procedures, including (a) waive terms and conditions with respect to any Prospective Bidder; (b) extend the deadlines set forth in the Bidding Procedures; (c) announce at the Auctions modified or additional procedures for conducting the

Auction; and (d) provide reasonable accommodations to the Stalking Horse Bidder and any Additional Stalking Horse Bidder with respect to such terms, conditions, and deadlines of the Bidding and Auction process to promote further bids by such bidders on any Assets (including extending deadlines as may be required for the Stalking Horse Bidder and any applicable Additional Stalking Horse Bidder to comply with any additional filing and review procedures with the Federal Trade Commission in connection with any previous filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976), in each case, to the extent not materially inconsistent with the Bidding Procedures and this Order. Except as provided in the Stalking Horse Agreement and any Additional Stalking Horse Agreement, nothing in this Order or the Bidding Procedures shall obligate the Debtors to consummate or pursue any transaction with respect to any Asset with a Qualified Bidder.

Sale Hearings and Sale Objection Deadlines

27. In accordance with the Bidding Procedures, if: (a) the Stalking Horse Bid is the only Qualified Bid received by the Debtors in respect of the Stalking Horse Package by the Stalking Horse Bid Deadline, the Sale Hearing for the Stalking Horse Package shall be held before the Court on **March 11, 2020**; or (b) if a Qualified Bid other than the Stalking Horse Bid is received by the Debtors in respect of the Stalking Horse Package or a Qualified Bid for Other Assets is received by the Debtors by the Other Assets Bid Deadline, the Sale Hearing for the Stalking Horse Package and/or such Other Assets, as applicable, shall be held on **March 26, 2020**.

28. Notwithstanding the foregoing paragraph, the Debtors may (after consultation with the Consultation Parties and the Successful Bidders) seek an adjournment of the Sale Hearings, as the Debtors deem appropriate in the exercise of their reasonable business judgment.

29. Notwithstanding anything to the contrary contained in the Bidding Procedures, in the event that a Successful Bidder does not consummate the proposed Sale Transaction and a Back-Up Bidder has been previously identified, the Debtors shall (a) file and serve a Notice of Intent to Proceed with Back-Up Bid, and (b) schedule a telephonic status conference, which may be expedited, upon reasonable notice under the circumstances (which shall be no less than three (3) business days), at which time a briefing and hearing schedule will be established for those landlords and Counterparties to executory contracts that do not consent to a proposed assumption and assignment to the Back-Up Bidder. Any Back-Up Bidder, as identified in the Notice of Auction Results, shall not be considered or approved at the Sale Hearing to approve the sale of the applicable Auction Package to the Successful Bidder, nor shall affected landlords or other Counterparties be required to object to a sale to the Back-Up Bidder prior to the filing and service of the Notice of Intent to Proceed with Back-Up Bid.

30. Objections to a proposed Sale Transaction, including any objection to the sale of any Assets free and clear of liens, claims, encumbrances, and interests pursuant to section 363(f) of the Bankruptcy Code and entry of a Sale Order (each, a “**Sale Objection**”) shall (a) be in writing; (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; (c) state, with specificity, the legal and factual bases thereof; and (d) be filed with the Court and served on (i) proposed counsel to the Debtors, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Ray C. Schrock, P.C. and Sunny Singh, Esq.); (ii) proposed counsel to the Official Committee of Unsecured Creditors in these chapter 11 cases, Pachulski Stang Ziehl & Jones LLP, 780 Third Avenue, 34th Floor, New York, NY 10017 (Attn: Bradford J. Sandler, Esq. and Robert J. Feinstein, Esq.); (iii) counsel to the Stalking Horse Bidder, Wollmuth Maher & Deutsch LLP, 500 Fifth Avenue, New York, NY 10110 (Attn: Paul R. DeFilippo, Esq.);

(iv) counsel to the Ad Hoc Group and DIP Lenders, King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 (Attn: W. Austin Jowers, Esq., Michael Rupe, Esq., and Michael R. Handler, Esq.); (v) counsel to Ankura Trust Company, LLC, as the Prepetition Agent under the Prepetition Credit Agreement, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017 (Attn: Christian Fischer, Esq.); and (vi) the Unions, including: (a) United Food and Commercial Workers Local 371, 290 Post Road West, Westport, CT 06881 (Attn: Thomas Wilkinson), (b) United Food and Commercial Workers Local 1262, 1389 Broad Street, Clifton, NJ 07013 (Attn: Harvey Whille), and (c) United Food and Commercial Workers Local 1500, 425 Merrick Avenue, Westbury, NY 11590 (Attn: Robert Newell) (collectively, the “**Objection Notice Parties**”) by no later than (x) **March 4, 2020 at 4:00 p.m. (Eastern Time)**, if the Sale Objection is with respect to the sale of the Stalking Horse Package, or the assumption or assignment of an Initial Transferred Contract, to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement; or (y) **seven (7) days after the service of the Additional Stalking Horse Notice, Notice of Auction Results, or Supplemental Assumption and Assignment Notice, as applicable** (other than with respect to Sale Objections to a Back-Up Bid), providing notice of the proposed sale or assumption and assignment to which the Sale Objection relates (or with respect to Cure Objections related to the proposed Cure Cost of a Proposed Assumed Contract, seven (7) days after the service of the first notice including such Cure Cost for such Contract). If a timely Sale Objection cannot otherwise be resolved by the parties, such objection shall be heard at the applicable Sale Hearing.

Noticing Procedures

31. The Sale Notice, substantially in the forms annexed hereto as **Exhibit 2**, are approved, and no other or further notice of the sale of the Assets, the Auctions, the Sale Hearings, or the deadlines for Sale Objections shall be required if the Debtors serve and publish such notice,

including any Additional Stalking Horse Notice, in the manner provided in the Bidding Procedures and this Order. The Sale Notice contains the type of information required under Bankruptcy Rule 2002 and Local Rule 2002-1, and complies in all respects with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

32. Within two (2) business days after entry of this Order, the Debtors shall file with the Court, serve on the Sale Notice Parties, and cause to be published on the Omni Website the Sale Notice, which shall set forth (a) a complete list and general description of the Assets for sale; (b) the date, time, and place of (i) the Auctions and (ii) the Sale Hearings; (c) the deadlines for Sale Objections; and (d) the procedures for filing Sale Objections.

33. Within five (5) business days after entry of this Order, the Debtors shall cause the contents of the Sale Notice to be published once in the national edition of *USA Today* and once in the *New York Times*.

34. Within one (1) calendar day after the conclusion of an Auction (or as soon as reasonably practicable thereafter), the Debtors shall file with the Court, serve on the Sale Notice Parties (including each Counterparty to a Proposed Assumed Contract (as defined below) in a Successful Bid and Back-Up Bid), and cause to be published on the Omni Website, a notice containing the results of the Auction (the “**Notice of Auction Results**”), which shall (a) identify the Successful Bidder(s) and Back-Up Bidder(s); (b) list all Proposed Assumed Contracts in the Successful Bid(s) and Back-Up Bid(s), if known; (c) identify any known proposed assignees of Proposed Assumed Contracts (if different from the applicable Successful Bidder); and (d) set forth the deadlines and procedures for filing Sale Objections in response to the Notice of Auction Results.

Assumption and Assignment Procedures

35. The Assumption and Assignment Notice is reasonable, fair, and appropriate, and contains the type of information required under Bankruptcy Rule 2002, Local Rule 2002-1, and complies in all respects with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules, and no other or further notice to each Counterparty to all known Contracts and Leases of the Debtors' proposed Cure Costs and, with respect to the Contracts proposed to be assumed and assigned under the Stalking Horse Bid and any other Contracts and Leases proposed to be assigned to any Additional Stalking Horse Bidder or any other Successful Bidder, the proposed assumption and assignment of Contracts and Leases (all such Contracts and Leases, collectively, the "**Proposed Assumed Contracts**"), shall be required if the Debtors file and serve such notice (and the Notice of Auction Results) in accordance with the Assumption and Assignment Procedures and this Order.

36. The following Assumption and Assignment Procedures are reasonable and appropriate under the circumstances, fair to all non-Debtor counterparties, comply in all respects with the Bankruptcy Code, and are approved.

37. As soon as practicable, but not later than two (2) business days after the entry of this Order, the Debtors shall file with the Court, serve on the Sale Notice Parties, including each applicable Contract Counterparty, and cause to be published on the Omni Website, an initial Assumption and Assignment Notice (the "**Initial Assumption and Assignment Notice**") which shall (a) identify the Transferred Contracts initially designated by the Stalking Horse Bidder for assumption and assignment to the Stalking Horse Bidder (the "**Initial Transferred Contracts**"); (b) list the Debtors' good faith calculation of the Cure Costs with respect to each Initial Transferred Contract; (c) expressly state that assumption or assignment of any Transferred Contract is not guaranteed and is subject to Court approval; (d) direct the non-Debtor Counterparty to relevant

publicly available financial information regarding the Stalking Horse Bidder for purposes of demonstrating adequate assurance of future performance by the Stalking Horse Bidder; (e) prominently display the deadline to file a Cure Objection and an Adequate Assurance Objection (each as hereinafter defined); and (f) prominently display the dates, times, and location of the Sale Hearings.

38. Pursuant to the terms of the Stalking Horse Agreement, the Stalking Horse Bidder shall have the right, at any time prior to five (5) days prior to the Auction on the Stalking Horse Package, if any, or ten (10) days prior to the Sale Hearing on the Stalking Horse Package if no Auction is held, to designate additional Transferred Contracts for proposed assumption and assignment to the Stalking Horse Bidder (each, a “**Supplemental Contract**”) or to remove Contracts from the list of Transferred Contracts from proposed assumption and assignment (each, a “**Removed Contract**”). The Debtors shall use commercially reasonable efforts to, as soon as reasonably practicable after the Buyer’s designation of any Supplemental Contracts or any Removed Contracts file with the Court, serve by overnight delivery on all applicable Counterparties, and cause to be published on the Omni Website, a notice of proposed assumption and assignment of the Supplemental Contracts (a “**Supplemental Assumption and Assignment Notice**”) and/or removal of the Removed Contracts, which shall (a) expressly state that assumption or assignment of the Supplemental Contracts is not guaranteed and subject to Court approval and removal of the Removed Contracts does not constitute a rejection by the Debtors of such Contract, (b) direct each non-Debtor Counterparty to a Supplemental Contract to relevant publicly available financial information regarding the Stalking Horse Bidder for purposes of demonstrating adequate assurance of future performance by the Stalking Horse Bidder, and (c) prominently display the deadline to file an Adequate Assurance Objection with respect to a Supplemental Contract.

39. The Debtors shall provide notice to Counterparties whose Contracts or Leases are designated for assumption and assignment by any Additional Stalking Horse Bidder, pursuant to the terms of an applicable Additional Stalking Horse Agreement, or by any Successful Bidder, pursuant to the terms of an asset purchase agreement executed by the Debtors and the applicable Successful Bidder, in a manner consistent with the Assumption and Assignment Procedures, this Order, and all applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules, by no later than five (5) days prior to the applicable Auction, if held, and to the extent known, or otherwise ten (10) days prior to the applicable Sale Hearing.

40. All objections to any proposed Cure Costs (a “**Cure Objection**”) shall (a) be in writing; (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; (c) state, with specificity, the legal and factual bases thereof, including the cure amount the objecting Counterparty believes is required to cure defaults under the relevant Contract or Lease; (d) include any appropriate documentation in support thereof; and (e) be filed with the Court and served on the Objection Notice Parties by the applicable deadline set forth in the applicable notice, which shall be at least seven (7) days after service of such notice (other than with respect to Cure Objections to a Back-Up Bid), or less in the case of a Supplemental Assumption and Assignment Notice to the extent necessary, but in each case no less than three (3) calendar days before the applicable Sale Hearing.

41. If a timely Cure Objection is received and such objection cannot otherwise be resolved by the parties, such objection shall be heard at the applicable Sale Hearing; provided that a Cure Objection may, at the Debtors’ discretion (after consultation with the Stalking Horse Bidder, an Additional Stalking Horse Bidder (if applicable), or, if an Auction is held, the Successful Bidder), be adjourned to a subsequent hearing if, pending resolution of such Cure

Objection (an “**Adjourned Cure Objection**”), the Debtors maintain a cash reserve (a “**Cure Cost Reserve**”) equal to the lesser of (a) the amount the objecting Counterparty has asserted to be required to cure the asserted defaults under the applicable Proposed Assumed Contract and (b) such other cash reserve amount as may be ordered by the Court, until a Cure Cost amount is agreed to by the parties or determined by the Court; provided that if the Debtors maintain a letter of credit or similar security deposit for the Debtors’ obligations under a Proposed Assumed Contract to a Counterparty asserting a Cure Objection, the Debtors shall not be required to fund a Cure Cost Reserve to the extent of the existing amounts available under such letter of credit or other security deposit maintained by such Counterparty. Notwithstanding the existence of an Adjourned Cure Objection, the Proposed Assumed Contract may be deemed assumed and assigned to the Stalking Horse Bidder, the Additional Stalking Horse Bidder (if applicable), or, if an Auction is held, the Successful Bidder, as of the applicable Closing Date if the Debtors maintain a Cure Cost Reserve. Upon resolution of a Cure Objection, the Cure Cost Reserve shall be reduced as appropriate, and any excess available cash shall be applied to the Obligations in accordance with the terms of the DIP Orders.

42. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Cure Objection, the Counterparty shall be forever barred from asserting any objection with regard to the cost to cure any defaults under the applicable Contract or Lease. The Cure Costs set forth in each Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the applicable Contract or Lease under Bankruptcy Code section 365(b), notwithstanding anything to the contrary in the Contract or Lease, or any other document, and the Counterparty shall be forever barred from asserting any

additional cure or other amounts with respect to such Contract or Lease against the Debtors, the Successful Bidder, or the property of any of them.

43. If the Stalking Horse Bidder is named a Successful Bidder at the applicable Auction, the Notice of Auction of Results served by the Debtors upon Counterparties to any Supplemental Contracts added to the Stalking Horse Bid at such Auction shall direct the non-Debtor Counterparty to relevant publicly available financial information regarding the Stalking Horse Bidder for purposes of demonstrating adequate assurance of future performance by the Stalking Horse Bidder.

44. In the event the Debtors designate an Additional Stalking Horse Bidder, the Debtors shall use commercially reasonable efforts to, on the date of service of the Sale Notice or applicable Additional Stalking Horse Notice, as the case may be, or as soon as reasonably practicable thereafter, provide or cause to be provided to Counterparties to any known Proposed Assumed Contracts in the applicable Additional Stalking Horse Bid Adequate Assurance Information for the Additional Stalking Horse Bidder.

45. No later than two (2) days before an Auction, the Debtors shall (a) file and serve on the Sale Notice Parties a notice setting forth the applicable Auction Package(s) and any Baseline Bids and Qualified Bids in respect thereof, and (b) provide or cause to be provided to Counterparties to any Proposed Assumed Contracts under each Qualified Bid for assets in the Auction Package(s) with Adequate Assurance Information for the applicable Qualified Bidder.

46. If an Additional Stalking Horse Bidder is named a Successful Bidder at the applicable Auction, the Debtors shall, within one (1) calendar day after the conclusion of the Auction (or as soon as reasonably practicable thereafter), provide or cause to be provided to Counterparties to any additional Proposed Assumed Contracts added to the Additional Stalking

Horse Bid at the applicable Auction with Adequate Assurance Information for the Additional Stalking Horse Bidder, if not already provided.

47. The Debtors shall, within one (1) calendar day after the conclusion of each Auction (or as soon as reasonably practicable thereafter), provide or cause to be provided to Counterparties to the Proposed Assumed Contracts included in each Successful Bid (other than the Stalking Horse Bid) with Adequate Assurance Information for such Successful Bidder, if not already provided.

48. The Debtors shall provide or cause to be provided to applicable Counterparties Adequate Assurance Information on a strictly confidential basis. Counterparties shall not use any Adequate Assurance Information for any purpose other than to (a) evaluate whether adequate assurance requirements under Bankruptcy Code section 365(f)(2) have been satisfied, and (b) to support any Adequate Assurance Objection filed by the Counterparty; provided that any Adequate Assurance Objection that discloses confidential, non-public information included in the Adequate Assurance Information, which shall be expressly identified as non-public and confidential therein, must be filed with the Court with such confidential, non-public information redacted, unless disclosure of such confidential, non-public information is authorized by the Debtors, the Successful Bidder, and any known proposed assignee(s) of the relevant Contract or Lease (if different from the Successful Bidder), or ordered by the Court.

49. Any objection to the assumption and assignment of a Proposed Assumed Contract, including the Transferred Contracts, the subject of which objection is a Successful Bidder's (including the Stalking Horse Bidder and any Additional Stalking Horse Bidder if selected as a Successful Bidder) and/or its known proposed assignee's (if different from the Successful Bidder) proposed form of adequate assurance of future performance with respect to

such Proposed Assumed Contract (an “**Adequate Assurance Objection**”), shall (a) be in writing; (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; (c) state, with specificity, the legal and factual bases thereof; (d) include any appropriate documentation in support thereof; and (e) be filed with the Court and served on the Objection Notice Parties, including the applicable Successful Bidder and any known proposed assignee of such Proposed Assumed Contract (if different from the Successful Bidder) by the applicable deadline set forth in the applicable notice, which shall be at least seven (7) days after the filing of such notice (other than with respect to Adequate Assurance Objections to a Back-Up Bid), or less in the case of a Supplemental Assumption and Assignment Notice to the extent necessary, but in each case no less than three (3) calendar days before the Sale Hearing.

50. If a timely Adequate Assurance Objection cannot otherwise be resolved by the parties prior to the commencement of the applicable Sale Hearing, such objection and all issues of adequate assurance of future performance with respect to the applicable Proposed Assumed Contract shall be determined by the Court at the Sale Hearing or at a later hearing on a date to be scheduled by the Debtors.

51. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties, including the applicable Successful Bidder and any known proposed assignee (if different from the Successful Bidder) of the relevant Proposed Assumed Contract, a timely Adequate Assurance Objection, the Counterparty shall be forever barred from asserting any such Adequate Assurance Objection with regard to the Proposed Assumed Contract. The Successful Bidder and/or its known proposed assignee of the Proposed Assumed Contract or Lease shall be deemed to have provided adequate assurance of future performance with respect to the Proposed Assumed Contract in accordance with Bankruptcy Code section 365(f)(2)(B) notwithstanding

anything to the contrary in the contract or lease or any other document, and the Debtors shall be authorized to assume and assign the applicable Proposed Assumed Contract to the applicable Successful Bidder (or its known proposed assignee) without further notice to any Counterparty or any other party in interest, and without need for further order of the Court, with such assumption and assignment being subject to the terms of the applicable Sale Order.

52. The Debtors' assumption and assignment of a Proposed Assumed Contract to a Successful Bidder (or to a designee of the Successful Bidder) is subject to Court approval and consummation of a Sale Transaction with the applicable Successful Bidder. Accordingly, absent the closing of a Sale Transaction, the Proposed Assumed Contract shall not be deemed either assumed or assumed and assigned and shall, in all respects, be subject to further administration under the Bankruptcy Code.

53. The inclusion of a Contract, Lease, or Cure Costs with respect thereto on an Assumption and Assignment Notice or the Notice of Auction Results shall not constitute or be deemed a determination or admission by the Debtors, the Successful Bidders, or any other party in interest that such Contract or Lease is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code. The Debtors reserve all of their rights, claims, and causes of action with respect to each Contract and Lease listed on any Assumption and Assignment Notice and Notice of Auction Results. The Debtors' inclusion of any Contract or Lease on an Assumption and Assignment Notice or Notice of Auction Results shall not be a guarantee that such Contract or Lease ultimately will be assumed or assumed and assigned. The Initial Assumption and Assignment Notice and any Supplemental Assumption and Assignment Notice or Additional Stalking Horse Sale Notice shall be without prejudice to the Stalking Horse Bidder's or any Additional Stalking Horse Bidder's rights under the Stalking Horse Agreement or the applicable

Additional Stalking Horse Agreement to subsequently (a) exclude a Contract from the list of Proposed Assumed Contracts previously included on such Notice or (b) include additional Proposed Assumed Contracts for assumption and assignment in accordance with the applicable Stalking Horse Agreement.

54. For the avoidance of doubt, nothing herein shall modify, alter, impair, or otherwise affect any of the provisions of the DIP Order or the DIP Documents, or the rights or remedies of the DIP Agent or the DIP Lenders under the DIP Documents (each as defined in the DIP Order) except with respect to the Acquired Assets.

Related Relief

55. All persons and entities (whether or not selected as a Qualified Bidder) that submit a bid for any of the Debtors' Assets during the sale process, including at the Auctions, shall be deemed to have knowingly and voluntarily (a) submitted to the exclusive jurisdiction of this Court with respect to all matters related to the terms and conditions of the transfer of Assets, the Auctions, and any Sale Transaction; (b) consented to the entry of a final order by the Court in connection with the Motion or this Order (including any disputes relating to the Bidding and Auction Process, the Auctions, and/or any Sale Transaction) to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution; and (c) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

56. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, or 9014, or any applicable provisions of the Bankruptcy Rules or the Local Rules or otherwise stating the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry, and any applicable stay of the effectiveness and enforceability of this Order is hereby waived.

57. Prior to mailing and publishing the Sale Notice and the Global Cure Notice, as applicable, the Debtors may fill in any missing dates and other information, conform the provisions thereof to the provisions of this Order, and make such other, non-material changes as the Debtors deem necessary or appropriate.

58. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Order.

59. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: February 20, 2020
New York, New York

/s/ James L. Garrity, Jr.

THE HONORABLE JAMES L. GARRITY, JR.
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
	:
In re	: Chapter 11
	:
FAIRWAY GROUP HOLDINGS CORP., et al.,	: Case No. 20-10161 (JLG)
	:
Debtors.¹	: (Jointly Administered)
	: (ECF No. 21)
-----X	

BIDDING PROCEDURES

Overview

On January 23, 2020, Fairway Group Holdings Corp. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

The Debtors are seeking to sell their fourteen (14) operating grocery stores, bakeries, and beer, wine, and liquor stores (each, a “**Store**”), their production and distribution center (the “**PDC**” and, together with the Stores, the “**Locations**”), and all related assets (collectively with the Locations, the “**Assets**”) for the highest or best offers. On [___], 2020, the United States Bankruptcy Court for the Southern District of New York entered an order (ECF No. [___]) (the “**Bidding Procedures Order**”),² which, among other things, authorized the Debtors to solicit bids and approved these procedures (the “**Bidding Procedures**”) for the consideration of the highest or otherwise best price for all of the Assets, on the terms and conditions set forth herein.

A stalking horse bid has been submitted for certain of the Assets by Village Super Market, Inc. (the “**Stalking Horse Bidder**” and its bid, the “**Stalking Horse Bid**”). The Stalking

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Fairway Group Holdings Corp. (2788); Fairway Group Acquisition Company (2860); Fairway Bakery LLC (4129); Fairway Broadway LLC (8591); Fairway Chelsea LLC (0288); Fairway Construction Group, LLC (2741); Fairway Douglaston LLC (2650); Fairway East 86th Street LLC (3822); Fairway eCommerce LLC (3081); Fairway Georgetowne LLC (9609); Fairway Greenwich Street LLC (6422); Fairway Group Central Services LLC (7843); Fairway Group Plainview LLC (8643); Fairway Hudson Yards LLC (9331); Fairway Kips Bay LLC (0791); FN Store LLC (9240); Fairway Paramus LLC (3338); Fairway Pelham LLC (3119); Fairway Pelham Wines & Spirits LLC (3141); Fairway Red Hook LLC (8813); Fairway Stamford LLC (0738); Fairway Stamford Wines & Spirits LLC (3021); Fairway Staten Island LLC (1732); Fairway Uptown LLC (8719); Fairway Westbury LLC (6240); and Fairway Woodland Park LLC (9544). The location of the Debtors’ corporate headquarters is 2284 12th Avenue, New York, New York 10027. Fairway Community Foundation Inc., a charitable organization, owned by Fairway Group Holdings Corp., is not a debtor in these proceedings.

² Capitalized terms used but not otherwise shall have the respective meanings ascribed to such terms in the Bidding Procedures Order or the Motion requesting the relief granted therein, as applicable.

Horse Bidder has executed an agreement (the “**Stalking Horse Agreement**”) for the purchase of Assets associated with six (6) Locations (five (5) Stores and the PDC) identified on **Schedule 1** annexed hereto, including the leasehold interests, inventory, Transferred Contracts, and furniture, fixtures, and equipment, and other related assets at such Locations (collectively, the “**Stalking Horse Package**”).³

The Stalking Horse Bid is subject to higher or better offers submitted in accordance with the terms and conditions of these Bidding Procedures. These Bidding Procedures describe, among other things: (i) the procedures for bidders to submit bids for one or more Locations, including those included in the Stalking Horse Package; (ii) the manner in which bidders and bids become Qualified Bidders and Qualified Bids (each as defined herein); (iii) the negotiation of bids received; (iv) the conduct of one or more subsequent auctions (an “**Auction**”); and (v) the ultimate selection of the Successful Bidder(s) (as defined herein) and Court approval thereof (collectively, the “**Bidding and Auction Process**”).

The Debtors reserve the right to extend any of the bidding deadlines or other dates set forth in these Bidding Procedures, after consultation with the Consultation Parties (as defined herein) without further order of the Bankruptcy Court subject to providing notice as described below.

Summary of Important Dates

Stalking Horse Package Sale Timeline	
February 20, 2020	Hearing to consider approval of Bidding Procedures and entry of Bidding Procedures Order
February 24, 2020	Date for Debtors to file and serve Notice of Assumption and Assignment (including Cure Costs) and provide applicable Counterparties with Adequate Assurance Information for Stalking Horse Bid
March 4, 2020 at 4:00 p.m. (Eastern Time)	Objection deadline for (i) sale of Stalking Horse Package to Stalking Horse Bidder pursuant to Stalking Horse Agreement and (ii) assumption and assignment of Initial Transferred Contracts to Stalking Horse Bidder
March 4, 2020 at 4:00 p.m. (Eastern Time)	Stalking Horse Bid Deadline

³ Pursuant to the Stalking Horse Agreement, the Stalking Horse Bidder may remove the Leases for (a) the Chelsea Store, (b) the Harlem Store, and/or (c) the PDC from the Stalking Horse Package at any time prior to the later of the date that is (i) forty-five (45) days from the date of execution of the Stalking Horse Agreement and (ii) two (2) days prior to the date of the Auction, if any. In addition, the Stalking Horse Bidder may add or remove Contracts from the list of Transferred Contracts at any time prior to five (5) days prior to the Auction, if any, or ten (10) days prior to the Sale Hearing if no Auction is held. Any such Location or Contract removed from the Stalking Horse Package shall, upon removal, no longer be deemed to be part of the Stalking Horse Package for purposes of these Bidding Procedures, and any such Contract added to the Stalking Horse Package shall be deemed included therein for all purposes hereof.

March 9, 2020 at 11:59 p.m. (Eastern Time)	Qualified Bid and Baseline Bid Designation Date for Stalking Horse Package
March 11, 2020	(i) Auction for Stalking Horse Package (if other Qualified Bids received for Stalking Horse Package) to be held at offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153; or (ii) Sale Hearing (if no other Qualified Bids received for Stalking Horse Package)
March 12, 2020 at 11:59 p.m. (Eastern Time)	Date for Debtors to file and serve Notice of Auction Results (including Cure Costs for Proposed Assumed Contracts), and provide applicable Counterparties with Adequate Assurance Information, with respect to Successful Bidder (if applicable, and if Auction held)
March 19, 2020 at 4:00 p.m. (Eastern Time)	Objection deadline for sale of Stalking Horse Package if Auction held (if Successful Bidder is not Stalking Horse Bidder or additional Proposed Assumed Contracts added at Auction)
March 26, 2020	Sale Hearing if Auction held
Other Asset Sale Timeline	
February 20, 2020	Hearing to consider approval of Bidding Procedures and entry of Bidding Procedures Order
March 9, 2020 at 4:00 p.m. (Eastern Time)	Other Assets Bid Deadline
March 13, 2020 at 11:59 p.m. (Eastern Time)	Qualified Bid and Baseline Bid Designation Date for Other Assets Date for Debtors to provide applicable Counterparties with Adequate Assurance Information for Qualified Bidders
March 16, 2020	Auction for Other Assets, to be held at offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153
March 16, 2020 at 11:59 p.m. (Eastern Time)	Date for Debtors to file and serve Notice of Auction Results (including Cure Costs for Proposed Assumed Contracts) and to provide applicable Counterparties with Adequate Assurance Information for Successful Bidder
March 20, 2020 at 4:00 p.m. (Eastern Time)	Objection deadline for sale of Auction Package to Successful Bidder
March 26, 2020	Sale Hearing for Other Assets

Marketing Process

Assets to be Sold

All of the Debtors' Assets are available for sale. A party who is interested in purchasing any of the Assets may submit one or more bids to purchase the following, in addition to related Assets:

- (A) the Stalking Horse Package;
- (B) the Locations not included in the Stalking Horse Package; and/or
- (C) one or more Locations, whether or not such Location is included in the Stalking Horse Package.

Stores not included in the Stalking Horse Package are referred to herein as the “**Other Locations**” (together with any other Assets not included in the Stalking Horse Package, the “**Other Assets**”). A complete list of the Other Locations available for sale pursuant to these Bidding Procedures is annexed hereto as Schedule 2.⁴

Access to Diligence

To participate in the diligence process and receive access to due diligence information with respect to any of the Locations, a party must submit to the Debtors or their advisors:

- (A) an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors; and
- (B) sufficient information, as reasonably determined by the Debtors, to allow the Debtors, after consultation with the Consultation Parties, to reasonably determine that the interested party has, or can obtain, the financial wherewithal and any required internal corporate, legal, or other authorizations to close a Sale Transaction, including, but not limited to, current audited financial statements of the interested party (or such other form of financial disclosure reasonably acceptable to the Debtors in their discretion).

An interested party shall be a “**Potential Bidder**” if the Debtors determine in their reasonable discretion, after consultation with the Consultation Parties, that an interested party has satisfied the above requirements. As soon as practicable, the Debtors will deliver to such Potential Bidder (i) an information package containing information and financial data with respect to the

⁴ Pursuant to the Stalking Horse Agreement, the Leases (and other related Assets) for (a) the Chelsea Store, (b) the Harlem Store, and/or (c) the PDC from the Stalking Horse Package may be removed from the Stalking Horse Package at any time prior to the later of the date that is (i) forty-five (45) days from the date of execution of the Stalking Horse Agreement and (ii) two (2) days prior to the date of the Auction, if any. Any such Locations and other Assets removed from the Stalking Horse Package shall, upon removal, be deemed Other Assets for purposes of these Bidding Procedures.

Assets in which such Potential Bidder has expressed an interest and (ii) access to the Debtors' confidential electronic data room concerning the Locations (the "**Data Room**").

Once an interested party is deemed a Potential Bidder, its identity may, in the Debtors' discretion, be disclosed to the Stalking Horse Bidder and any Additional Stalking Horse Bidder (as defined below).

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

Due Diligence

Until the applicable Bid Deadline (as defined below), the Debtors will provide any Potential 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. The Debtors will work to accommodate all reasonable requests for additional information and due diligence access from Prospective Bidders. All due diligence requests shall be directed to Scott Moses (smoses@pjsolomon.com) and Josh Heft (jheft@pjsolomon.com) of the Debtors' advisors, PJ Solomon, L.P. ("**Solomon**").

Unless otherwise determined by the Debtors, the availability of additional due diligence to a Potential Bidder will cease if (i) the Potential Bidder does not become a Qualified Bidder or (ii) these Bidding Procedures are terminated.

Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Locations to any person or entity who is not a Potential Bidder or a Consultation Party or who does not comply with the participation requirements set forth above.

Designation of Additional Stalking Horse Bidders

Designation of Additional Stalking Horse Bidders

In connection with the sale of the Other Assets, the Debtors may, but are not obligated to, after consulting with the Consultation Parties, designate one or more stalking horse bidders (each, an "**Additional Stalking Horse Bidder**," and each such bidder's bid, an "**Additional Stalking Horse Bid**") for one or more of the Other Assets (each such group of Other Assets, an "**Additional Stalking Horse Package**") and offer each such Additional Stalking Horse Bidder certain bid protections, including a break-up fee (an "**Additional Termination Payment**" and, together with other bid protections provided to an Additional Stalking Horse Bidder, the "**Additional Stalking Horse Bid Protections**"); provided that the Additional Termination Payment provided to an Additional Stalking Horse Bidder shall be negotiated by Debtors, in consultation with the Consultation Parties, and may not exceed three percent (3%) of the cash portion of the purchase price in the Additional Stalking Horse Bid, as set forth in an asset purchase agreement executed by the Debtors and the applicable Additional Stalking Horse Bidder (each, an "**Additional Stalking Horse Agreement**").

In the event that the Debtors determine to designate an Additional Stalking Horse Bidder, the Debtors shall promptly upon execution of an Additional Stalking Horse Agreement, and in no event more than one (1) calendar day following such execution, file with the Bankruptcy Court, serve on the Sale Notice Parties (as defined in the Motion), and cause to be published on the website maintained by Omni Agent Solutions, the Debtors' claims and noticing agent in these chapter 11 cases, located at www.omniagentsolutions.com/Fairway (the "**Omni Website**"), a notice that contains information about the Additional Stalking Horse Bidder and the Additional Stalking Horse Bid, including the proposed Additional Stalking Horse Bid Protections, and attaches the proposed Additional Stalking Horse Agreement (the "**Notice of Additional Stalking Horse Bidder**").

Objections to and Approval of Designation of Additional Stalking Horse Bidder

Any objections (each, an "**Additional Stalking Horse Objection**") to the designation of an Additional Stalking Horse Bidder, including any Additional Stalking Horse Bid Protections pursuant to the terms and provisions of an Additional Stalking Horse Agreement, must (i) be in writing; (ii) state the name and address of the objecting party (unless such party is the U.S. Trustee or a Consultation Party) and the amount and nature of the Claim or Interest of such party; (iii) state with particularity the basis and nature of any objection; (iv) conform to the Bankruptcy Rules and the Local Rules; (v) be filed with the Court (a) by registered users of the Court's case filing system, electronically in accordance with General Order M-399 (which can be found at <http://www.nysb.uscourts.gov>) and (b) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Court and General Order M-399, as applicable; and (vi) be served upon the Objection Notice Parties (as defined herein) within seven (7) calendar days after the filing of the Notice of Additional Stalking Horse Bidder.

If a timely Additional Stalking Horse Objection is filed and served in accordance with the preceding paragraph, the proposed designation of an Additional Stalking Horse Bidder and Additional Stalking Horse Bid Protections will not be approved until either the Additional Stalking Horse Objection is resolved by agreement of the objecting party and the Debtors or by order of the Bankruptcy Court.

If no timely Additional Stalking Horse Objection is filed and served with respect to an Additional Stalking Horse Agreement in accordance with these Bidding Procedures, the Debtors shall file a Certificate of No Objection and submit a proposed order approving the Additional Stalking Horse Bid Protections to the Court.

For all purposes under these Bidding Procedures, an Additional Stalking Horse Bidder approved as such in accordance with the Bidding Procedures Order shall be a Qualified Bidder, and its Additional Stalking Horse Bid shall be considered a Qualified Bid. Subject to the other provisions of these Bidding Procedures, in the event that an Additional Stalking Horse Bid is the only Qualified Bid received by the Debtors in respect of the assets included in an Additional Stalking Horse Package by the applicable bid deadline, the Additional Stalking Horse Bidder may be declared the Successful Bidder.

Auction Qualification Procedures

Bid Deadlines

A Potential Bidder that desires to make a bid on the Locations in the Stalking Horse Package shall deliver written and electronic copies of its bid in both PDF and MS-WORD format to the Bid Notice Parties (as defined herein) so as to be received no later than **March 4, 2020 at 4:00 p.m. (Eastern Time)** (the “**Stalking Horse Bid Deadline**”) and a Potential Bidder that desires to make a bid for any of the Other Assets shall deliver written and electronic copies of its bid in both PDF and MS-WORD format to the Bid Notices Parties so as to be received no later than **March 9, 2020 at 4:00 p.m. (Eastern Time)** (the “**Other Assets Bid Deadline**” and, together with the Stalking Horse Bid Deadline, the “**Bid Deadlines**”); provided that the Debtors may, in consultation with the Consultation Parties, extend the Stalking Horse Bid Deadline or the Other Assets Bid Deadline for any reason whatsoever, in their reasonable business judgment, for all or certain Potential Bidders, without further order of the Bankruptcy Court, subject to providing notice to the Stalking Horse Bidder, all Potential Bidders, and the Consultation Parties.

Any party that does not submit a bid by the applicable Bid Deadline will not be allowed to (i) submit any offer after such deadline for the applicable Assets or (ii) participate in the Auction for the applicable Assets; provided that the foregoing shall not preclude the Debtors from marketing to any person or auctioning, or any parties from bidding on, any Locations not included in an Auction after the applicable Bid Deadline.

Communications with Potential Bidders

There must be no communications between and amongst Potential Bidders regarding the Debtors unless the Debtors have previously authorized such communication in writing. The Debtors reserve the right, in their reasonable business judgment, in consultation with the Consultation Parties, to disqualify any Potential Bidder(s) that have communications between and amongst themselves.

Form and Content of Qualified Bids

A “**Bid**” as used herein is a signed document from a Potential Bidder received by the applicable Bid Deadline that identifies the purchaser by its legal name (including any equity holders or other financial backers, if the Potential Bidder is an entity formed for the purpose of submitting bids or consummating a Sale Transaction), and any other party that will be participating in connection with the bid or the Sale Transaction, and includes, at a minimum, the following information:

- (A) Proposed Locations and Valuation. Each Bid must clearly identify and list the particular Locations and Other Assets (such as inventory) and liabilities that the Potential Bidder seeks to acquire, whether individually or in combination. The Bid must identify, on a per Location basis, the valuations, in U.S. dollars, that the Potential Bidder associates with each of those Locations, and a description of any significant assumptions on which such valuations are based (including a separate identification of the cash and non-cash components of the valuation). To the extent the Bid proposes to purchase particular Assets associated with the Locations, such

as inventory, the Bid shall clearly identify the value, in U.S. dollars, associated with such Assets.

- (B) Proposed APA. Each Bid must include a copy of an asset purchase agreement reflecting the terms and conditions of the Bid, which agreement must be marked to show any proposed amendments and modifications to the form of purchase agreement posted by the Debtors in the Data Room (the “**Proposed APA**”).
- (C) Unconditional Offer; No Financial Contingency. A statement that the Bid is formal, binding, and unconditional (except for those conditions expressly set forth in the applicable Proposed APA), is not subject to any due diligence or financing contingency, and is irrevocable until the first business day following the closing of the proposed Sale Transaction, except as otherwise provided in these Bidding Procedures. To the extent that a Bid is not accompanied by evidence of the Potential Bidder’s capacity to consummate the Sale Transaction set forth in its Bid with cash on hand (or other immediately available cash), each Bid must include committed financing documented to the Debtors’ satisfaction, in consultation with the Consultation Parties, that demonstrates that the Potential Bidder has received sufficient debt and/or equity funding commitments to satisfy the Potential Bidder’s purchase price and other obligations under its Bid.
- (D) Form of Consideration.
 - (i) All-Cash Offer. Unless the Bid includes a Credit Bid or a Landlord Bid (as described below), a statement confirming that the Bid is based on an all-cash offer, including, in the case of a bid for all or any part of the Stalking Horse Package or any Additional Stalking Horse Package, sufficient cash consideration to pay the Termination Payment (as such term is defined in the Stalking Horse Agreement) or any Additional Termination Payment and to meet the Minimum Overbid Amount (as defined herein); provided that any bid that includes a Credit Bid shall also include a cash component sufficient to pay, and earmarked exclusively for the payment of, any applicable Termination Payment or Additional Termination Payment and all obligations secured by senior liens on the applicable Assets.
 - (ii) Credit Bidding. In connection with the sale of all or a portion of the Assets, a person or entity may seek to credit bid all or a portion of their secured claims for their respective collateral (each such bid, a “**Credit Bid**”) pursuant to section 363(k) of the Bankruptcy Code; provided that the Credit Bid shall include cash consideration sufficient to pay in full all claims for which there are valid, perfected, and unavoidable liens on any Assets included in such Bid that are senior in priority to those of the party seeking to Credit Bid (unless such senior lien holder consents to alternative treatment) and complies with any orders of the Bankruptcy Court approving debtor-in-possession financing or use of cash collateral, and if for any portion of the Stalking Horse Package, an amount sufficient to pay the

Termination Payment. A Credit Bid shall not require a Deposit (as defined herein).

- (iii) Landlord Bid. Subject to the Debtors' discretion to consider such bids (in consultation with the Consultation Parties), any bid submitted by a landlord for the purchase of one or more of such landlord's own Locations (each such bid, a "**Landlord Bid**") may include a purchase price composed of a (i) cash component, and (ii) a non-cash component that represents a valid and undisputed "credit" for any unpaid amounts validly due under the lease for such Location (a "**Landlord Credit**"). A Landlord Credit will be applied to reduce the cash consideration for the applicable Location. Landlord Bids must be accompanied by a Deposit in an amount equal to ten percent (10%) of only the cash component of such Bid.

(E) Purchase Price; Minimum Bid.

- (i) Stalking Horse Package. Except as otherwise provided herein, each Bid submitted in connection with the Stalking Horse Package must (a) be a Bid for all of the Locations and the related Assets contained in the Stalking Horse Package, (b) exceed the Cash Purchase Price, the Termination Payment, and any Minimum Overbid Amount set by the Debtors, and (c) propose an alternative transaction that provides substantially similar or better terms than the Stalking Horse Bid (as determined by the Debtors in consultation with the Consultation Parties).
- (ii) Bids for Individual Locations or Combination of Locations. Bidders may also submit Bids for individual Locations or combinations of Locations that do not comprise the entire Stalking Horse Package, whether or not any such Locations are included in the Stalking Horse Package or any Additional Stalking Horse Package (each, a "**Partial Bid**"). The Debtors will determine, after consultation with the Consultation Parties, whether such Bids qualify as Qualified Bids. Generally, to be considered a Qualified Bid, the Debtors, in consultation with the Consultation Parties, must conclude that a Partial Bid, when taken together with other Partial Bids, satisfies the criteria for being a Qualified Bid with respect to the Stalking Horse Package.

If a Bid includes one or more Locations and/or other Assets currently included in the Stalking Horse Package or any Additional Stalking Horse Package, but does not include all of the Locations and other Assets included in such Stalking Horse Package, such Bid will not be considered to be a "Qualified Bid" unless (a) the Debtors receive one or more Bids for the remaining Locations in such Stalking Horse Package that, in combination with one or more other Bids for other Acquired Assets in the Stalking Horse Package, constitute a higher or better bid than the applicable Stalking Horse Bid; or (b) the Partial Bid includes less than all of the Locations and related Assets in such Stalking Horse Package but proposes a purchase price

allocable to such Locations and related Assets that, together with the liquidation or alternative value of any Locations and related Assets in such Stalking Horse Package not included in the Partial Bid, exceeds the aggregate purchase price in the applicable Stalking Horse Bid.

- (iii) Additional Stalking Horse Packages. Each bid submitted in connection with an Additional Stalking Horse Package must exceed the cash purchase price in the applicable Additional Stalking Horse Bid, plus any applicable Additional Termination Payment and Minimum Overbid Amount, or propose an alternative transaction that provides better terms than the Additional Stalking Horse Bid, taking into account any allocable Additional Termination Payment.

- (F) Employee and Labor Terms. A statement of proposed terms for unionized and non-unionized employees, which shall include, alternatively: (i) a statement that the Potential Bidder will assume the Debtors' affected collective bargaining agreements (the "**Affected Labor Agreements**") without modification; (ii) if the Potential Bidder will not assume the Affected Labor Agreements without modification, a statement that the Potential Bidder will enter into good faith negotiations with each affected labor union (the "**Affected Unions**") to enter into modified labor agreements (each, a "**Modified Labor Agreement**"), including a term sheet, which shall be attached to the Potential Bidder's Proposed APA, proposing post-closing work rules and conditions to be offered to unionized employees; or (iii) a statement that the Potential Bidder does not intend to assume any Affected Labor Agreements; provided that such statement shall include whether or not the Potential Bidder intends to offer employment to any of the Debtors' employees following a closing of an applicable Sale Transaction. Such statement shall also include an acknowledgment of the requirements of sections 1113 and 1114 of the Bankruptcy Code and an agreement to use good faith reasonable best efforts to cooperate with the Debtors in ensuring compliance with any applicable provisions thereof in the event that mutually satisfactory Modified Labor Agreements have not been entered into between the Potential Bidder and the Affected Unions prior to the closing of a sale contemplated by these Bidding Procedures.

- (G) Pension Plans. Each Bid must state whether or not the Potential Bidder intends to assume (i) sponsorship of all or any part of or (ii) any of the potential liabilities associated with the Debtors' multi-employer pension plan (the "**Pension Plan**"). If the Potential Bidder does not intend to assume sponsorship or liabilities of the Pension Plan in full, each Bid must state whether the Potential Bidder intends to assume the assets and liabilities of the Pension Plan relating to plan participants associated with the Locations in the Bid.

- (H) Required Approvals. A statement or evidence (i) that the Potential Bidder has made or will make in a timely manner all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, if applicable ("**HSR Filings**"), and any other Antitrust Law (as defined in the Stalking Horse Agreement), and pay

the fees associated with such filings and (ii) of the Potential Bidder's plan and ability to obtain all governmental and regulatory approvals to operate the business and the Locations included in its Bid from and after closing the applicable Sale Transaction and the proposed timing for the Potential Bidder to undertake the actions required to obtain such approvals. A Potential Bidder further agrees that its legal counsel will coordinate in good faith with Debtor's legal counsel to discuss and explain Potential Bidder's regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable, and in no event later than the time period contemplated in the Proposed APA.

- (I) No Entitlement to Expense Reimbursement or Other Amounts. Except as provided with respect to the Stalking Horse Bidder or any Additional Stalking Horse Bidder in the Stalking Horse Agreement or any Additional Stalking Horse Agreement, a statement that the Bid does not entitle the Potential Bidder to any breakup fee, termination fee, expense reimbursement, or similar type of payment or reimbursement and a waiver of any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code related to bidding for the Assets.
- (J) Adequate Assurance Information. Each Bid must contain such financial and other information that allows the Debtors, after consultation with the Consultation Parties, to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate the applicable Sale Transaction, including, without limitation, such financial and other information setting forth adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code, and the Potential Bidder's willingness to perform under any contracts that are assumed and assigned to the Potential Bidder (the "**Adequate Assurance Information**"). Adequate Assurance Information may, but shall not be required to, include (i) a corporate organizational chart or similar disclosure identifying ownership and control of the proposed assignee of the applicable contracts and leases; (ii) financial statements, tax returns, and annual reports; (iii) any financial projections, calculations, and/or financial pro-formas prepared in contemplation of purchasing leases; (iv) the number of stores the proposed assignee operates and all trade names that the proposed assignee uses; (v) the proposed assignee's intended use of the leased premises; (vi) the proposed assignee's experience in retail and in operating grocery stores; and (vii) a contact person for the proposed assignee.
- (K) Designation of Contracts and Leases. Each Bid must identify with particularity each and every executory contract and unexpired lease, the assumption and, as applicable, assignment of which is a condition to closing the applicable Sale Transaction.
- (L) Representations and Warranties. Each Bid must include the following representations and warranties:

- (i) a statement that the Potential Bidder has had an opportunity to conduct any and all due diligence regarding the applicable Assets prior to submitting its Bid;
- (ii) a statement that the Potential Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the assets in making its Bid and did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Assets or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Potential Bidder's Proposed APA ultimately accepted and executed by the Debtors;
- (iii) a statement that the Potential Bidder agrees to serve as Back-Up Bidder (as defined herein), if its Bid is selected as the next highest or next best bid after the Successful Bid with respect to the applicable Assets, until the Back-Up Termination Date (as defined herein);
- (iv) a statement that the Potential Bidder has not engaged in any collusion with respect to the submission of its Bid;
- (v) a statement that all proof of financial ability to consummate a Sale Transaction in a timely manner and all information provided to support adequate assurance of future performance is true and correct; and
- (vi) A statement that the Potential Bidder agrees to be bound by the terms of these Bidding Procedures.

A Potential Bidder must also accompany its Bid with:

- (M) a Deposit (as defined herein);
- (N) 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 Potential Bidder;
- (O) written evidence of available cash, a commitment for financing (not subject to any conditions), and such other evidence of ability to consummate the transaction contemplated by the applicable Proposed APA, as acceptable in the Debtors' business judgment and following consultation with the Consultation Parties, including a description of each investor and any additional party or parties investing in the transaction included in the applicable bid and such party's financial position;
- (P) a copy of a board resolution or similar document demonstrating the authority of the Potential Bidder to make a binding and irrevocable bid on the terms proposed and to consummate the transaction contemplated by the Proposed APA;

- (Q) a covenant to cooperate with the Debtors to provide pertinent factual information regarding the Potential Bidder's operations reasonably required to analyze issues arising with respect to any applicable Antitrust Laws and other applicable regulatory requirements;
- (R) in the case of a Bid for the Stalking Horse Package or any Additional Stalking Horse Package, if the value of the Bid relative to the applicable Stalking Horse Agreement includes additional non-cash components (such as fewer contingencies than are in the applicable Stalking Horse Agreement), a detailed analysis of the value of any additional non-cash component of the Bid and back-up documentation to support such value; and
- (S) if the Bid includes an asset purchase agreement that is not executed, a signed statement that such Bid is irrevocable until the first business day following the closing or closings of the applicable Sale Transaction, and to serve as a Back-Up Bidder.

The submission of a Bid by the applicable Bid Deadline shall constitute a binding and irrevocable offer to acquire the Locations and/or other Assets reflected in such Bid.

Deposit

To qualify as a Qualified Bid (as defined herein), each Bid (other than any Credit Bid) must be accompanied by a good faith cash deposit in the amount of ten percent (10%) of the proposed purchase price (the "**Deposit**"), to be deposited, prior to the applicable Bid Deadline, with an escrow agent selected by the Debtors (the "**Escrow Agent**") pursuant to the escrow agreement to be provided by the Debtors to the Potential Bidders (the "**Escrow Agreement**").

To the extent the Locations included in a Qualified Bid are modified at or prior to the Auction, the Qualified Bidder must adjust its Deposit so that it equals ten percent (10%) of the purchase price proposed to be paid for each Location and related Assets.

Review of Bids and Designation of Qualified Bidders

The Debtors will deliver, within one (1) business day after receipt thereof, copies of all Bids to the Consultation Parties. A bid received for the Assets that is determined by the Debtors, in consultation with the Consultation Parties, to meet the requirements set forth in the preceding section will be considered a "**Qualified Bid**," and the Stalking Horse Bidder, any Additional Stalking Horse Bidder, and any bidder that submits a Qualified Bid (including the Stalking Horse Bid and any Additional Stalking Horse Bid) will be considered a "**Qualified Bidder**."

The Debtors may, after consulting with the Consultation Parties, amend or waive the conditions precedent to being a Qualified Bidder at any time, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, and may engage in negotiations with Potential Bidders who submitted Bids complying with the preceding section as the Debtors deem appropriate in the exercise of their business judgment, based upon the Debtors' evaluation of the content of each Bid.

The Debtors will evaluate timely submitted bids, in consultation with the Consultation Parties, and may take into consideration the following non-binding factors:

- (A) the amount of the purchase price and Credit Bid, Landlord Credit, and/or other non-cash consideration, as applicable, set forth in the Bid;
- (B) the Assets included in or excluded from the Bid;
- (C) the value to be provided to the Debtors under the Bid for the Locations included therein (individually and in the aggregate), including the net economic effect upon the Debtors' estates after the payment of any applicable Termination Payment;
- (D) any benefit to the Debtors' bankruptcy estates from any assumption or waiver of liabilities, including through a Credit Bid or a Landlord Credit, and any liabilities under the Pension Plans, the assumption of the sponsorship of all, any, or a portion of the Pension Plans;
- (E) the transaction structure and execution risk, including conditions to, timing of, and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, cost to the Debtors' bankruptcy estates to pursue such transaction, and required governmental or other approvals;
- (F) the impact on employees, employee claims against the Debtors, Affected Labor Agreements, and whether the Potential Bidder has reached an agreement with the Affected Unions;
- (G) the impact on trade creditors and landlords; and
- (H) any other factors the Debtors may reasonably deem relevant, in consultation with the Consultation Parties.

The Debtors, in consultation with the Consultation Parties, will make a determination regarding which bids qualify as Qualified Bids, and will notify Potential Bidders whether they have been selected as Qualified Bidders by no later than (i) **March 9, 2020**, with respect to each bid or combination of bids for the Stalking Horse Package, or (ii) **March 13, 2020**, with respect to all other bids (the applicable date, the "**Qualified Bid Designation Date**").

The Debtors reserve the right to work with any Bidder in advance of the Auctions to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid. The Debtors may accept a single Bid or multiple Bids for non-overlapping Locations such that, if taken together, would otherwise meet the standards for a single Qualified Bid as to the Stalking Horse Package, any Additional Stalking Horse Package, or any Other Locations, Other Assets, or combination of Locations and Assets that the Debtors determine to auction (in which event those multiple bidders shall be treated as a single Qualified Bidder for purposes of the applicable Auction). If a Bid is received and, in the Debtors' judgment, after consultation with the Consultation Parties, it is not clear whether the Bid is a Qualified Bid, the Debtors may consult with the Potential Bidder and seek additional information in an effort to establish whether or not the Bid is a Qualified Bid.

The Debtors, after consultation with the Consultation Parties, will have the right to determine that a Bid is not a Qualified Bid if any of the following conditions are satisfied:

- (A) A Potential Bidder has failed to comply with reasonable requests for additional information from the Debtors; or
- (B) The terms of the Bid are burdensome or conditional in view of the proposed purchase price or, in the case of a Bid or combination of Bids for the Stalking Horse Package or any Additional Stalking Horse Package, are materially more burdensome or conditional than the terms of the applicable Stalking Horse Agreement, and are not offset by a material increase in purchase price, which determination (as made by the Debtors in consultation with the Consultation Parties) may take into consideration, among other things:
 - (i) whether the Bid does not provide sufficient cash consideration to pay transfer taxes, Cure Costs, or other cash costs of the transaction (including, if applicable, the applicable Termination Payment); and
 - (ii) whether the Bid includes a non-cash instrument or similar consideration that is not freely marketable.

The Stalking Horse Bidder and any Additional Stalking Horse Bidder are each a Qualified Bidder and the Stalking Horse Bid and any Additional Stalking Horse Bid are each a Qualified Bid as to the applicable Stalking Horse Package.

Should it decide to Credit Bid, each of (i) Ankura Trust Company, LLC, as administrative agent and collateral agent under the Prepetition Credit Agreement, (ii) the Prepetition Secured Lenders under the Prepetition Credit Agreement, and (iii) the DIP Lenders is a Qualified Bidder and any such Credit Bid will be considered a Qualified Bid to the extent such bid is received by the applicable Bid Deadline, complies with (a) the above requirements set forth under the heading “Designation of Qualified Bidders,” (b) section 363(k) of the Bankruptcy Code, and (c) the terms and conditions of the Prepetition Credit Agreement (and any other “Loan Documents” (as such term is defined therein)), and includes, to the extent the Credit Bid is for a Stalking Horse Package or any Additional Stalking Horse Package, a cash component sufficient to pay, and earmarked exclusively for payment of, the applicable Termination Payment and all obligations secured by senior liens (if any) on the Assets to be purchased.

Notwithstanding the foregoing or anything contained in these Bidding Procedures to the contrary, the Debtors reserve the right to, in consultation with the Consultation Parties, consider Landlord Bids (and Partial Bids that include Landlord Bids). A Landlord Bid may qualify as a Qualified Bid if such bid complies with the Qualified Bid requirements set forth under the heading “Form and Content of Qualified Bids,” as applicable; provided that the bidding landlord shall not be required to include in its Bid the regulatory approvals set forth in subsection (H) under such heading or include any Adequate Assurance Information of the type set forth in subsection (J) under such heading with respect to its ability to perform under its own lease. In addition, for a Landlord Bid for a Location included in the Stalking Horse Package to be considered a Qualified Bid, the Debtors, in consultation with the Consultation Parties, must conclude that the Landlord

Bid, when taken together with other Partial Bids and/or Landlord Bids received in respect of the remaining Locations in the Stalking Horse Package, satisfies the criteria for being a Qualified Bid for the Stalking Horse Package.

Pre-Auction Procedures

Determination and Announcement of Baseline Bids

In consultation with the Consultation Parties, the Debtors shall make a determination regarding:

- (A) the Assets to be auctioned by the Debtors, including the Stalking Horse Package and any Additional Stalking Horse Package (each, an “**Auction Package**”);
- (B) the highest or best Qualified Bid (or collection of Qualified Bids) determined for each Auction Package (each, a “**Baseline Bid**,” and such bidder or group of bidders, a “**Baseline Bidder**”) to serve as the starting point at the Auction for such Auction Package;
- (C) which Bids have been determined to be Qualified Bids and the Auction Package applicable to such Qualified Bid; provided that the Debtors may permit a Qualified Bidder to bid on any other Auction Package; and
- (D) the time and place for the Auction of each Auction Package.

By the applicable Qualified Bid Designation Date, the Debtors shall file notice of the foregoing on the Court’s docket and publish such notice on the Omni Website and in the Data Room. As soon as practicable, but no later than two (2) days prior to the Auction, the Debtors will provide copies of each Baseline Bid to the Consultation Parties.

Between the date the Debtors notify a Potential Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate or seek clarification of any Qualified Bid from a Qualified Bidder. Without the written consent of the Debtors (in consultation with the Consultation Parties), a Qualified Bidder may not modify, amend or withdraw its Qualified Bid, except for proposed amendments to increase the purchase price or otherwise improve the terms of its Qualified Bid, during the period that such Qualified Bid remains binding as specified herein; provided that any Qualified Bid may be improved at the Auction as set forth herein.

Except as provided in the Stalking Horse Agreement, the Debtors are under no obligation to (i) select any Baseline Bid or (ii) conduct separate Auctions for any Locations, whether before or after selecting a Baseline Bid. Notwithstanding anything to the contrary contained herein, the Debtors may elect, in their reasonable discretion, and after consultation with the Consultation Parties, to adjourn any Auction.

Failure to Receive Two or More Qualified Bids

If no Qualified Bid for the Stalking Horse Package and/or any Additional Stalking Horse Package other than the applicable Stalking Horse Bid is received by the applicable Bid

Deadline, the Debtors will not conduct the Auction for such Stalking Horse Package, and shall file and serve a notice indicating that the Auction has been cancelled with respect to such Stalking Horse Package, that the applicable Stalking Horse Bidder is the Successful Bidder as to such Stalking Horse Package, and setting forth the date and time of the Sale Hearing.

With respect to Locations not included in the Stalking Horse Package or any Additional Stalking Horse Package, if only one Qualified Bid is received by the Other Assets Bid Deadline for assets that are not the subject of another Qualified Bid, the Debtors may, after consultation with the Consultation Parties, determine to consummate a Sale Transaction with the Qualified Bidder that submitted such Qualified Bid (to the extent one is received) and shall file and serve a notice identifying such Qualified Bidder, the terms of such Qualified Bid, and notice of the Sale Hearing applicable to such Qualified Bid.

Except as provided in the Stalking Horse Agreement, nothing herein shall obligate the Debtors to consummate or pursue any transaction with a Qualified Bidder.

Auction Procedures

If there are two or more Qualified Bids for an Auction Package, the Debtors may conduct one or more Auctions for such Auction Package on dates to be announced at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, or such other time and place as the Debtors, after consultation with the Baseline Bidder and the Consultation Parties, may notify Qualified Bidders who have submitted Qualified Bids. Only a Qualified Bidder will be eligible to participate at an Auction, subject to such limitations as the Debtors may impose in good faith. Professionals and/or other representatives of the Consultation Parties will be permitted to attend and observe an Auction.

At any Auction, Qualified Bidders (including the Stalking Horse Bidder and any Additional Stalking Horse Bidder) will be permitted to increase their bids. For each Baseline Bid, bidding will start at the purchase price and terms proposed in the applicable Baseline Bid, and will proceed thereafter in increments to be announced (a “**Minimum Overbid Amount**”). The Minimum Overbid Amount for the Stalking Horse Package, whether in one or a combination of Qualified Bids, shall be the amount of the Termination Payment plus \$500,000. The Debtors reserve the right to and may, after consultation with the Consultation Parties, increase or decrease the Minimum Overbid Amount at any time during the Auction for any assets other than the Stalking Horse Package. The Stalking Horse Bidder and any Additional Stalking Horse Bidder are each authorized to increase their respective bids at the Auction. If the Stalking Horse Bidder or any Additional Stalking Horse Bidder bids at an Auction for the applicable Stalking Horse Package that is the subject of its Stalking Horse Bid or Additional Stalking Horse Bid, as applicable, such Stalking Horse Bidder will also be entitled to a “credit” in the amount of the applicable Termination Payment to be counted towards its bid such that the cash and other consideration proposed by the applicable Stalking Horse Bidder plus the applicable Termination Payment “credit” must exceed the most recent bid by at least the Minimum Overbid Amount.

The Debtors may adopt rules, after consultation with the Consultation Parties, for an Auction at any time that the Debtors reasonably determine to be appropriate to promote the goals of the Bidding and Auction Process and are not inconsistent with these Bidding Procedures.

At the start of an Auction, the Debtors shall describe the terms of the applicable Baseline Bid. Any rules adopted by the Debtors will not unilaterally modify any of the terms of the Stalking Horse Agreement or any Additional Stalking Horse Agreement (as each may be consensually modified at any Auction) without the consent of the Stalking Horse Bidder or the Additional Stalking Horse Bidder, as applicable. Any rules developed by the Debtors will provide that all bids in a particular Auction will be made and received in one room, on an open basis, and all other bidders participating in that Auction will be entitled to be present for all bidding with the understanding that the true identity of each bidder will be fully disclosed to all other bidders participating in that Auction and that all material terms of each Qualified Bid submitted in response to the Baseline Bid or to any successive bids made at the Auction will be fully disclosed to all other bidders throughout the entire Auction. Each Qualified Bidder will be permitted what the Debtors reasonably determine, in consultation with the Consultation Parties, to be an appropriate amount of time to respond to the previous bid at the Auction.

The Debtors reserve the right to and may, after consultation with the Consultation Parties, reject at any time before entry of the relevant Sale Order any bid that, in the Debtors' judgment, is (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, these Bidding Procedures, or the terms and conditions of the applicable Sale Transaction; or (iii) contrary to the best interests of the Debtors and their estates, except that if the Stalking Horse Bid and/or any Additional Stalking Horse Bid as reflected in the applicable Stalking Horse Agreement is the only Qualified Bid for the applicable Stalking Horse Package, the foregoing provisions of this sentence will be inoperative. In doing so, the Debtors may take into account the factors set forth above regarding the form and content of Qualified Bids and the Debtors' review of bids. No attempt by the Debtors to reject a bid under this paragraph will modify any rights of the Debtors or the Stalking Horse Bidder or any Additional Stalking Horse Bidder under applicable Stalking Horse Agreement (as may be consensually modified at any Auction).

Prior to the conclusion of an Auction, the Debtors, after consultation with the Consultation Parties, will (i) review and evaluate each bid made at the Auction on the basis of financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating a Sale Transaction; (ii) determine the highest or best offer or collection of offers for an Auction Package (as applicable to each Auction Package, a "**Successful Bid**"); (iii) except as provided in the applicable Stalking Horse Agreement, determine which Qualified Bid is the next highest or best bid for such Auction Package (as applicable to each Auction Package, the "**Back-Up Bid**"); and (iv) notify all Qualified Bidders participating in an Auction, prior to its conclusion, the successful bidder for such Auction Package (the "**Successful Bidder**"), the amount and other material terms of the Successful Bid, and the identity of the party that submitted the Back-Up Bid for such Auction Package (the "**Back-Up Bidder**").

Each Qualified Bidder shall be required to confirm, both before and after the Auction, that it has not engaged in any collusion with respect to the submission of any bid, the bidding, or the Auction.

Post-Auction Process

A Successful Bidder shall, within one (1) business day after the close of the Auction, submit to the Debtors fully executed revised documentation memorializing the terms of the Successful Bid, which shall be in form and substance acceptable to the Debtors, in consultation with the Consultation Parties. Promptly following the submission of such documentation, the Debtors shall file with the Bankruptcy Court notice of the Successful Bid, the Successful Bidder, and, if applicable, the Back-Up Bid and the Back-Up Bidder. The Successful Bid may not be assigned to any party without the consent of the Debtors after consultation with the Consultation Parties.

Except to the extent otherwise provided in the Stalking Horse Agreement or any Additional Stalking Horse Agreement, the Back-Up Bid shall remain open and irrevocable until the earliest to occur of (i) forty-five (45) days after the completion of the Auction, or such other date as may be provided for in an applicable Stalking Horse Agreement, (ii) the consummation of the transaction with the Successful Bidder, and (iii) the release of such bid by the Debtors (such date, the “**Back-Up Termination Date**”). If the transaction with a Successful Bidder is terminated prior to the Back-Up Termination Date, the Back-Up Bidder shall be deemed the Successful Bidder and shall be obligated to consummate the Back-Up Bid as if it were the Successful Bid.

Notices Regarding Assumption and Assignment

The Debtors shall provide all notices regarding the proposed assumption and assignment of contracts and leases in connection with the Assumption and Assignment Procedures set forth in the Bidding Procedures Order.

Treatment and Return of Deposits

Potential Bidders

Within three (3) business days after the Designation Deadline, the Escrow Agent shall return to each Potential Bidder that was determined not to be a Qualified Bidder, as confirmed by the Debtors, such Potential Bidder’s Deposit, plus any interest accrued thereon. Upon the authorized return of such Potential Bidder’s Deposit, the bid of such Potential Bidder shall be deemed revoked and no longer enforceable.

Qualified Bidders

The Deposit of a Qualified Bidder will be forfeited to the Debtors if (i) the applicable Qualified Bidder attempts to modify, amend, or withdraw its Qualified Bid, except as permitted by these Bidding Procedures, during the time the Qualified Bid remains binding and irrevocable under these Bidding Procedures, or (ii) the Qualified Bidder is selected as the Successful Bidder and fails to enter into the required definitive documentation or to consummate the transaction according to these Bidding Procedures and the terms of the applicable transaction documents with respect to the Successful Bid. The Escrow Agent shall release the Deposit by wire transfer of immediately available funds to an account designated by the Debtors two (2) business days after the receipt by the Escrow Agent of a joint written notice by an authorized officer of the

Debtors stating that the Qualified Bidder has breached or failed to satisfy its obligations or undertakings.

With the exception of the Deposit of a Successful Bidder and a Back-Up Bidder, the Escrow Agent shall return to any other Qualified Bidder any Deposit, plus any interest accrued thereon, three (3) business days after the execution by the Successful Bidder and the Debtors of the documentation memorializing the Successful Bid, but in no event later than seven (7) business days after the conclusion of a Sale Hearing.

Notwithstanding anything to the contrary herein, the good faith deposit provided by the Stalking Horse Bidder pursuant to the Stalking Horse Agreement (including any required return of such deposit) and any good faith deposit provided by an Additional Stalking Horse Bidder pursuant to an Additional Stalking Horse Agreement (including any required return of such deposit) shall be governed by the terms and conditions of the applicable Stalking Horse Agreement.

Back-Up Bidder

The Escrow Agent shall return a Back-Up Bidder's Deposit, plus any interest accrued thereon, within three (3) business days after the occurrence of the applicable Back-Up Bid Expiration Date.

The Successful Bidder

The Deposit of a Successful Bidder shall be applied against the cash portion of the Purchase Price of such Successful Bidder upon the consummation of the transaction proposed in the applicable Successful Bid.

Joint Notice to Escrow Agent

The Debtors and, as applicable, the Potential Bidder, Qualified Bidder, and/or Back-Up Bidder agree to execute an appropriate joint notice to the Escrow Agent for the return of any Deposit to the extent such return is required by these Bidding Procedures. If either party fails to execute such written notice, the Deposit may be released by an order of the Bankruptcy Court.

Notice and Consultation Parties

Bid Notice Parties

Information that must be provided to the "**Bid Notice Parties**" under these Bidding Procedures must be provided to the following parties:

- (i) Fairway Group Holdings Corp., 2284 12th Avenue, New York, New York 10027 (Attn: Abel Porter and Nathalie Augustin, Esq.);
- (ii) proposed counsel to the Debtors, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Ray C. Schrock, P.C., Gavin Westerman, and Sunny Singh, Esq.);

- (iii) Solomon, 1345 6th Avenue, New York, NY 10105 (Attn: Scott Moses and Josh Heft); and
- (iv) Mackinac Partners, 180 N. LaSalle Street, Suite 3020, Chicago, IL 60601 (Attn: Michael Nowlan).

Objection Notice Parties

Information that must be provided to the “**Objection Notice Parties**” under these Bidding Procedures must be provided to each of the Bid Notices Parties and the following parties:

- (i) proposed counsel to the Official Committee of Unsecured Creditors appointed in the Debtors’ chapter 11 cases (the “**Creditors’ Committee**”), Pachulski Stang Ziehl & Jones LLP, 780 Third Avenue, 34th Floor, New York, NY 10017 (Attn: Bradford J. Sandler, Esq. and Robert J. Feinstein, Esq.);
- (ii) counsel to the Stalking Horse Bidder, Wollmuth Maher & Deutsch LLP, 500 Fifth Avenue, New York, NY 10110 (Attn: Paul R. DeFilippo, Esq.);
- (iii) counsel to the Ad Hoc Group and DIP Lenders, King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 (Attn: W. Austin Jowers, Esq., Michael Rupe, Esq., and Michael R. Handler, Esq.);
- (iv) counsel to Ankura Trust Company, LLC, as the Prepetition Agent under the Prepetition Credit Agreement, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017 (Attn: Christian Fischer, Esq.); and
- (v) the Unions, including (a) United Food and Commercial Workers Local 371, 290 Post Road West, Westport, CT 06881 (Attn: Thomas Wilkinson), (b) United Food and Commercial Workers Local 1262, 1389 Broad Street, Clifton, NJ 07013 (Attn: Harvey Whille), and (c) United Food and Commercial Workers Local 1500, 425 Merrick Avenue, Westbury, NY 11590 (Attn: Robert Newell).

Consultation Parties

The term “**Consultation Parties**” as used in these Bidding Procedures shall mean:

- (i) the Creditors’ Committee;
- (ii) the Ad Hoc Group and DIP Lenders; and
- (iii) designated representatives of each of the Unions.

For the avoidance of doubt, any consultation rights provided to the Consultation Parties by these Bidding Procedures shall not limit the Debtors’ discretion in any way and shall

not include the right to veto any decision made by the Debtors in the exercise of their business judgment.

In the event that any Consultation Party or any member of the Creditors' Committee, or an affiliate of any of the foregoing, submits a bid that is a Qualified Bid, any obligation of the Debtors to consult with the bidding party established under these Bidding Procedures will be waived, discharged, and released without further action; provided that the bidding party will have the same rights as any other Potential Bidder set forth above, and will retain any rights it has under existing orders regarding debtor in possession financing and/or use of cash collateral (to the extent applicable).

If a member of the Creditors' Committee submits a Qualified Bid, the Creditors' Committee will continue to have Consultation Rights; provided that the Creditors' Committee shall exclude such member from any discussions or deliberations regarding the sale of the Assets and shall not provide any confidential information regarding the sale of the Assets to such member; provided, further, that if the bid is a Landlord Bid not included in the Stalking Horse Package, then such member shall only be excluded for purposes of discussions of the applicable lease contained in the Landlord Bid.

Consent to Jurisdiction and Authority to Condition to Bidding

All Potential Bidders (including the Stalking Horse Bidder and any Additional Stalking Horse Bidder) shall be deemed to have (i) consented to the core jurisdiction of the Bankruptcy Court to enter any order or orders, which shall be binding in all respects, in any way related to the Bidding Procedures, an Auction, or the construction and enforcement of any agreement or any other document relating to the applicable Sale Transaction, (ii) waived any right to a jury trial in connection with any disputes relating to the Bidding Procedures, an Auction, or the construction and enforcement of any agreement or any other document relating to the Sale Transaction, and (iii) consented to the entry of a final order or judgment in any way related to the Bidding Procedures, an Auction, or the construction and enforcement of any agreement or any other document relating to the Sale Transaction if it is determined that the Bankruptcy Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

Reservation of Rights

The Debtors reserve the right, in their reasonable discretion and subject to the exercise of their business judgment, after consultation with the Consultation Parties, to alter or terminate these Bidding Procedures, to waive terms and conditions set forth herein with respect to all potential bidders, extend the deadlines set forth herein, alter the assumptions set forth herein, provide reasonable accommodations to the Stalking Horse Bidder and any Additional Stalking Horse Bidder with respect to such terms, conditions, and deadlines of the Bidding and Auction Process to promote further bids by such bidders on any additional Locations not included in the Stalking Horse Package or any Addition Stalking Horse Package (including, without limitation, extending time deadlines as may be required for such Stalking Horse Bidder to comply with any additional filing and review procedures with the Federal Trade Commission in connection with their previous respective HSR Filings or any other Antitrust Law) and/or to terminate discussions with any and all prospective acquirers and investors (except for the Successful Bidder) at any time

and without specifying the reasons therefor, in each case to the extent not materially inconsistent with these Bidding Procedures and/or the Bidding Procedures Order; provided that the Debtors' exercise of their discretion in evaluating bids and administering the Bidding and Auction Process does not permit, and shall not be construed as permitting, the Debtors to materially deviate from the procedures, terms, conditions, and protections set forth in these Bidding Procedures and/or the Bidding Procedures Order.

Schedule 1

Locations in the Stalking Horse Package

Six (6) Locations Included In the Stalking Horse Bid

#	Location Name	Debtor	Street Address	City	State	Zip Code	Country
1	Production and Distribution Center	Fairway Bakery LLC	400 Walnut Avenue	Bronx	NY	10454	USA
2	Downtown	Fairway Broadway LLC	2131 Broadway	New York	NY	10023	USA
3	Chelsea	Fairway Chelsea LLC	55 W 25th Street a/k/a 766 Avenue of the Americas	New York	NY	10010	USA
4	Upper East Side	Fairway East 86 th Street LLC	230-240 E. 86th Street	New York	NY	10022	USA
5	Kips Bay	Fairway Kips Bay LLC	542-580 Second Avenue	New York	NY	10016	USA
6	Uptown	Fairway Uptown LLC	2328 12th Avenue	New York	NY	10027	USA

Schedule 2

Additional Locations

Nine (9) Other Locations

#	Location Name	Debtor	Street Address	City	State	Zip Code	Country
1	Douglaston	Fairway Douglaston LLC	242-02 61st Avenue	Douglaston	NY	11362	USA
2	Georgetowne	Fairway Georgetowne LLC	2149 Ralph Avenue	Brooklyn	NY	11234	USA
3	Plainview	Fairway Group Plainview LLC	50 Manetto Hill Road	Plainview	NY	10023	USA
4	Paramus	Fairway Paramus LLC	#4 Fashion Center Mall Route 17 North 30 Ridgewood Avenue	Paramus	NJ	7652	USA
5	Pelham	Fairway Pelham LLC	847 Pelham Parkway	Pelham Manor	NY	10803	USA
6	Red Hook	Fairway Red Hook LLC	480-500 Van Brunt Street	Brooklyn	NY	11231	USA
7	Stamford	Fairway Stamford LLC	699 Canal Street	Stamford	CT	6902	USA
8	Westbury	Fairway Westbury LLC	1258 Corporate Drive	Westbury	NY	11590	USA
9	Woodland Park	Fairway Woodland Park LLC	1510 Route 46 West	Woodland Park	NJ	7424	USA

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
: **Chapter 11**
: **Case No. 20-10161 (JLG)**
: **(Jointly Administered)**
: **(ECF No. [__])**
-----X

**NOTICE OF SALE, BIDDING
PROCEDURES, AUCTIONS, AND SALE HEARINGS**

PLEASE TAKE NOTICE OF THE FOLLOWING:

Fairway Group Holdings Corp. and its chapter 11 affiliate debtors, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), filed with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) a motion (ECF No. 21) (the “**Motion**”) for the entry of orders (i) an order (the “**Bidding Procedures Order**”) ² (a) approving bidding procedures in connection with the sale or disposition of substantially all of the Debtors’ assets (the “**Assets**”); (b) approving Stalking Horse Bid Protections for the Stalking Horse Bidder (as hereinafter defined); (c) authorizing the designation of additional stalking horse bidders; (d) scheduling auctions (the “**Auctions**”) of the Assets and hearings (each, a “**Sale Hearing**”) to consider approval of proposed sale transactions; (e) approving the form and manner of notice of sales of the Assets, the Auctions, and the Sale Hearings; (f) approving the form and manner of notice to each non-Debtor counterparty (each, a “**Counterparty**”) to executory contracts and unexpired leases (collectively, the “**Contracts and Leases**”) regarding the Debtors’ potential assumption and assignment of their Contracts and Leases and of the Debtors’ calculation of the amount necessary to cure all monetary defaults thereunder (collectively, the “**Cure Costs**”); (g) approving procedures for the assumption and assignment of Contracts (the “**Assumption and Assignment Procedures**”); and (h) granting related relief; and (ii) one or more orders (each, a “**Sale Order**”) (a) authorizing the sale of the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Fairway Group Holdings Corp. (2788); Fairway Group Acquisition Company (2860); Fairway Bakery LLC (4129); Fairway Broadway LLC (8591); Fairway Chelsea LLC (0288); Fairway Construction Group, LLC (2741); Fairway Douglaston LLC (2650); Fairway East 86th Street LLC (3822); Fairway eCommerce LLC (3081); Fairway Georgetowne LLC (9609); Fairway Greenwich Street LLC (6422); Fairway Group Central Services LLC (7843); Fairway Group Plainview LLC (8643); Fairway Hudson Yards LLC (9331); Fairway Kips Bay LLC (0791); FN Store LLC (9240); Fairway Paramus LLC (3338); Fairway Pelham LLC (3119); Fairway Pelham Wines & Spirits LLC (3141); Fairway Red Hook LLC (8813); Fairway Stamford LLC (0738); Fairway Stamford Wines & Spirits LLC (3021); Fairway Staten Island LLC (1732); Fairway Uptown LLC (8719); Fairway Westbury LLC (6240); and Fairway Woodland Park LLC (9544). The location of the Debtors’ corporate headquarters is 2284 12th Avenue, New York, New York 10027. Fairway Community Foundation Inc., a charitable organization, owned by Fairway Group Holdings Corp., is not a debtor in these proceedings.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Bidding Procedures Order.

Assets free and clear of all liens, claims, interests, and encumbrances; (b) authorizing the assumption and assignment of proposed assumed Contracts and Leases (collectively, the “**Proposed Assumed Contracts**”); and (c) granting related relief.

On [___], 2020, the Bankruptcy Court entered the Bidding Procedures Order (ECF No. [___]), approving the relief requested in the Motion.

Stalking Horse Bid

A binding stalking horse bid (the “**Stalking Horse Bid**”) has been submitted by Village Super Market, Inc. (the “**Stalking Horse Bidder**”). The Stalking Horse Bidder has executed an asset purchase agreement (the “**Stalking Horse Agreement**”)³ for the purchase of the Debtors’ locations and related assets identified on **Exhibit A** annexed hereto (the “**Stalking Horse Package**”). The Stalking Horse Bid is subject to higher or otherwise better offers submitted in accordance with the terms and provisions of the Bidding Procedures.

The Debtors are seeking to sell substantially all of their assets (the “**Assets**”), including their fourteen (14) operating grocery stores, bakeries, and beer, wine, and liquor stores, their production and distribution center, and all related assets, including, but not limited to, inventory, intellectual property, prepaid expenses, and furniture, fixtures, and equipment.

Assets not included in the Stalking Horse Package are referred to herein as the “**Other Assets.**” A complete list of the Other Assets available for sale pursuant to the Bidding Procedures and the scheduled Auction Dates for such Assets, is included hereto as **Exhibit B**.

A party may submit a bid for any individual Asset (or combination of Assets) listed on **Exhibit A** and/or **Exhibit B** whether or not such asset is included in the Stalking Horse Package, in each case, in accordance with the terms and provisions of the Bidding Procedures.

IMPORTANT DATES AND DEADLINES

- **Auctions.** Auctions for the Assets have been scheduled for (i) **March 11, 2020 at 10:00 a.m. (Eastern Time)** with respect to the Stalking Horse Package, and (ii) **March 16, 2020 at 10:00 a.m. (Eastern Time)** with respect to the Other Assets and, if necessary, will be conducted at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153. The Auction date for each Asset is set forth on the Exhibits hereto. The Debtors reserve the right to adjourn or continue the Auction of any Asset to a later date.
- **Sale Objection Deadlines.** Objections to a proposed Sale Transaction, including any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code and/or entry of a Sale Order, must be (i) filed in accordance with the Bidding Procedures Order, (ii) filed with the Bankruptcy Court, and (iii) served on the Objection Notice Parties (as identified and defined in the Bidding Procedures) by no later than (i) **March 4, 2020 at 4:00 p.m.**

³ The Stalking Horse Agreement is attached as **Exhibit C** to the Motion.

(**Eastern Time**), with respect to the proposed sale of the Stalking Horse Package to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement, or (ii) **March 20, 2020 at 4:00 p.m. (Eastern Time)**, with respect to the sale of the Stalking Horse Package to a Successful Bidder (other than the Stalking Horse Bidder pursuant to the Stalking Horse Agreement), or a sale of the Other Assets to a Successful Bidder, following an Auction.

- **Sale Hearings**. The Sale Hearing shall be held before the Bankruptcy Court for the Southern District of New York, Courtroom 601, One Bowling Green, New York, New York, 10004-1408 before the Honorable James L. Garrity, Jr., United States Bankruptcy Judge, on (i) **March 11, 2020 at [] (Eastern Time)**, with respect to the sale of the Stalking Horse Package to the Stalking Horse Bidder if no Auction is held with respect thereto, or (ii) **March 26, 2020 at [] (Eastern Time)**, with respect to a sale of the Stalking Horse Package to a Successful Bidder following an Auction and a sale of the Other Assets to a Successful Bidder.

Additional Information

Any party interested in submitting a bid for the Assets should contact the Debtors' advisors at PJ Solomon, L.P., 1345 6th Avenue, New York, NY 10105 (Attn: Scott Moses (smoses@pjsolomon.com) and Josh Heft (jheft@pjsolomon.com)).

Copies of the Motion, the Bidding Procedures Order, the Bidding Procedures, and the Stalking Horse Agreement may be obtained free of charge at the website dedicated to the Debtors' chapter 11 cases maintained by their claims and noticing agent and administrative advisor, Omni Agent Solutions, located at www.omniagentsolutions.com/Fairway.

Reservation of Rights

The Debtors reserve the right to, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, and in consultation with the Consultation Parties, modify the Bidding Procedures; waive terms and conditions set forth therein; extend the deadlines set forth therein; announce at the Auctions modified or additional procedures for conducting the Auctions; and provide reasonable accommodations to the Stalking Horse Bidder with respect to such terms, conditions, and deadlines of the bidding and auction process to promote further bids by such bidder, in each case, to the extent not materially inconsistent with the Bidding Procedures and the Bidding Procedures Order. **Except as provided in the Stalking Horse Agreement, nothing shall obligate the Debtors to consummate or pursue any transaction with respect to any Asset with any bidder.**

THE FAILURE OF ANY PERSON OR ENTITY TO FILE AND SERVE AN OBJECTION IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER BY THE APPLICABLE SALE OBJECTION DEADLINE SHALL FOREVER BAR SUCH PERSON OR ENTITY FROM ASSERTING ANY OBJECTION TO THE MOTION, SALE ORDERS, THE PROPOSED SALE TRANSACTIONS, OR THE DEBTORS' CONSUMMATION OF THE STALKING HORSE AGREEMENT OR ANY OTHER

**ASSET PURCHASE AGREEMENT EXECUTED BY THE DEBTORS AND A
SUCCESSFUL BIDDER AT THE AUCTION.**

Dated: [_____], 2020
New York, New York

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Ray C. Schrock, P.C.
Sunny Singh

*Proposed Attorneys for Debtors
and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
	:
In re	: Chapter 11
	:
FAIRWAY GROUP HOLDINGS CORP., et al.,	: Case No. 20-10161 (JLG)
	:
Debtors.¹	: (Jointly Administered)
	: (ECF No. [__])
-----X	

**NOTICE OF CURE COSTS AND PROPOSED
ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH SALE**

PLEASE TAKE NOTICE OF THE FOLLOWING:

Fairway Group Holdings Corp. and its chapter 11 affiliate debtors, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), filed with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) a motion (ECF No. 21) (the “**Motion**”) for the entry of orders (i) an order (the “**Bidding Procedures Order**”)² (a) approving bidding procedures in connection with the sale or disposition of substantially all of the Debtors’ assets (the “**Assets**”); (b) approving Stalking Horse Bid Protections for the Stalking Horse Bidder (as hereinafter defined); (c) authorizing the designation of additional stalking horse bidders; (d) scheduling auctions (the “**Auctions**”) of the Assets and hearings (each, a “**Sale Hearing**”) to consider approval of proposed sale transactions; (e) approving the form and manner of notice of sales of the Assets, the Auctions, and the Sale Hearings; (f) approving the form and manner of notice to each non-Debtor counterparty (each, a “**Counterparty**”) to executory contracts and unexpired leases (collectively, the “**Contracts and Leases**”) regarding the Debtors’ potential assumption and assignment of their Contracts and Leases and of the Debtors’ calculation of the amount necessary to cure all monetary defaults thereunder (collectively, the “**Cure Costs**”); (g) approving procedures for the assumption and

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Fairway Group Holdings Corp. (2788); Fairway Group Acquisition Company (2860); Fairway Bakery LLC (4129); Fairway Broadway LLC (8591); Fairway Chelsea LLC (0288); Fairway Construction Group, LLC (2741); Fairway Douglaston LLC (2650); Fairway East 86th Street LLC (3822); Fairway eCommerce LLC (3081); Fairway Georgetowne LLC (9609); Fairway Greenwich Street LLC (6422); Fairway Group Central Services LLC (7843); Fairway Group Plainview LLC (8643); Fairway Hudson Yards LLC (9331); Fairway Kips Bay LLC (0791); FN Store LLC (9240); Fairway Paramus LLC (3338); Fairway Pelham LLC (3119); Fairway Pelham Wines & Spirits LLC (3141); Fairway Red Hook LLC (8813); Fairway Stamford LLC (0738); Fairway Stamford Wines & Spirits LLC (3021); Fairway Staten Island LLC (1732); Fairway Uptown LLC (8719); Fairway Westbury LLC (6240); and Fairway Woodland Park LLC (9544). The location of the Debtors’ corporate headquarters is 2284 12th Avenue, New York, New York 10027. Fairway Community Foundation Inc., a charitable organization, owned by Fairway Group Holdings Corp., is not a debtor in these proceedings.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Bidding Procedures Order.

assignment of Contracts (the “**Assumption and Assignment Procedures**”); and (h) granting related relief; and (ii) one or more orders (a) authorizing the sale of the Assets free and clear of all liens, claims, interests, and encumbrances; (b) authorizing the assumption and assignment of proposed assumed Contracts and Leases (collectively, the “**Proposed Assumed Contracts**”); and (c) granting related relief.

On [___], 2020, the Bankruptcy Court entered the Bidding Procedures (ECF No. [___]), approving the relief requested in the Motion, including the bidding procedures attached to the Bidding Procedures Order as **Exhibit 1** (the “**Bidding Procedures**”).

You are receiving this Notice because you may be a Counterparty to a Contract or Lease of the Debtors that is proposed to be assumed and assigned to the Stalking Horse Bidder or one or more other bidders.

Stalking Horse Bid

A binding stalking horse bid (the “**Stalking Horse Bid**”) has been submitted by Village Super Market, Inc. The Stalking Horse Bidder has executed an asset purchase agreement (the “**Stalking Horse Agreement**”)³ for the purchase of the Debtors’ locations and related assets identified on **Schedule 1** to the Bidding Procedures. The Proposed Assumed Contracts included in the Stalking Horse Package as of the date hereof and the Debtors’ calculation of the Cure Costs with respect thereto are set forth on **Exhibit A** annexed hereto.

The inclusion of any Contract or Lease on **Exhibit A** does not constitute an admission that a particular Proposed Assumed Contract is an executory contract or unexpired lease within the meaning of the Bankruptcy Code or require or guarantee that such Proposed Assumed Contract ultimately will be assumed or assigned. All rights of the Debtors with respect thereto are reserved.

Pursuant to the terms of the Bidding Procedures Order, the Debtors may designate Additional Stalking Horse Bidders (as defined in the Bidding Procedures) for the Other Assets. Notice of any such designation, including the execution of any asset purchase agreement with an Additional Stalking Horse Bidder and the provision of any bid protections in connection therewith, shall be provided in accordance with the terms of the Bidding Procedures Order.

Cure Costs

In accordance with the Assumption and Assignment Procedures and the Bidding Procedures Order, the Debtors shall, in connection with a Sale Transaction with a Successful Bidder (as defined in the Bidding Procedures) at the Auction (whether such bidder be the Stalking Horse Bidder or other bidder prevailing at the Auction), assume and assign to the Successful Bidder (or its designated assignee, if applicable) certain Contracts and Leases of the Debtors, whether or not such Contracts and Leases are included in the Stalking Horse Package and set forth on **Exhibit A** annexed hereto.

³ The Stalking Horse Agreement is attached at **Exhibit C** to the Motion.

Each of the Contracts and Leases (excluding the Proposed Assumed Contracts set forth on **Exhibit A** annexed hereto) that are designated for assumption and assignment in connection with a Sale Transaction with a Successful Bidder and the Debtors' calculation of the Cure Costs with respect thereto are set forth on **Exhibit B** annexed hereto. Each of the executory contracts and unexpired leases set forth on **Exhibit B** annexed hereto are proposed to be assumed and assigned in connection with a Sale Transaction with a Successful Bidder [at the applicable Auction] that is **not** a Sale Transaction with the Stalking Horse Bidder pursuant to the Stalking Horse Agreement.

The inclusion of any Contract or Lease on **Exhibit B** does not constitute an admission that a particular Contract or Lease is an executory contract or unexpired lease within the meaning of the Bankruptcy Code or require or guarantee that such Contract or Lease ultimately will be assumed or assigned. All rights of the Debtors with respect thereto are reserved.

Objections

A. Cure Objections

Any objection to the proposed assumption or assignment of a Contract or Lease identified on **Exhibit A** or **Exhibit B** annexed hereto, the subject of which objection is the Debtors' proposed Cure Costs, must be (i) filed in accordance with the Bidding Procedures Order; (ii) filed with the Bankruptcy Court; and (iii) served on the Objection Notice Parties (as defined in the Bidding Procedures Order) by no later than (a) **March 4, 2020 at 4:00 p.m. (Eastern Time)**] with respect to Contracts and Leases included on **Exhibit A** as designated for assumption and assignment to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement, or (b) **seven (7) calendar days after the service of this Assumption and Assignment Notice** with respect to Contracts and Leases included on **Exhibit B**.

IF A COUNTERPARTY FAILS TO FILE WITH THE BANKRUPTCY COURT AND SERVE ON THE OBJECTION NOTICE PARTIES A TIMELY CURE OBJECTION, THE COUNTERPARTY SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO THE AMOUNT TO CURE ANY DEFAULT UNDER THE APPLICABLE EXECUTORY CONTRACT OR UNEXPIRED LEASE. THE CURE COSTS SET FORTH ON EXHIBIT A AND EXHIBIT B ANNEXED HERETO, AS APPLICABLE, SHALL BE CONTROLLING AND WILL BE THE ONLY AMOUNT NECESSARY TO CURE OUTSTANDING DEFAULTS UNDER THE APPLICABLE EXECUTORY CONTRACT OR LEASE UNDER BANKRUPTCY CODE SECTION 365(b), NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE EXECUTORY CONTRACT OR UNEXPIRED LEASE, OR ANY OTHER DOCUMENT, AND THE APPLICABLE COUNTERPARTY SHALL BE FOREVER BARRED FROM ASSERTING ANY ADDITIONAL CURE OR OTHER AMOUNTS WITH RESPECT TO SUCH EXECUTORY CONTRACT OR UNEXPIRED LEASE AGAINST THE DEBTORS, ANY SUCCESSFUL BIDDER, OR THE PROPERTY OF ANY OF THEM.

B. Adequate Assurance Objections

Any objection to the proposed assumption or assignment of a Contract or Lease identified on **Exhibit A** annexed hereto, the subject of which is the Stalking Horse Bidder's (or its known assignee's) proposed form of adequate assurance of future performance with respect to such Proposed Assumed Contract must be (i) filed in accordance with the Bidding Procedures Order; (ii) filed with the Bankruptcy Court; and (iii) served on the Objection Notice Parties by no later than **March 4, 2020, at 4:00 p.m. (Eastern Time)**.

Any objection to the proposed assumption or assignment of a Contract or Lease identified on **Exhibit B** annexed hereto, the subject of which is the applicable bidder's (as listed on **Exhibit B**) proposed form of adequate assurance of future performance with respect to such Proposed Assumed Contract must be (i) filed in accordance with the Bidding Procedures Order; (ii) filed with the Bankruptcy Court; and (iii) served on the Objection Notice Parties by no later than **(7) calendar days after the service of this Assumption and Assignment Notice**.

IF A COUNTERPARTY FAILS TO FILE WITH THE BANKRUPTCY COURT AND SERVE ON THE OBJECTION NOTICE PARTIES A TIMELY ADEQUATE ASSURANCE OBJECTION, THE COUNTERPARTY SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO ADEQUATE ASSURANCE OF FUTURE PERFORMANCE OF THE APPLICABLE EXECUTORY CONTRACT OR UNEXPIRED LEASE. THE SUCCESSFUL BIDDER (OR ITS DESIGNATED ASSIGNEE, IF APPLICABLE) SHALL BE DEEMED TO HAVE PROVIDED ADEQUATE ASSURANCE OF FUTURE PERFORMANCE WITH RESPECT TO THE APPLICABLE CONTRACT OR LEASE IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 362(f)(2)(B), NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE EXECUTORY CONTRACT OR UNEXPIRED LEASE, OR ANY OTHER DOCUMENT.

Sale Hearings

If the Stalking Horse Bid is the only Qualified Bid received by the Debtors in respect of the Stalking Horse Package by the Global Bid Deadline (as defined in the Bidding Procedures Order), the Sale Hearing for the Stalking Horse Package shall be held before the Bankruptcy Court before the Honorable James L. Garrity, Jr., United States Bankruptcy Judge, in the Bankruptcy Court for the Southern District of New York, Courtroom 601, One Bowling Green, New York, New York, 10004-1408 on **March 11, 2020 at [] (Eastern Time)**.

If (i) a Qualified Bid (other than the Stalking Horse Bid) is received by the Debtors in respect of the Stalking Horse Package by the Global Bid Deadline, and/or (ii) a Qualified Bid is received by the Debtors in respect of the Other Assets, the applicable Sale Hearing shall be held before the Bankruptcy Court before the Honorable James L. Garrity, Jr., United States Bankruptcy

Court Judge, in the Bankruptcy Court for the Southern District of New York, Courtroom 601, One Bowling Green, New York, New York, 10004-1408 on **March 26, 2020** at [__] (**Eastern Time**).

Additional Information

Copies of the Motion, the Bidding Procedures Order, the Bidding Procedures, and the Stalking Horse Agreement may be obtained free of charge at the website dedicated to the Debtors' chapter 11 cases maintained by their claims and noticing agent and administrative advisor, Omni Agent Solutions, located at www.omniagentsolutions.com/Fairway.

Dated [_____], 2020
New York, New York

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Ray C. Schrock, P.C.
Sunny Singh

*Proposed Attorneys for Debtors and
Debtors in Possession*