

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

In re:)	Chapter 11
)	
K.G. IM, LLC, <i>et al.</i> , ¹)	
)	Case No. 20-11723 (MG)
Debtors.)	
)	(Jointly Administered)
)	

**ORDER APPROVING (A) BIDDING PROCEDURES, (B) STALKING
HORSE ASSET PURCHASE AGREEMENT AND BID PROTECTIONS,
(C) FORM AND MANNER OF NOTICE OF AUCTION, SALE TRANSACTION,
AND SALE HEARING, (D) ASSUMPTION AND ASSIGNMENT PROCEDURES,
AND (E) DATE FOR AUCTION, IF NECESSARY, AND SALE HEARING**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), pursuant to sections 105, 363, 365, 503, and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 6004-1 and 60061 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the “**Local Bankruptcy Rules**”), for entry of an order approving (a) the Bidding Procedures attached hereto as **Exhibit 1**, (b) the Bid Protections granted to the Stalking Horse Bidder as provided in that certain Asset Purchase Agreement (together with the exhibits and schedules thereto, and as may be amended, modified, or supplemented from time to time in accordance with the terms thereof, the “**Stalking Horse APA**”), dated as of October 12, 2020 (as amended), attached to the Motion as **Exhibit C**, (c) the form and manner of notice of the Auction

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number (if any), include: K.G. IM, LLC (8556); Il Mulino USA, LLC (1682); IM LLC – III (2613); IMNYLV, LLC (9805); IM NY, Florida, LLC (9385); IM NY, Puerto Rico, LLC (0901); IMNY AC, LLC (5082); IM Products, LLC (0303); IM Long Island Restaurant Group, LLC (1623); IM Long Island, LLC (1488); IM Franchise, LLC (0565); IM 60th Street Holdings, LLC (9997); IM Broadway, LLC (4335); IMNY Hamptons, LLC (0423) and IM Payroll, LLC (0807). For the purpose of these chapter 11 cases, the service address for the Debtors is: 1761 Yardley Langhorne Rd., Yardley, PA 19067.

and Sale Hearing, (d) the Assumption and Assignment Procedures, including the procedures for determining cure costs, (e) a date for the Auction and Sale Hearing (collectively, the “**Bidding and Auction Process**”), (f) the marketing and potential sale of the Purchased Assets (as defined in the Stalking Horse APA) free and clear of all liens, claims, encumbrances, and other interests (other than as set forth in the Stalking Horse APA) pursuant to section 363(f) of the Bankruptcy Code and (g) the process for assuming and assigning certain executory contracts and unexpired leases in connection therewith (the “**Assumed Contracts**” and subparts (a) through (g), the “**Sale Transaction**”), all as more fully described in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 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 relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion having been given as provided therein, and such notice having been adequate and appropriate under the circumstances; and it appearing that no other or further notice need be provided; and any objections to the requested relief having been withdrawn or overruled on their merits; and this Court having held a hearing to consider the relief requested in the Motion as to the Bidding and Auction Process (the “**Hearing**”); and all of the proceedings had before this Court; and this Court having reviewed the Motion and the First Day Declarations; and this Court having found and determined that the relief sought in the Motion as to the Bidding and Auction Process is in the best interests of the Debtors, their estates and creditors, and all parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:²

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 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.

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 Bidding Procedures are fair, reasonable and appropriate, were negotiated in good faith by the Debtors and the Stalking Horse Bidder, and are designed to promote participation and active bidding and ensure that the highest or best value is generated for the Purchased Assets.

E. BSP submitted a bid, which bid includes a credit bid component on account of the Prepetition Secured Lenders' claims under the Prepetition Credit Documents and the DIP Lenders' claims under the DIP Credit Facility, for the Purchased Assets as reflected in the Stalking

² The findings and conclusions set forth herein constitute this 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.

Horse APA (the “**Stalking Horse Bid**”), which Stalking Horse Bid represents the highest or best offer the Debtors have received to date to purchase the Purchased Assets.

F. BSP shall act as the “Stalking Horse Bidder” under the Stalking Horse APA and be subject to higher or better offers in accordance with the Bidding Procedures.

G. Pursuit of the Stalking Horse Bidder as a “stalking-horse” bidder and its Stalking Horse APA as a “stalking-horse” sale agreement was and 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 APA provides the Debtors with the opportunity to sell the Purchased Assets in a manner that will maximize value for their estates and stakeholders. Without the Stalking Horse APA, the Debtors would likely realize a lower price for the Purchased Assets; therefore, the contributions of the Stalking Horse Bidder to the process have indisputably provided a substantial benefit to the Debtors and their estates and creditors. The Stalking Horse APA will enable the Debtors to secure a fair and adequate baseline price for the Purchased Assets at the Auction and, accordingly, will provide a clear benefit to the Debtors’ estates, their creditors, and all other parties in interest.

H. The Bid Protections, including, but not limited to, the Breakup Fee and Expense Reimbursement (as such terms are defined in the Stalking Horse APA), (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 the Stalking Horse APA and the Sale Transaction. The Breakup Fee and Expense Reimbursement, to the extent payable under the Stalking Horse APA, (a) are (x) actual and necessary costs and expenses of preserving each of the Debtors’ estates within the meaning of section 503(b) of the Bankruptcy Code and (y) joint and several obligations of each Debtor and its

estate, (b) shall be treated as allowed superpriority administrative expense claims against the Debtors' estates pursuant to sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code equal in priority to the superpriority claims arising under the DIP Order (but junior to the Carve Out (as defined therein)), (c) shall be secured by liens equal in priority to the DIP Liens granted under the DIP Order (but junior to the Carve Out (as defined therein)); (d) are commensurate to the real and material benefits conferred upon the Debtors' estates by the Stalking Horse Bidder, and (e) are fair, reasonable, and appropriate, including in light of nature of the Sale Transaction and the efforts that have been, and will be, expended by the Stalking Horse Bidder. The Bid Protections are a material inducement for, and condition of, the Stalking Horse Bidder's execution of the Stalking Horse APA without which the Stalking Horse Bidder would not have executed the Stalking Horse APA. Unless it is assured that the Bid Protections, including, but not limited to, the Breakup Fee and Expense Reimbursement, 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 APA (including the obligations to maintain its committed offer while such offer is subject to higher or better offers as contemplated by the Bidding Procedures).

I. The Debtors have articulated good and sufficient business reasons for this Court to approve (i) the Bidding Procedures, (ii) the Assumption and Assignment Procedures, (iii) the Bid Protections (to the extent payable under the Stalking Horse APA), and (iv) the form and manner of notice of the Auction and Sale Hearing for the Sale Transaction.

J. The Stalking Horse Bidder and its 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 its Bid Protections and the Bidding Procedures and the Stalking Horse Bidder's negotiation and entry into the Stalking Horse APA.

K. 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 an adequate opportunity for all non-Debtor parties to the Assumed Contracts to raise any objections to the proposed assumption and assignment or to the cure costs.

L. 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 Auction, the Sale Hearing, and the Sale Transaction (including the sale of the Purchased Assets (as set forth under the Stalking Horse APA) free and clear of any liens, claims, encumbrances, or interests (other than as set forth in the Stalking Horse APA) pursuant to section 363(f) of the Bankruptcy Code) (with such liens, claims, encumbrances or interests attaching to the proceeds of any such sale, except that if the Stalking Horse Bidder is not the Successful Bidder, then all proceeds of the Sale Transaction shall be paid to the DIP Lenders and Prepetition Secured Lenders in satisfaction of the DIP Loans and Prepetition Loans, respectively), and any and all objection deadlines related thereto, and no other or further notice shall be required for the motion to approve the Sale Transaction or the assumption and assignment of the Assumed Contracts except as expressly required herein.

M. The Stalking Horse Bidder is entitled to credit bid up to the full amount of the Senior Secured Claims (as defined in the Bidding Procedures) for the purchase of the Purchased Assets as reflected in the Stalking Horse APA pursuant to section 363(k) of the Bankruptcy Code. Nothing contained herein shall prejudice or impair the right of the Stalking Horse Bidder to increase its credit bid as set forth in, and subject to the terms of, the Stalking Horse APA. Allowing the Stalking Horse Bidder to credit bid will not chill the Bidding and Auction Process and neither

the Stalking Horse Bidder nor its Affiliates have engaged in any inequitable conduct with respect to the Debtors or the Sale Transaction. As such, no “cause” exists to limit or condition the ability of the Stalking Horse Bidder to credit bid under section 363(k) of the Bankruptcy Code. Gerald Katzoff (“Katzoff”) has consented to, and waives any right to object to, the right of the Prepetition Secured Parties to credit bid up to the full amount owed by the Debtors under the Prepetition Loans, and the right of the DIP Secured Parties to credit bid up to the full amount owed by the Debtors under the DIP Loans.

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.

Important Dates and Deadlines

3. The Bidding and Auction Process shall be subject to the following milestones, each of which is subject to change in accordance with the Bidding Procedures and this Order.

Date	Event
November 30, 2020	Deadline for service of Cure Notices in connection with Assumed Contracts
December 9, 2020 at 5:00 p.m. (ET)	Deadline to Submit Bids
December 10, 2020 at 5:00 p.m. (ET)	Deadline for Debtors to Designate and Publish Baseline Bid

December 10, 2020 at 5:00 p.m.	Deadline to file Cure Objections, Adequate Assurance Objections with respect to Stalking Horse Bidder, and objections to the Sale
December 11, 2020 at 10:00 a.m. (ET)	Auction, if necessary, to be conducted at the offices of Alston & Bird LLP, located at 90 Park Avenue, New York, New York 10016, or such other location, including by virtual meeting, as shall be timely communicated to all entities entitled to attend the Auction
December 12, 2020 at 12:00 p.m. (ET)	Deadline for Debtors to File and Serve Notice of Successful Bidder and Back-Up Bidder
December 14, 2020 at 5:00 p.m. (ET)	Deadline to File Adequate Assurance Objection for Successful Bidder other than the Stalking Horse Bidder
December 16, 2020 at 3:00 p.m. (ET)	Sale Hearing

Notice Matters

4. The Sale Notice and the Publication Sale Notice, substantially in the forms annexed hereto as **Exhibit 2** and **Exhibit 3**, respectively, are approved.

5. All parties in interest shall receive or be deemed to have received good and sufficient notice of (a) the Motion, (b) the Assumption and Assignment Procedures, including the proposed assumption and assignment of the Assumed Contracts to the Stalking Horse Bidder pursuant to the Stalking Horse APA or to a Successful Bidder other than the Stalking Horse Bidder, the Auction, (d) the Sale Transaction, including the sale of the Purchased Assets (as set forth under the Stalking Horse APA) free and clear of all liens, claims, encumbrances or interests (with such liens, claims, encumbrances or interests attaching to the proceeds of any such sale, except that if the Stalking Horse Bidder is not the Successful Bidder, then all proceeds of the Sale Transaction shall be paid to the DIP Lenders and Prepetition Secured Lenders in satisfaction of the DIP Loans and Prepetition Loans, respectively), and (e) the Sale Hearing, and no further notice of the foregoing shall be required, if:

- (a) as soon as reasonably practicable, but no later than three (3) business days after entry of this Order, the Debtors will cause the Sale Notice to be filed with this Court and served by email, mail, facsimile, or overnight delivery on: (a) the Office of the United States Trustee for the Southern District of New York; (b) the Debtors' thirty (30) largest unsecured creditors; (c) counsel to the secured lender; (d) all Persons known by the Debtors to have expressed an interest to the Debtors in a transaction with respect to the Acquired Assets in whole or in part during the past 12 months; (e) all entities known by the Debtors to have asserted any Liens in the Acquired Assets (for whom identifying information and addresses are available to the Debtors); (f) all non-Debtor parties to the Assumed Contracts (for whom identifying information and addresses are available to the Debtors); (g) the United States Attorney for the Southern District of New York; (h) the Office of the Attorney General in each state in which the Debtors operate; (i) the Office of the Secretary of State in each state in which the Debtors operate or are organized; (j) the Internal Revenue Service; (k) all of the Debtors' known creditors (for whom identifying information and addresses are available to the Debtors); and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002; and
- (b) as soon as reasonably practicable, but no later than five (5) business days after entry of this Order, the Debtors will cause the Publication Sale Notice to be published on the website of the Debtors' claims and noticing agent and once in *The New York Times*.

Bidding Procedures and Auction

6. The Bidding Procedures, attached hereto as **Exhibit 1**, are fully incorporated herein and approved, and shall apply with respect to any bids for, and the auction and sale of, the Purchased Assets set forth under the Stalking Horse APA. The procedures and requirements set forth in the Bidding Procedures, including those associated with submitting a Qualified Bid, are fair, reasonable and appropriate, and are designed to maximize recoveries for the benefit of the Debtors' estates, creditors, and other parties in interest. The Debtors are authorized to take all actions, including incurring and paying costs and expenses, as are necessary or appropriate to implement the Bidding Procedures.

7. The deadline for submitting Qualified Bids (the "**Bid Deadline**") is **December 9, 2020 at 5:00 p.m. (Eastern Time)**. Any party that does not submit a Qualified Bid

by the Bid Deadline in accordance with the Bidding Procedures will not be allowed to (i) submit any offer after the Bid Deadline or (ii) participate in the Auction. The Stalking Horse Bidder is a Qualified Bidder and the bid reflected in the Stalking Horse APA is a Qualified Bid for all purposes and requirements pursuant to the Bidding Procedures.

8. All bidders submitting a Qualified Bid are deemed to have submitted to the exclusive jurisdiction of this Court with respect to all matters related to the Bidding and Auction Process.

9. To qualify as a Qualified Bid, each such bid must be accompanied by:
- a. Finalized Agreement. In both PDF and MS-WORD format, an executed copy of an asset purchase agreement (the “APA”) that shall be subject to no greater conditionality than the Stalking Horse APA, and shall be in the same form of the Stalking Horse APA and shall include a copy of the APA that has been marked against the Stalking Horse APA.
 - b. Better Terms. A statement that the applicable Potential Bidder offers to purchase the Purchased Assets, pursuant to a transaction that meets the Cash Bid Amount, includes payment of the Cure Amounts and the Assumed Liabilities and is otherwise no less favorable to the Debtors’ estates, as the Debtors may reasonably determine, than the transactions contemplated in the Stalking Horse APA.
 - c. Unconditional Offer. A statement that the Bid is formal, binding, and unconditional in all respects (except for those conditions expressly set forth in the Stalking Horse APA) and is not subject to any financial, diligence or other contingency not set forth in the Stalking Horse APA and is irrevocable until the earlier of the first business day following the closing of the proposed sale transaction or the Outside Date (as defined below), except as otherwise provided in these Bidding Procedures.
 - d. Form of Consideration. A statement confirming that the Bid is based on a cash offer in U.S. dollars in an amount no less than an amount sufficient to immediately satisfy, in each case upon the closing of the proposed transaction, the Cash Bid Amount (as defined below).
 - e. Purchase Price; Minimum Bid. The value of each Bid, as determined by the Debtors in their business judgment, must (I) provide a cash component in U.S. dollars that exceeds the aggregate sum of (a) the amount of the Stalking Horse Bid representing the credit bid of a portion of the Prepetition Secured Claims and a portion of the DIP Claims (which aggregate amount is \$18,000,000) (the

“**Initial Credit Bid Amount**”), (b) the GUC Payment of \$100,000, (c) the Breakup Fee and the Expense Reimbursement (which amount is \$850,000), (d) \$250,000 (the “**Initial Overbid Amount**”), (e) the Cure Amounts; and (f) the Investment Banker Incremental Cash Fee equal to 7.5% of the cash portion of the Bid that is greater than the Initial Credit Bid Amount, provided, however, if BSP agrees to provide financing to a third-party Qualified Bidder, the Investment Banker Incremental Cash Fee shall be equal to 5.5% of the cash portion of the Bid that is greater than the Initial Credit Bid (together, clauses (c) and (f), the “**Bid Protections**,” and collectively, clauses (a) through (f) inclusive, the “**Cash Bid Amount**”); (II) assume the Assumed Liabilities as provided for in the Stalking Horse APA; and (III) provide substantially similar or better terms than the Stalking Horse Bid. The Debtors and their advisors, in good faith and in consultation with the DIP Lender and the Prepetition Secured Lenders, will determine the value of any assumed liabilities that differ from those included in the Stalking Horse APA.

- f. Committed Financing. To the extent that a Bid is not accompanied by evidence of the Potential Bidder’s capacity to consummate the transaction set forth in its Bid with cash on hand, it shall include written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Debtors to make a reasonable determination as to the Qualified Bidder’s financial and other capabilities to consummate the transaction.
- g. 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 sale transaction; *provided* that the APA may allow for the Potential Bidder to remove executory contracts and unexpired leases from the list of contracts to be assumed and assigned any time prior to the closing of the sale transaction; *provided further* that to the extent the Debtors identify any additional executory contracts or unexpired leases after the Bid is submitted, the APA may allow for the Potential Bidder to add such executory contracts and unexpired leases to the list of contracts to be assumed and assigned any time from and after the Bid is submitted as provided for in the Stalking Horse APA.
- h. Required Approvals. A statement or evidence of the Potential Bidder’s plan and ability to obtain all governmental, regulatory, or other third-party approvals to operate the Debtors’ business from and after closing the 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 Debtors’ legal counsel to discuss and explain such Potential Bidder’s regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable.

- i. No Entitlement to Expense Reimbursement or Other Amounts. 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 Purchased Assets.
- j. As-Is, Where-Is. Each Bid must include a written acknowledgment and representation that the Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Purchased Assets prior to the Bid Deadline; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Purchased Assets in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Purchased Assets or the completeness of any information provided in connection therewith or the Auction, except, in each case, as expressly stated in the APA.
- k. Agreement to Terms of the Bidding Procedures. A statement that the Potential Bidder has acted in good faith consistent with section 363(m) of the Bankruptcy Code and agrees to be bound by these Bidding Procedures.

10. A Potential Bidder must also accompany its Bid with: (i) a Deposit (as defined below), to be secured by a lien in favor of the Buyer; (ii) 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; (iii) 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 APA if the Potential Bidder is the Successful Bidder at the Auction; (iv) if the value of the Bid relative to the Stalking Horse APA includes additional non-cash components (such as fewer contingencies than are in the Stalking Horse APA), a reasonably detailed analysis of the value of any additional non-cash component of the Bid and back-up documentation to support such value; and (v) information supporting the bidder's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if

applicable, section 365(b)(3) of the Bankruptcy Code (the “**Adequate Assurance Information**”), including the bidder’s financial wherewithal and willingness to perform under any contracts that will be assumed and assigned to such bidder. In addition to the other requirements of a Qualified Bid as set forth in the Bidding Procedures, each such bid must be accompanied by a written statement confirming that (a) the bidder 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 the Successful Bidder

11. Subject to the rights of the Stalking Horse Bidder under the Stalking Horse APA, the Bidding Procedures, and this Order, the Debtors shall have the right as they may reasonably determine to be in the best interests of their estates, in consultation with the Prepetition Secured Lenders and DIP Lenders, to carry out the Bidding Procedures, including to: (i) determine which bidders are Qualified Bidders; (ii) determine which bids are Qualified Bids; (iii) determine which Qualified Bid is the Baseline Bid; (iv) determine which bids are the Successful Bid and Back-Up Bid, each as it relates to the Auction; (v) reject any bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bidding Procedures, the Bankruptcy Code, or this Order, or (c) contrary to the best interests of the Debtors and their estates; (vi) adjourn or cancel the Auction and/or the Sale Hearing (with the prior written consent of the Prepetition Secured Lenders and DIP Lenders); and (vii) modify the Bidding Procedures consistent with their fiduciary duties and bankruptcy law, in each case, as provided in the Bidding Procedures, subject to the prior written consent of the Prepetition Secured Lenders, DIP Lenders and Stalking Horse Bidder, or order of this Court. In no event may the Debtors extend the timeframes or deadlines set forth in the Stalking Horse APA or the Bidding Procedures, or otherwise extend or enlarge the Stalking Horse Bidder’s obligations thereunder or reduce or modify the Stalking Horse Bidder’s

rights thereunder without the prior written consent of the Prepetition Secured Lenders, DIP Lenders and Stalking Horse Bidder. All Bids must be provided to the Prepetition Secured Lenders and DIP Lenders immediately upon receipt by the Debtors.

12. The Debtors, in consultation with the DIP Lenders and Prepetition Secured Lenders, shall identify those bids that qualify as Qualified Bids (each bidder that submits such a Qualified Bid being a “**Qualified Bidder**”), determine which Qualified Bid shall serve as the Baseline Bid at the Auction, and inform the Qualified Bidders of the Baseline Bid by December 10, 2020 at 5:00 p.m. (Eastern Time). If more than one Qualified Bid (inclusive of the Stalking Horse Bid) is timely received, the Auction shall be conducted at the offices of Alston & Bird LLP, located at 90 Park Avenue, New York, New York 10016, or such other location, including by virtual meeting, as shall be timely communicated to all entities entitled to attend the Auction on December 11, 2020 at 10:00 a.m. (Eastern Time). As set forth more fully in the Bidding Procedures, (a) only Qualified Bidders and their legal and financial advisors will be permitted to participate in the Auction, (b) the Debtors may, subject to the exercise of their business judgment and with the prior written consent of the Stalking Horse Bidder adjourn the Auction, (c) copies of the Baseline Bid shall be provided to all of the Qualified Bidders (including the Stalking Horse Bidder) and the DIP Lenders and Prepetition Secured Lenders prior to the start of the Auction, and (d) all proceedings at the Auction shall be transcribed.

13. If the bid of the Stalking Horse Bidder, as reflected in the Stalking Horse APA, is the only Qualified Bid received for the Purchased Assets, the Debtors will not conduct the Auction, and shall file and serve, by December 10, 2020 at 5:00 p.m. (Eastern Time), a notice indicating that the Auction has been cancelled and that the Stalking Horse Bidder is the Successful Bidder.

Sale Hearing and Sale Objection Deadline

14. The Sale Hearing shall be held before this Court on **December 16, 2020 at 3:00 p.m. (Eastern Time)**; *provided*, that the Debtors shall be entitled to request a hearing before such time if the Stalking Horse APA is the only Qualifying Bid. The Debtors may seek an adjournment of the Sale Hearing as the Debtors deem appropriate in the exercise of their reasonable business judgment with the prior written consent of the DIP Lenders and Prepetition Secured Lenders and as is consistent with the Stalking Horse APA or the Successful Bidder's asset purchase agreement (the "**Successful Bidder APA**"), the Bidding Procedures, and this Order.

15. The Successful Bidder (which may be the Stalking Horse Bidder) shall appear at the Sale Hearing and be prepared, if necessary, to have a representative(s) testify in support of the Successful Bid and the Successful Bidder's ability to close in a timely manner consistent with the Successful Bidder APA, and provide adequate assurance of its future performance under any and all executory contracts and unexpired leases to be assumed and assigned as part of the proposed Sale Transaction.

16. Objections to the Sale Transaction and entry of the Sale Order (other than objections to the provision of adequate assurance of future performance by a Successful Bidder other than the Stalking Horse Bidder) (each, a "**Sale Objection**") must: (i) be in writing and specify the nature of such objection; (ii) comply with the Bankruptcy Rules and the Local Bankruptcy Rules; and (iii) be filed with this Court and served on (a) counsel to the Debtors, Alston & Bird LLP, 90 Park Avenue, New York, New York 10016 (Attn: Gerard S. Catalanello, Esq. and William Hao, Esq.), (b) counsel to the official committee of unsecured creditors appointed in these chapter 11 cases, if any, (c) counsel to BSP Agency, LLC, Goodwin Procter LLP, 620 Eighth Avenue, New York, New York 10018 (Attn: Michael H. Goldstein and Howard S. Steel); (d) Office of the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York,

New York 10014 (Attn: Shannon Scott) (collectively, the “**Objection Notice Parties**”). Any Sale Objection will be heard by this Court at the Sale Hearing. The deadline to assert a Sale Objection with respect to the Stalking Horse APA and any other Successful Bidder except with respect to adequate assurance of future performance and the specific terms and conditions of the Successful Bid is December 10, 2020, at 5:00 p.m. (Eastern Time). The deadline to assert a Sale Objection with respect to any other Sale Transaction solely as it relates to adequate assurance of future performance of a Successful Bidder other than the Stalking Horse Bidder and the specific terms and conditions of the Successful Bid is December 14, 2020, at 5:00 p.m. (Eastern Time).

17. The failure of any objecting person or entity to timely file and serve a Sale Objection shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Motion, or to the consummation and performance of the Sale Transaction contemplated by the Stalking Horse APA or, if the Auction is held, the Successful Bidder APA, including the transfer of the Purchased Assets to the Stalking Horse Bidder or the Successful Bidder, free and clear of all liens (other than as provided in the Successful Bidder APA) pursuant to section 363(f) of the Bankruptcy Code or a confirmed chapter 11 plan.

Assumption and Assignment Procedures

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

19. As soon as reasonably practicable, but not later than November 30, 2020, the Debtors shall file with this Court and serve by first class mail on each non-Debtor party to the Assumed Contracts a notice (the “**Cure Notice**,” the form of which is attached hereto as **Exhibit 4**) that shall: (i) provide a description of each such Assumed Contract, (ii) state the amount, if any, that the Debtors believe are necessary to cure, or compensate the non-Debtor party for, any and all

defaults under such Assumed Contract pursuant to section 365 of the Bankruptcy Code (the “**Cure Costs**”); (iii) notify the non-Debtor party that such party’s contract or lease may be assumed and assigned to a purchaser of the Purchased Assets; (iv) state the date of the Sale Hearing and that any unresolved objections to any Cure Costs or to assumption and assignment will be heard at the Sale Hearing or such later date as the Debtors and the Stalking Horse Bidder or, if the Auction is held, the Successful Bidder, may determine, in accordance with this Order; and (v) state the appropriate deadline by which the non-Debtor party must file an objection to the Cure Costs or assumption and assignment of the Assumed Contracts. Upon service of the Cure Notice, all non-Debtor parties to the Assumed Contracts shall receive or be deemed to have received good and sufficient notice of the Cure Costs for, and the proposed assumption and assignment of, the Assumed Contracts.

20. The Cure Notice is hereby approved. It is reasonably calculated to provide sufficient notice to the non-Debtor parties to the Assumed Contracts of the Debtors’ intent to assume and assign the Assumed Contracts in connection with the Sale Transaction and constitutes adequate notice thereof.

21. All Objections to any proposed Cure Costs (each, a “**Cure Objection**”) and to the provision of adequate assurance of future performance (each, an “**Adequate Assurance Objection**”) must: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Bankruptcy Rules; (iii) with respect to a Cure Objection, state with specificity what Cure Costs the objecting party believes are required; and (iv) be filed with this Court and served on the Objection Notice Parties. The deadline to assert a Cure Objection and an Adequate Assurance Objection with respect to the Stalking Horse APA is December 10, 2020, at **5:00 p.m. (Eastern**

Time). The deadline to assert an Adequate Assurance Objection with respect to any other Sale Transaction is **December 14, 2020, at 5:00 p.m. (Eastern Time)**.

22. If a timely Cure Objection or Adequate Assurance Objection is received and such objection cannot otherwise be resolved by the parties, such objection shall be heard at the Sale Hearing or such later date as the Debtors and the Stalking Horse Bidder or, if the Auction is held, the Successful Bidder may determine.

23. To the extent the Debtors identify, at any time after the Cure Notice is served but prior to the closing of the Sale Transaction, additional Assumed Contracts to be assumed and assigned to the Stalking Horse Bidder or, if the Auction is held, the Successful Bidder, the Debtors shall file with this Court and serve by first class mail on the non-Debtor party to such Assumed Contract a supplemental Cure Notice (each, a “**Supplemental Cure Notice**,” the form of which shall be identical to the form of Cure Notice attached hereto as **Exhibit 4**).

24. If a Supplemental Cure Notice is served by December 4, 2020, the objection deadlines and hearing schedule in connection with the Cure Notice, as set forth above, shall apply to any Cure Objection or Adequate Assurance Objection in respect of an Assumed Contract identified in such Supplemental Cure Notice. To the extent a Supplemental Cure Notice is served after December 4, 2020, any related Cure Objection or Adequate Assurance Objection must be filed and served within seven (7) days after service of the Supplemental Cure Notice. If such a Cure Objection or Adequate Assurance Objection is timely received and cannot otherwise be resolved by the parties, the Debtors may, in their discretion (after consultation with the Stalking Horse Bidder or, if the Auction is held, the Successful Bidder), schedule an emergency hearing to hear such objection prior to any scheduled closing of the Sale Transaction.

25. If no timely Cure Objection is filed and served in respect of an Assumed Contract, the Cure Cost identified on the Cure Notice or a Supplemental Cure Notice, as applicable, will be the only amount necessary under section 365(b) of the Bankruptcy Code to cure all defaults under such Assumed Contract. Any party failing to timely file a Cure Objection shall be forever barred from objecting to the Cure Costs and from asserting any additional cure or other amounts against the Debtors, their estates, the Stalking Horse Bidder or, if the Auction is held, the Successful Bidder. If no timely Adequate Assurance Objection is filed and served with respect to an Assumed Contract, the Stalking Horse Bidder or, if the Auction is held, the Successful Bidder, will be deemed to have provided adequate assurance of future performance for such Assumed Contract in accordance with section 365(f)(2)(B) of the Bankruptcy Code. If no timely Cure Objection or Adequate Protection Objection is filed and served with respect to an Assumed Contract, the non-Debtor party to such Assumed Contract shall be deemed to have consented to (i) the Cure Costs, (ii) the assumption and assignment of the Assumed Contract to the Stalking Horse Bidder or, if the Auction is held, the Successful Bidder, (iii) related relief requested in the Motion, and (iv) the Sale Transaction.

26. The Debtors' assumption and assignment of the Assumed Contracts to the Stalking Horse Bidder or, if the Auction has been conducted, the Successful Bidder is subject to approval of this Court and consummation of the Sale Transaction. Accordingly, absent the closing of such Sale Transaction, the Assumed Contracts shall not be deemed assumed or assigned, and shall in all respects be subject to further administration under the Bankruptcy Code.

27. The inclusion of a contract or other document or Cure Cost on the Cure Notice or any Supplemental Cure Notice shall not constitute or be deemed a determination or admission by the Debtors, the Stalking Horse Bidder or Successful Bidder, as applicable, or any

other party in interest that such contract or other document is an executory contract or unexpired lease within the meaning of the Bankruptcy Code, that the stated Cure Cost is due (all rights with respect thereto being expressly reserved), or a guarantee that any such contract or other document will ultimately be assumed or assumed and assigned. The Debtors reserve all of their rights, claims, defenses, and causes of action with respect to each contract or other document listed on the Cure Notice or any Supplemental Cure Notice.

28. The Debtors shall provide written notice to the parties to all Assumed Contracts that are ultimately assumed and assigned to the Successful Bidder of (i) such assumption and assignment and (ii) the identity of the Successful Bidder.

29. If a Contract is removed from the list of Assumed Contracts to be assumed and assigned, the Debtors shall notify such contract counterparty in writing that such contract has been removed from the list of Assumed Contracts, within one (1) Business Day of such removal.

Stalking Horse APA and Bid Protections

30. The form of Stalking Horse APA is hereby approved. All of the Debtors' pre-closing obligations under the Stalking Horse APA are authorized as set forth herein; *provided* that, for the avoidance of doubt, consummation of the Sale Transaction contemplated by the Stalking Horse APA shall be subject to entry of the Sale Order and the satisfaction or waiver of the other conditions to closing on the terms set forth in the Stalking Horse APA.

31. The Bid Protections are approved in their entirety, including, without limitation, the Breakup Fee and Expense Reimbursement payable in accordance with, and subject to the terms of, the Stalking Horse APA. Except as expressly provided for herein or in the Stalking Horse APA, no other termination payments are authorized or permitted under this Order.

32. The Debtors are authorized and directed to pay the Breakup Fee and Expense Reimbursement, to the extent payable under the Stalking Horse APA, without further

order of this Court. The Breakup Fee and Expense Reimbursement, to the extent payable under the Stalking Horse APA, shall (i) constitute joint and several obligations of each Debtor and its estates, (ii) be treated as allowed superpriority administrative expense claims against the Debtors' estates pursuant to sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code equal in priority to the superpriority claims arising under the DIP Order (but junior to the Carve Out (as defined therein)), and (iii) be secured by liens equal in priority to the DIP Liens granted under the DIP Order (but junior to the Carve Out (as defined therein)).

33. The Stalking Horse Bidder is entitled to credit bid up to the full amount of the Senior Secured Claims for the purchase of the Purchased Assets as reflected in the Stalking Horse APA pursuant to section 363(k) of the Bankruptcy Code. Katzoff has consented to, and waives any right to object to, the right of the Prepetition Secured Parties to credit bid up to the full amount owed by the Debtors under the Prepetition Loans, and the right of the DIP Secured Parties to credit bid up to the full amount owed by the Debtors under the DIP Loans.

General Provisions

34. All persons or entities (whether or not Qualified Bidders) that participate in the bidding process shall be deemed to have knowingly and voluntarily (i) consented to the entry of a final order by this Court in connection with the Motion to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution; (ii) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters; and (iii) agreed to be bound by the terms of the Bidding Procedures.

35. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014, or any applicable provisions of the Local Bankruptcy Rules or otherwise, the

terms and conditions of this Order shall be immediately effective and enforceable upon its entry, and no automatic stay of execution shall apply to this order.

36. For the avoidance of doubt, nothing in the Bidding Procedures or this Order waives, modifies, limits, or otherwise amends the terms of the DIP Order and the DIP Loan Documents or any of the rights of the DIP Lenders or the Prepetition Secured Lenders or any of the obligations of the Debtors or other parties thereunder, including without limitation the right to repayment of the Senior Secured Claims upon termination, expiration, or maturity of the DIP Credit Facility (each as defined in the DIP Order).

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

38. This Order shall be binding on the Debtors, their estates, and their successors and assigns, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the Debtors or their estates under any applicable law.

39. The Debtors are authorized to take all actions necessary or appropriate to effectuate the relief granted pursuant to this Order in accordance with the Motion.

40. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from the implementation of this Order.

IT IS SO ORDERED.

Dated: October 23, 2020
New York, New York

/s/ Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge

Exhibit 1

Bidding Procedures

BIDDING PROCEDURES

Overview

On July 28, 2020, K.G. IM, LLC and its affiliated debtors and debtors in possession (collectively, the “**Debtors**”), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).

The Debtors are seeking to sell the Purchased Assets (as defined below) for the highest or best offer. On _____, the Bankruptcy Court entered an order [Docket No. [•]] (the “**Bidding Procedures Order**”), which, among other things, authorized the Debtors to pursue a sale process in accordance with the procedures set forth below (the “**Bidding Procedures**”) and to conduct an auction for the sale of all or substantially all of the Debtors’ assets and/or equity interests in the Debtors or one or more of their direct and indirect subsidiaries, including in accordance with the terms of the Stalking Horse APA (the “**Sale Transaction**” and, collectively, the “**Purchased Assets**”). The Sale Transaction under the Stalking Horse APA shall be implemented pursuant to section 363 of the Bankruptcy Code.

BSP Agency LLC (“**BSP**”) submitted a stalking horse bid (the “**Stalking Horse Bid**” and such bidder, the “**Stalking Horse Bidder**”), which Stalking Horse Bid includes: (i) a credit bid of a portion of the Prepetition Secured Lenders’ claims under the Prepetition Credit Documents (the “**Prepetition Secured Claims**”) and the entirety of DIP Lenders’ claims under the DIP Facility (the “**DIP Secured Claims**,” and along with the Prepetition Secured Claims, collectively, the “**Senior Secured Claims**”), (ii) payment of the Cure Amounts¹, (iii) the GUC payment²; and (iv) the assumption of Assumed Liabilities.³ The Stalking Horse Bidder has executed that certain Asset Purchase Agreement (together with the exhibits thereto, and as may be amended, modified, or supplemented from time to time in accordance with the terms thereof, the “**Stalking Horse APA**”),⁴ dated as of October 12, 2020 (as amended). The Stalking Horse APA contemplates, pursuant to the terms and subject to the conditions and purchase price adjustments and mechanics contained therein, the sale of the Purchased Assets to the Stalking Horse Bidder in consideration of approximately \$18,000,000 plus the payment of cure amounts, the assumption of certain liabilities and the payment of \$100,000 to general unsecured creditors. The willingness of the Stalking Horse Bidder to proceed with the transactions contemplated under the Stalking Horse APA is expressly conditioned upon, and being done in reliance upon, the right of the Stalking Horse Bidder to credit bid up to the full amount of the Senior Secured Claims, receive payment of the Bid Protections (as defined below),

¹ As defined in the Stalking Horse APA, all amounts necessary to cure any monetary default (as distinct from curing all defaults or failures to comply with provisions thereunder that may not be cured by the mere payment of money) that are required to be paid pursuant to § 365 of the Bankruptcy Code in order to assume and assign the Assumed Contracts to Buyer.

² \$100,000.00 in cash.

³ As set forth in Section 2.3 of the Stalking Horse APA.

⁴ Capitalized terms used but not otherwise defined herein will have the meanings ascribed to them in the Stalking Horse APA.

and for an Auction (as defined below) to occur in compliance with the terms herein and those set out in the Bidding Procedures Order.

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 the Purchased Assets; (ii) the manner in which bidders and bids become Qualified Bidders and Qualified Bids (each as defined below); (iii) the negotiation of bids received; (iv) the conduct of the auction with respect to the Purchased Assets (the “**Auction**”); (v) the ultimate selection of the Successful Bidder (as defined below); and (vi) Bankruptcy Court approval of the sale of the Purchased Assets to the Successful Bidder at a hearing before the Honorable Martin Glenn, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York (the “**Sale Hearing**”).

The Debtors may, subject to the exercise of their business judgment and with the prior written consent of the Stalking Horse Bidder and the DIP Lenders and the Prepetition Secured Lenders, modify or terminate these Bidding Procedures, waive or modify terms and conditions set forth herein, extend any of the deadlines or other dates set forth herein, and/or adjourn the Auction and/or Sale Hearing; *provided* that, for the avoidance of doubt, the Bidding Procedures and the Bidding Procedures Order must, at all times, be in form and substance satisfactory to the Stalking Horse Bidder pursuant to the Stalking Horse APA and the DIP Lenders.

Summary of Important Dates

Date	Event
November 30, 2020	Deadline for service of Cure Notices in connection with Assumed Contracts
December 9, 2020 at 5:00 p.m. (ET)	Deadline to Submit Bids
December 10, 2020 at 5:00 p.m. (ET)	Deadline for Debtors to Designate and Publish Baseline Bid
December 10, 2020 at 5:00 p.m.	Deadline to file Cure Objections, Adequate Assurance Objections with respect to Stalking Horse Bidder, and objections to the Sale
December 11, 2020 at 10:00 a.m. (ET)	Auction, if necessary, to be conducted at the offices of Alston & Bird LLP, located at 90 Park Avenue, New York, New York 10016, or such other location, including by virtual meeting, as shall be timely communicated to all entities entitled to attend the Auction
December 12, 2020 at 12:00 p.m. (ET)	Deadline for Debtors to File and Serve Notice of Successful Bidder and Back-Up Bidder

December 14, 2020 at 5:00 p.m. (ET)	Deadline to File Adequate Assurance Objection for Successful Bidder other than the Stalking Horse Bidder
December 16, 2020 at _____.m. (ET)	Sale Hearing

Due Diligence

The Debtors have posted copies of selected documents related to the Purchased Assets to the Debtors’ confidential electronic data room (the “**Data Room**”) with certain confidential documents to be provided upon submission of a non-binding indication of interest at the Initial Overbid Amount or higher. To access the Data Room, a party must submit to the Debtors or their advisors:

- (A) an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors, the DIP Lenders and the Prepetition Secured Lenders (unless such party is already a party to an existing and unexpired confidentiality agreement with the Debtors that is acceptable to the Debtors for this due diligence process, in which case such agreement shall govern);
- (B) sufficient financial and other information, as reasonably determined by the Debtors in consultation with the DIP Lenders and the Prepetition Secured Lenders, to allow the Debtors to determine that the interested party has the financial wherewithal to close a purchase of the Purchased Assets, including such portion necessary to satisfy the Senior Secured Claims in full, in cash, in U.S. dollars, replacement debtor-in-possession financing and, if such interested party is an acquisition vehicle or newly-formed entity, a guarantee from an entity securing such party’s performance under these Bidding Procedures and the Bidding Procedures Order; and
- (C) identification of the Potential Bidder and any of the principals, members, partners, limited partners, corporate officers, or other representatives that are authorized to appear for and act on behalf of the Potential Bidder with respect to the contemplated transaction.

An interested party that meets the above requirements to the satisfaction of the Debtors, in consultation with the DIP Lenders, shall be a “**Potential Bidder**.” As soon as practicable, the Debtors will provide such Potential Bidder access to the Data Room; *provided* that such access may be terminated by the Debtors in their discretion at any time for any reason whatsoever, including that a Potential Bidder does not become a “Qualified Bidder” (as defined below) or these Bidding Procedures are terminated.

Each Potential Bidder shall comply with all requests for information and due diligence access by the Debtors or their advisors regarding the ability of such Potential Bidder to consummate a sale transaction and shall provide such information to the Debtors.

Until the 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. All additional due diligence requests shall be initially directed to counsel for the Debtors and the Debtors' investment bankers. Unless otherwise determined by the Debtors, the availability of additional due diligence to a Potential Bidder will cease if (a) the Potential Bidder does not become a Qualified Bidder or (b) these Bidding Procedures are terminated. The due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline the Debtors will have no obligation, but will have the right, to furnish any due diligence information to anyone other than Qualified Bidders. No conditions relating to the completion of due diligence will be permitted to exist after the Bid Deadline. All information provided to any Potential Bidder shall be simultaneously provided to the Stalking Horse Bidder and posted to the Data Room.

Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the business or assets of the Debtors to any person or entity who (i) is not a Potential Bidder, (ii) does not comply with the participation requirements set forth above, or (iii) has not established, in the Debtors' reasonable business judgment, in consultation with the DIP Lenders and the Prepetition Secured Lenders, that such Potential Bidder intends in good faith to, or have the capacity to, consummate the Sale Transaction. The Debtors shall take such reasonable or appropriate steps to protect any commercially sensitive information, including in relation to a Potential Bidder that may be a competitor. The Debtors reserve the right to withhold any diligence materials that the Debtors determine are sensitive, proprietary, or otherwise not appropriate for disclosure to a Potential Bidder who the Debtors determine is a competitor or is affiliated with any competitor of the Debtors; *provided*, that this foregoing paragraph shall not apply to the Stalking Horse Bidder.

Bid Deadline

A Potential Bidder that desires to make a bid on the Purchased Assets shall deliver electronic copies of its bid so as to be received no later than **December 9, 2020 at 5:00 p.m. (Eastern Time)** (the "**Bid Deadline**"). **The submission of a bid by the Bid Deadline shall constitute a binding and irrevocable offer to acquire the Purchased Assets.** Any party that does not submit a bid by the Bid Deadline will not be allowed to (i) submit any offer after the Bid Deadline or (ii) participate in the Auction.

All Bids, including all documentation required to be submitted under the section "Form and Content of Bid," should be submitted by email to the following representatives:

Counsel to the Debtors:

Alston & Bird LLP
Gerard S. Catalanello
Gerard.Catalanello@alston.com

William Hao
William.Hao@alston.com

with full copies to:

Counsel to the DIP Lenders, Prepetition Secured Lenders, and Stalking Horse Bidder

Goodwin Procter LLP

Michael H. Goldstein
MGoldstein@goodwinlaw.com

Howard S. Steel
HSteel@goodwinlaw.com

Right to Credit Bid

The Stalking Horse Bidder shall be entitled to credit bid up to the full amount of the Senior Secured Claims. Any other Qualified Bidder who has a valid and perfected lien on any assets of the Debtors' estates (a "**Secured Creditor**") and the right and power to credit bid claims secured by such liens, shall have the right to seek to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the Bankruptcy Code; *provided* that a Secured Creditor shall have the right to seek to credit bid its secured claim only with respect to the collateral by which such Secured Creditor is secured and, consistent with the procedures set forth herein, any such credit bid shall also include a bid for all of the Purchased Assets and provide sufficient cash consideration to satisfy the Cash Bid Amount (as defined below) in full at the earlier of (i) consummation of the Sale Transaction and (ii) the termination, expiration, or maturity of the DIP Credit Facility.

Form and Content of Bid

A bid is a signed document from a Potential Bidder received by the Bid Deadline that identifies the purchaser by its legal name (including any equity holders, guarantors, 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 material party that will be participating in connection with the bid or the sale transaction, and includes, at a minimum, the following (a "**Bid**"):

- (A) Finalized Agreement. In both PDF and MS-WORD format, an executed copy of an asset purchase agreement (the "**APA**") that shall be subject to no greater conditionality than the Stalking Horse APA, and shall be in the same form of the Stalking Horse APA and shall include a copy of the APA that has been marked against the Stalking Horse APA.
- (B) Better Terms. A statement that the applicable Potential Bidder offers to purchase the Purchased Assets, pursuant to a transaction that meets the Cash Bid Amount, includes payment of the Cure Amounts and the Assumed Liabilities and is otherwise no less favorable to the Debtors' estates, as the Debtors may reasonably determine, than the transactions contemplated in the Stalking Horse APA.

- (C) Unconditional Offer. A statement that the Bid is formal, binding, and unconditional in all respects (except for those conditions expressly set forth in the Stalking Horse APA) and is not subject to any financial, diligence or other contingency not set forth in the Stalking Horse APA and is irrevocable until the earlier of the first business day following the closing of the proposed sale transaction or the Outside Date (as defined below), except as otherwise provided in these Bidding Procedures.
- (D) Form of Consideration. A statement confirming that the Bid is based on a cash offer in U.S. dollars in an amount no less than an amount sufficient to immediately satisfy, in each case upon the closing of the proposed transaction, the Cash Bid Amount (as defined below).
- (E) Purchase Price; Minimum Bid. The value of each Bid, as determined by the Debtors in their business judgment, must (I) provide a cash component in U.S. dollars that exceeds the aggregate sum of (a) the amount of the Stalking Horse Bid representing the credit bid of a portion of the Prepetition Secured Claims and a portion of the DIP Claims (which aggregate amount is \$18,000,000), (b) the GUC Payment of \$100,000, (c) the Breakup Fee and the Expense Reimbursement (which amount is \$850,000), (d) \$250,000 (the “Initial Overbid Amount”), (e) the Cure Amounts; and (f) the Investment Banker Incremental Cash Fee equal to 7.5% of the cash portion of the Bid that is greater than the Initial Credit Bid Amount, provided, however, if BSP agrees to provide financing to a third-party Qualified Bidder, the Investment Banker Incremental Cash Fee shall be equal to 5.5% of the cash portion of the Bid that is greater than the Initial Credit Bid (together, clauses (c) and (f), the “Bid Protections,” and collectively, clauses (a) through (f) inclusive, the “Cash Bid Amount”); (II) assume the Assumed Liabilities as provided for in the Stalking Horse APA; and (III) provide substantially similar or better terms than the Stalking Horse Bid. The Debtors and their advisors, in good faith and in consultation with the DIP Lender and the Prepetition Secured Lenders, will determine the value of any assumed liabilities that differ from those included in the Stalking Horse APA.
- (F) Committed Financing. To the extent that a Bid is not accompanied by evidence of the Potential Bidder’s capacity to consummate the transaction set forth in its Bid with cash on hand, it shall include written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Debtors to make a reasonable determination as to the Qualified Bidder’s financial and other capabilities to consummate the transaction.
- (G) 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 sale transaction; *provided* that the APA may allow for the Potential Bidder to remove executory contracts and unexpired leases from the list of contracts

to be assumed and assigned any time prior to the closing of the sale transaction; *provided further* that to the extent the Debtors identify any additional executory contracts or unexpired leases after the Bid is submitted, the APA may allow for the Potential Bidder to add such executory contracts and unexpired leases to the list of contracts to be assumed and assigned any time from and after the Bid is submitted as provided for in the Stalking Horse APA.

- (H) Required Approvals. A statement or evidence of the Potential Bidder's plan and ability to obtain all governmental, regulatory, or other third-party approvals to operate the Debtors' business from and after closing the 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 Debtors' legal counsel to discuss and explain such Potential Bidder's regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable.
- (I) No Entitlement to Expense Reimbursement or Other Amounts. 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 Purchased Assets.
- (J) As-Is, Where-Is. Each Bid must include a written acknowledgment and representation that the Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Purchased Assets prior to the Bid Deadline; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Purchased Assets in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Purchased Assets or the completeness of any information provided in connection therewith or the Auction, except, in each case, as expressly stated in the APA.
- (K) Agreement to Terms of the Bidding Procedures. A statement that the Potential Bidder has acted in good faith consistent with section 363(m) of the Bankruptcy Code and agrees to be bound by these Bidding Procedures.

A Potential Bidder must also accompany its Bid with: (i) a Deposit (as defined below) to be secured by a lien in favor of the Buyer; (ii) 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;; (iii) 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 APA if the Potential Bidder is the Successful Bidder at the Auction; and (iv) if the value of the Bid relative to the Stalking Horse APA includes additional non-cash components (such as fewer contingencies

than are in the Stalking Horse APA), a reasonably detailed analysis of the value of any additional non-cash component of the Bid and back-up documentation to support such value.

Deposit

To qualify as a Qualified Bid (as defined below), each Bid must be accompanied by a good faith cash deposit in the amount of ten percent (10%) of the total purchase price (inclusive of any assumption of liabilities) set forth in the APA (the “**Deposit**”) secured by a lien in favor of the DIP Lenders, to be deposited, prior to the Bid Deadline, with an escrow agent selected by the Debtors (the “**Escrow Agent**”) in a U.S. escrow account to be identified and established pursuant to the authority granted by the order authorizing the Debtors to maintain and operate their bank accounts and subject in all respect to the DIP Order (the “**Escrow Account**”). The Debtors’ interests in the Deposit and the Escrow Account shall be subject to the superpriority claims and liens of the DIP Lenders and the Prepetition Lenders and shall constitute DIP Collateral (each as defined in the DIP Order). As set forth below and notwithstanding the foregoing, the Debtors will refund any Bidder’s deposit and all accumulated interest thereon on or within ten (10) business days after the Bid Deadline if a Bid is determined by the Debtors not to be a Qualified Bid.

To the extent a Qualified Bid is modified before the Auction, the Debtors reserve the right to require that such Qualified Bidder adjust its Deposit so that it equals ten percent (10%) of the proposed purchase price, to the extent the purchase price under such Qualified Bid is also so modified.

The requirements set forth in this “Deposit” section do not apply with respect to the Stalking Horse Bid or the Stalking Horse Bidder and no “Deposit” shall be required of the Stalking Horse Bidder.

Review of Bids; Designation of Qualified Bids

The Debtors will evaluate timely submitted Bids and may engage in negotiations with Potential Bidders who submitted Bids as the Debtors deem appropriate in the exercise of their business judgment, based upon the Debtors’ evaluation of the content of each Bid, in consultation with the DIP Lenders and the Prepetition Secured Lenders.

By no later than December 10, 2020, the Debtors shall determine, in their reasonable judgment, after consultation with the DIP Lenders and the Prepetition Secured Lenders, which of the Bids received by the Bid Deadline qualifies as a “**Qualified Bid**” (each Potential Bidder that submits such a Qualified Bid being a “**Qualified Bidder**”). The Debtors shall consult with the DIP Lenders and the Prepetition Secured lenders regarding the sufficiency of any Bid with respect to such bidder’s ability to satisfy the Cash Bid Amount in full, in U.S. dollars, and the DIP Lenders and the Prepetition Secured Lenders shall have the right to object if it believes that any Bid is not sufficient to satisfy the Cash Bid Amount in full, in U.S. dollars. The Debtors shall notify each Potential Bidder of its status as a Qualified Bidder as promptly as possible following such determination.

Notwithstanding anything contained herein to the contrary, the Stalking Horse Bidder is a Qualified Bidder and the Stalking Horse Bid is a Qualified Bid.

Without the prior written consent of the Debtors and the Stalking Horse Bidder, the DIP Lender and the Prepetition Secured Lenders, 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 the Qualified Bid, during the period that such Qualified Bid remains binding as specified herein; *provided* that, if the proposed modifications or amendments to a Qualified Bid include additional non-cash components (such as fewer contingencies than are in the Stalking Horse APA), then such Qualified Bidder shall include a reasonably detailed analysis of the value of any additional non-cash component of the Bid and back-up documentation to support such value; *provided further* that any Qualified Bid of a Qualified Bidder that previously submitted a Qualified Bid prior to the Bid Deadline may be improved at the Auction, in accordance with these Bidding Procedures.

Determination and Announcement of Baseline Bids and Qualified Bidders

In evaluating the Bids, the Debtors, in consultation with the DIP Lenders and the Prepetition Secured Lenders, shall also make a determination regarding which Qualified Bid is the highest or best Qualified Bid for the Purchased Assets and will therefore serve as the starting point at the Auction (the “**Baseline Bid**”). On or before December 10, 2020, at 5:00 p.m. (Eastern Time) (the “**Designation Deadline**”), the Debtors shall file a notice designating the Baseline Bid and/or distribute the same at the Auction. The Debtors shall also provide copies of such Baseline Bid (if applicable, marked against the Stalking Horse Bid) to all of the Qualified Bidders (including the Stalking Horse Bidder).

If a Bid is determined by the Debtors not to be a Qualified Bid, the Debtors will refund such Bidder’s deposit and all accumulated interest thereon on or within ten (10) business days after the Bid Deadline.

Failure to Receive More Qualified Bids

If no Qualified Bid other than the one submitted by the Stalking Horse Bidder is received by the Bid Deadline, the Debtors will not conduct the Auction and the Stalking Horse APA will be deemed the Successful Bid and, subject to the termination rights under the Stalking Horse APA, the Debtors will pursue entry of an order by the Bankruptcy Court approving the Stalking Horse APA no later than December 16, 2020.

Sale Hearing and Sale Order

At a hearing before the Bankruptcy Court (the “**Sale Hearing**”), the Debtors will seek the entry of an order authorizing and approving, *inter alia*, the applicable sale transaction (the “**Sale Order**”). The Sale Order shall authorize and approve the applicable sale transaction:

- (A) if no other Qualified Bid is received by the Debtors, to the Stalking Horse Bidder pursuant to the terms and conditions set forth in the Stalking Horse APA; or
- (B) if the Auction is held, to the Successful Bidder or, if the Successful Bid is not consummated within the timeframe contemplated by the APA, to the Back-Up Bidder.

In the Debtors' discretion (with the consent of the Stalking Horse Bidder, or, if the Auction is held, the Successful Bidder, the DIP Lender and the Prepetition Secured Lender), the Sale Hearing may be adjourned or rescheduled without notice or with limited and shortened notice to parties, including by (i) an announcement of such adjournment at the Sale Hearing or at the Auction or (ii) the filing of a notice of adjournment with the Bankruptcy Court prior to the commencement of the Sale Hearing.

The Stalking Horse Bidder shall have standing to, without limitation, appear, object, and/or otherwise respond to any matter at the Sale Hearing or any related hearing.

Auction Procedures

If there are two or more Qualified Bids, the Debtors will conduct the Auction on **December 11, 2020, beginning at 10:00 a.m. (Eastern Time)** at the offices of Alston & Bird LLP, located at 90 Park Avenue, New York, New York 10016, or such other location, including by virtual meeting, as shall be timely communicated to all entities entitled to attend the Auction, , or such later time or other place as the Debtors (with the consent of the Stalking Horse Bidder) notify the Qualified Bidders.

The Auction will be conducted in accordance with the following procedures (the "**Auction Procedures**"):

1. only Qualified Bidders and their legal and financial advisors are permitted to attend the Auction;
2. only Qualified Bidders (including the Stalking Horse Bidder) will be permitted to bid at the Auction;
3. at the start of the Auction, the Debtors shall describe the terms of the Baseline Bid;
4. bidding will start at the purchase price and terms proposed in the Baseline Bid, and will proceed thereafter in minimum increments of at least \$100,000 of additional value (a "**Minimum Overbid Amount**"), as determined by the Debtors in the exercise of their business judgment; provided, that the Debtors reserve the right to and may modify the Minimum Overbid Amount at any time during the Auction;
5. in each round of bidding at the Auction, the Stalking Horse Bidder will also be entitled to a "credit" in the amount of the Bid Protections and the Investment Banker Incremental Cash Fee to be counted towards its bid in such round such that the cash and other consideration proposed by the Stalking Horse Bidder plus the Bid Protections "credit" must exceed the most recent bid by at least the Minimum Overbid Amount; provided that the Stalking Horse Bidder shall not be obligated to exercise such credit during any round of bidding at the Auction. To the extent a Qualified Bidder fails, in any round of bidding at the Auction, to submit a bid that is of a higher value or is a better offer than the immediately preceding bid submitted in such round of bidding, such Qualified Bidder shall be disqualified from continuing to participate in the Auction;

6. upon the solicitation of each round of applicable overbids relative to the Baseline Bid (each, an “**Overbid**”), the Debtors, in consultation with the DIP Lenders and the Prepetition Lenders, may establish a reasonable deadline on notice to all Bidders by which an Overbid must be submitted to the Debtors. An Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable to the Debtors’ estates than any prior Bid or Overbid made by that Bidder, as determined by the Debtors’ reasonable business judgment, in consultation with the DIP Lenders and the Prepetition Secured Lenders but shall otherwise comply with the terms of these Bidding Procedures;
7. subsequent to each Overbid deadline, the Debtors shall announce whether the Debtors have identified an Overbid as being higher or otherwise better than the Baseline Bid or, as applicable in subsequent rounds, the Overbid previously designated as the prevailing highest or otherwise best Bid (the “**Prevailing Highest Bid**”). The Debtors shall describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid;
8. the Debtors, in their reasonable discretion, shall afford the Qualified Bidders a reasonable amount of time to respond to the Prevailing Highest Bid;
9. the bidding will be transcribed to ensure an accurate recording of the bidding at the Auction;
10. each Qualified Bidder will be required to confirm on the record of the Auction that (a) it has not engaged in any collusion with respect to the bidding or the Sale Transaction, and (b) its Bid and any Overbid is a good faith, bona fide offer and it intends to consummate the proposed transaction if selected as the Successful Bidder; and
11. the Auction will not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an overbid at the Auction to the then prevailing highest Bid.

With the consent of the Stalking Horse Bidder, the DIP Lenders and the Prepetition Secured Lenders, the Debtors may modify or adopt such other rules for the Auction at any time that the Debtors reasonably determine to be appropriate to promote a robust auction. Any rules adopted by the Debtors will not unilaterally modify any of the terms of the Stalking Horse APA (as may be consensually modified at the Auction) without the prior written consent of the Stalking Horse Bidder, the DIP Lenders and the Prepetition Secured Lenders. Each Qualified Bidder will be permitted what the Debtors reasonably determine to be an appropriate amount of time to respond to the previous bid at the Auction. The Auction will be conducted openly and shall be transcribed or recorded, and the Qualifying Bidders will be informed of the material terms of the previous bid.

In evaluating a Qualified Bid submitted at the Auction, the Debtors may consider, among other things and without limitation, the amount of cash (or as may be applicable, reduction of liabilities of the estates) to be paid or delivered, the speed and certainty of consummating a transaction, and any other relevant factor. Prior to the conclusion of the Auction, the Debtors shall announce on the record that it has determined in its business judgment that it has received the highest or otherwise best Qualified Bid, and the Qualified Bidder that had submitted such Qualified Bid (the “**Successful Bid**”) shall be declared the winning bidder (the “**Successful Bidder**”). The Debtors shall also identify the Qualified Bidder that submitted the next highest or otherwise best Qualified Bid (the “**Back-Up Bid**”) who shall be declared the “**Back-Up Bidder.**” The Debtors shall consult

with the DIP Lenders and the Prepetition Secured Lenders regarding the amount of the Cash Bid Amount set forth in the Successful Bid and the Back-Up Bid, and the DIP Lenders and the Prepetition Secured Lenders shall have the right to object if it believes that either the Successful Bid or the Back-Up Bid is not sufficient to satisfy the Cash Bid Amount in full, in U.S. dollars. The Back-Up Bid shall remain open and irrevocable until the earliest to occur of (i) December 31, 2020 (the “**Outside Date**”), (ii) consummation of the transaction with the Successful Bidder, and (iii) the release of such bid by the Debtors in writing (such date, the “**Back-Up Bid Expiration Date**”). If a transaction with the Successful Bidder is terminated prior to the Back-Up Bid Expiration 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; *provided* that, if the Stalking Horse Bidder is declared the Back-Up Bidder, then the Stalking Horse Bidder shall only be obligated to consummate the Back-Up Bid to the extent required under the Stalking Horse APA.

Within two (2) business days after the Auction, the Successful Bidder shall submit, to the extent applicable, to the Debtors fully executed revised documentation memorializing the terms of the Successful Bid. The Successful Bid may not be assigned to any entity without the prior written consent of the Debtors and, to the extent the Back-Up-Bidder is the Stalking Horse Bidder, the Stalking Horse 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.

In the event the Stalking Horse Bidder is not the Successful Bidder, any sale order approving the proposed transaction shall provide for the immediate transfer, in cash, in U.S. dollars, upon the closing of the proposed transaction, of such portion of the Cash Bid Amount to the DIP Lenders, the Prepetition Secured Lenders, and the Stalking Horse Bidder that remains unpaid as of such date.

At any time before entry of the Sale Order approving the applicable transaction envisioned by a Successful Bid, the Debtors reserve the right, subject to the consent of the DIP Lenders and the Prepetition Secured Lenders to and may reject such Successful Bid if such Successful Bid, 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 is the Successful Bid, the foregoing provisions of this sentence will be inoperative. No attempt by the Debtors to reject a Successful Bid under this paragraph will modify any rights of the Debtors or the Stalking Horse Bidder under the Stalking Horse APA.

Post-Auction Process

The Debtors shall not consider any bids submitted after the conclusion of the Auction. Within one (1) business day after the conclusion of the Auction, the Debtors shall file with the Bankruptcy Court notice of the Successful Bid, Successful Bidder, Back-Up Bid, and Back-Up Bidder. At the Sale Hearing, the Debtors will present the Successful Bid to the Bankruptcy Court for approval. The Successful Bidder shall appear at the Sale Hearing and be prepared to have a

representative(s) testify in support of the Successful Bid and the Successful Bidder's ability to close within the timeframe contemplated by the APA and provide adequate assurance of its future performance under any and all executory contracts and unexpired leases to be assumed and/or assigned as part of the proposed sale transaction.

Within seven (7) business days after the Auction, the Debtors shall direct the Escrow Agent to return the deposit of any bidder, together with interest accrued thereon, who is not declared the Successful Bidder or Back-Up Bidder. Within five (5) business days after the Back-Up Bid Expiration Date, the Debtors shall direct the Escrow Agent to return the deposit of such Back-Up Bidder, together with interest accrued thereon. Upon the authorized return of any such deposit, the bid of such Potential or Qualified Bidder shall be deemed revoked in all respects (without any action required by the Bankruptcy Court) and no longer enforceable.

The deposit of the Successful Bidder shall be applied against the cash purchase price of such bidder's Successful Bid upon the consummation of the sale transaction.

In addition to the foregoing, the deposit of a Qualified Bidder will be forfeited to the Debtors if the Qualified Bidder (i) attempts to modify, amend, or withdraw its Qualified Bid, except as permitted herein, during the time the Qualified Bid remains binding and irrevocable, (ii) is selected as the Successful Bidder and fails to enter into the required definitive documentation or to consummate a sale transaction according to these Bidding Procedures and, as applicable, the APA or Stalking Horse APA, or (iii) breaches the Bidding Procedures, in each case, in addition to (and without limiting) any other remedies the Debtors may have.

Consent to Jurisdiction and Authority as Condition to Bidding

All bidders (including the Stalking Horse Bidder) that participate in the bidding process 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 these Bidding Procedures, the bid process, the Auction, or the construction and enforcement of any agreement or any other document relating to the sale transaction, (ii) waived any right to a jury trial in connection with any disputes relating to these Bidding Procedures, the bid process, the 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 these Bidding Procedures, the bid process, the 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.

* * * *

Exhibit 2

Sales Notice

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

In re:)	CHAPTER 11
)	
K.G. IM, LLC, <i>et al.</i> , ¹)	
)	CASE NO. 20-11723 (MG)
Debtors.)	
)	(Jointly Administered)
)	

**NOTICE OF DEBTORS' MOTION
FOR ENTRY OF AN ORDER (I) ESTABLISHING
BIDDING PROCEDURES AND GRANTING RELATED
RELIEF, AND (II) APPROVING THE SALE OF CERTAIN ASSETS
FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS**

PLEASE TAKE NOTICE THAT the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) each filed a voluntary petition for relief under chapter 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) on July 28, 2020 (the “**Petition Date**”).

PLEASE TAKE FURTHER NOTICE THAT on _____ in connection with the proposed sale (the “**Sale**”) of the Purchased Assets² to BSP Agency LLC, or any other Successful Bidder for the Purchased Assets, at an auction for the Purchased Assets (the “**Auction**”), the Debtors filed a motion (the “**Motion**”) [Docket No. [●]] seeking, among other things, the entry of an order approving: (a) bidding procedures governing the Sale (the “**Bidding Procedures**”); (b) the Stalking Horse APA; (c) payment of a Break-Up Fee and Reimbursable Expenses to the Stalking Horse Bidder in certain instances, including if the Successful Bidder at the Auction consummates a transaction, and other bid protections (the “**Bid Protections**”); (d) procedures for the assumption and assignment of executory contracts and unexpired leases (the “**Assumption Procedures**”); and (e) the form and manner of notices.

PLEASE TAKE FURTHER NOTICE THAT on October [●], 2020 the Bankruptcy Court entered an order [Docket No. [●]] (the “**Bidding Procedures Order**”) granting certain of the relief sought in the Motion, including, among other things, approving: (a) the Bid Protections and the Bidding Procedures and (b) the Assumption Procedures.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number (if any), include: K.G. IM, LLC (8556); Il Mulino USA, LLC (1682); IM LLC – III (2613); IMNYLV, LLC (9805); IM NY, Florida, LLC (9385); IM NY, Puerto Rico, LLC (0901); IMNY AC, LLC (5082); IM Products, LLC (0303); IM Long Island Restaurant Group, LLC (1623); IM Long Island, LLC (1488); IM Franchise, LLC (0565); IM 60th Street Holdings, LLC (9997); IM Broadway, LLC (4335); IMNY Hamptons, LLC (0423) and IM Payroll, LLC (0807). For the purpose of these chapter 11 cases, the service address for the Debtors is: 1761 Yardley Langhorne Rd., Yardley, PA 19067.

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

Contact Person for Parties Interested in Submitting a Bid

The Bidding Procedures set forth in detail the requirements for submitting a Qualified Bid, and any person interested in making an offer to purchase the Purchased Assets **must** comply strictly with the Bidding Procedures. **Only Qualified Bids will be considered by the Debtors.** Any persons interested in making an offer to purchase the Purchased Assets should contact:

Investment Banker to Debtors	Counsel to Debtors
Configure Partners, LLC 3340 Peachtree Road, NE Atlanta, GA 30326 Attn: Vin Batra (678) 723-4575	Alston & Bird LLP 90 Park Avenue New York, New York 10016 Attn: Gerard S. Catalanello William Hao (212)-210-9400

Obtaining Information

Copies of the Bidding Procedures Order, the Bidding Procedures and any other related documents are available upon request to Omni Agent Solutions, the Debtors' notice and claims agent, at (818)-906-8300, or by visiting the case website at <https://omniagentsolutions.com/ilmulino>

Important Dates and Deadlines

1. The deadline to submit a Qualified Bid is 5:00 p.m. Eastern Time on **December 9, 2020**.
2. The deadline to file an objection with the Bankruptcy Court to the entry of an order approving the sale (the "**Sale Order**") is **4:00 p.m. Eastern Time on December 10, 2020** (the "**Sale Objection Deadline**").
3. The Auction for the Purchased Assets, if one is necessary, will commence at **10:00 a.m. Eastern Time on December 11, 2020**, or such other date as determined by the United States Bankruptcy Court for the Southern District of New York (the "**Court**"), at the offices of Alston & Bird LLP, 90 Park Avenue, New York, New York 10016.
4. A hearing (the "**Sale Hearing**") to consider the proposed Sale will be held before the Honorable Martin Glenn of the Court at **[X] Eastern Time on December 16, 2020**, or such other date as determined by the Court, at One Bowling Green, New York, New York 10004.

Filing Objections to the Sale

Any objection to the Motion as it relates to the Sale must: (a) be in writing; (b) state with specificity the nature of such objection; (c) comply with the Bankruptcy Rules and the LBRs for the Southern District of New York; and (d) be filed with this Court and served upon, so as to be **actually received** on or prior to the Sale Objection Deadline, by the following parties:

Debtors	Counsel to Debtors
Mackinac Partners, LLC 74 W Long Lake Road Suite 205 Bloomfield Hills, MI 48304 Attn: Craig M. Boucher	Alston & Bird LLP 90 Park Avenue New York, New York 10016 Attn: Gerard S. Catalanello William Hao (212)-210-9400
Counsel to the Debtors' Prepetition Lender and DIP Lender and Stalking Horse Bidder	United States Trustee
Goodwin Procter LLP The New York Times Building 620 Eighth Avenue New York, NY 10018 Attn: Michael H Goldstein Howard S. Steel	Office of the United States Trustee Southern District of New York U.S. Federal Office Building 201 Varick Street, Room 1006 New York, New York 10014 Attn: Shannon Scott
United States Attorney	
Office of the United States Attorney for the Southern District of New York 86 Chambers Street, 3rd Floor New York, New York 10007	

Consequences of Failing to Timely File and Serve an Objection:

Any party or entity who fails to timely file and serve an Objection to the Sale on or before the Sale Objection Deadline in accordance with the Bidding Procedures Order shall be forever barred from asserting any Objection to the Sale, including with respect to the transfer of the Purchased Assets of the Debtor estates free and clear of liens, claims, encumbrances, and other interests effected thereunder.

No Successor or Transferee Liability

The proposed Sale Order provides that the Stalking Horse Bidder and/or Successful Bidder, if applicable, will have no responsibility for, and the Purchased Assets will be sold free and clear of, any successor liability, including the following: (a) any liability or other obligation of the Debtors' estates or related to the Debtors' Purchased Assets other than as expressly set forth in the Stalking Horse Asset Purchase Agreement; or (b) any claims against the Debtors, their estates, or any of their predecessors or affiliates. Except as expressly provided in the Sale Order or the Stalking Horse APA, the Stalking Horse Bidder or Successful Bidder shall have no liability whatsoever with respect to the Debtors' estates' (or their predecessors' or affiliates') respective businesses or operations or any of the Debtors' estates' (or their predecessors' or affiliates') obligations (as described below, "Successor Liability") based on any action taken in connection with the Sale, the assumption of the Assumed Liabilities (as defined in the Stalking Horse Asset Purchase Agreement), or the continued operation of the Business on any basis, including under any doctrines of successor, transferee, or vicarious liability (whether based on de facto merger, mere continuation, or any other basis or theory of liability), including (a) any past, present, or future liabilities of K.G. IM, LLC or any of its affiliates to any shareholder, governmental entity, or person, (b) any past, present or future liabilities of K.G. IM, LLC or any of its affiliates arising out of any civil or criminal investigations or claims brought by any governmental entity, including the United States Attorney's Office or the Securities and Exchange Commission, seeking sanctions, penalties, restitution, disgorgement, or other amounts owed or that become owed, and (c) any past, present or future claims of or liability associated with indemnity, advancement, reimbursement or contribution of legal or other expenses incurred by current or former directors, officers, employees, agents, attorneys, or other representatives of K.G. IM, LLC or its affiliates in connection with or arising out of any proceedings, including those referenced in sections (a) and (b) above.

Exhibit 3

Publication Sale Notice

[Form to be provided.]

Exhibit 4

Cure Notice

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

In re:)	CHAPTER 11
)	
K.G. IM, LLC, <i>et al.</i> , ¹)	
)	CASE NO. 20-11723 (MG)
Debtors.)	
)	(Jointly Administered)
)	

**NOTICE OF PROPOSED ASSUMPTION AND ASSIGNMENT
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

PLEASE TAKE NOTICE THAT the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) each filed a voluntary petition for relief under chapter 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) on July 28, 2020 and July 31, 2020 (the “**Petition Date**”).

PLEASE TAKE FURTHER NOTICE THAT on [●] in connection with the proposed sale (the “**Sale**”) of the Purchased Assets² to any Successful Bidder for the Purchased Assets, at an auction for the Purchased Assets (the “**Auction**”), the Debtors filed a motion (the “**Motion**”) [Docket No. [●]] seeking, among other things: the entry of an order approving (a) bidding procedures governing the Sale; (b) the Stalking Horse APA; (c) payment of a Break-Up Fee and Expense Reimbursement to the Stalking Horse Bidder in certain instances defined in the Stalking Horse APA and other bid protections; (d) the form and manner of notices; and (e) procedures relating to the assumption and assignment of executory contracts and unexpired leases in connection with the Sale.

PLEASE TAKE FURTHER NOTICE THAT on [●], 2020, the Bankruptcy Court entered an order (the “**Bidding Procedures Order**”) [Docket No. [●]] granting certain of the relief sought in the Motion, including, among other things, approving: (a) the bidding procedures (the “**Bidding Procedures**”) for the Sale of the Purchased Assets; (b) the bid protections (the “**Bid Protections**”) and (c) procedures (the “**Assumption Procedures**”) for the assumption and assignment of executory contracts and unexpired leases (the “**Assumed Contracts**”). Copies of the Bidding Procedures Order (which describes the Bid Protections and incorporates the Assumption Procedures) and the Bidding Procedures are enclosed herein.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number (if any), include: K.G. IM, LLC (8556); Il Mulino USA, LLC (1682); IM LLC – III (2613); IMNYLV, LLC (9805); IM NY, Florida, LLC (9385); IM NY, Puerto Rico, LLC (0901); IMNY AC, LLC (5082); IM Products, LLC (0303); IM Long Island Restaurant Group, LLC (1623); IM Long Island, LLC (1488); IM Franchise, LLC (0565); IM 60th Street Holdings, LLC (9997); IM Broadway, LLC (4335); IMNY Hamptons, LLC (0423) and IM Payroll, LLC (0807). For the purpose of these chapter 11 cases, the service address for the Debtors is: 1761 Yardley Langhorne Rd., Yardley, PA 19067.

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

PLEASE TAKE FURTHER NOTICE THAT upon the closing of the Sale, the Debtors intend to assume and assign to the Stalking Horse Bidder or any other Successful Bidder the Assumed Contracts set forth on **Exhibit 1** hereto. In addition, the cure payments, if any, necessary for the assumption and assignment of the Assumed Contracts (the “**Cure Costs**”) are set forth on **Exhibit 1**.

YOU ARE RECEIVING THIS NOTICE BECAUSE THE STALKING HORSE BIDDER HAS IDENTIFIED YOU AS A COUNTERPARTY TO A POTENTIAL ASSUMED CONTRACT. Under the terms of the Assumption Procedures, the Stalking Horse Bidder may modify the list of Assumed Contracts until the Bid Deadline, and the Debtors reserve the right at any time after the Assumption and Assignment Service Deadline and before the closing of a Sale, to: (a) supplement the list of Assumed Contracts on the Contract Assumption Notice with previously omitted executory contracts or unexpired leases; (b) remove an Assumed Contract from the list of executory contracts and unexpired leases ultimately selected as an Assumed Contract that a Successful Bidder proposes be assumed and assigned to it in connection with a Sale or add to such list; and/or (c) modify the previously stated Cure Costs associated with any Assumed Contract. Any counterparty impacted by such a modification will receive notice thereof (the “**Supplemental Assumption Notice**”) and an opportunity to object to the proposed assumption and assignment of the Assumed Contract, if applicable.

Obtaining Additional Information

Additional copies of the Bidding Procedures Order, the Bidding Procedures and any other related documents are available upon request to Omni Agent Solutions, the Debtors’ notice and claims agent, at (818)-906-8300, or by visiting the case website at <https://omniagentsolutions.com/ilmulino>

Important Dates and Deadlines

1. The deadline to submit a Qualified Bid is **5:00 p.m. Eastern Time on December 9, 2020**.
2. The deadline to file an objection with the Bankruptcy Court to the entry of an order approving the sale (the “**Sale Order**”) is **4:00 p.m. Eastern Time on December 10, 2020** (the “**Sale Objection Deadline**”).
3. The Auction for the Assets, if one is necessary, will commence at **10:00 a.m. Eastern Time on December 11, 2020**, or such other date as determined by the Court, at the offices of Alston & Bird LLP, 90 Park Avenue, New York, New York 10016.
4. A hearing (the “**Sale Hearing**”) to consider the proposed Sale will be held before the Honorable Martin Glenn of the Bankruptcy Court at [●] **Eastern Time on December 16, 2020**, or such other date as determined by the Court, at One Bowling Green, New York, New York 10004.

Filing Assumption and Assignment Objections

Pursuant to the Assumption Procedures, objections to the proposed assumption and assignment of a Assumed Contract, including any objection relating to the Cure Costs and/or adequate assurance of future performance, must: (a) be in writing; (b) state with specificity the

nature of such objection and alleged Cure Costs, including applicable and appropriate documentation in support of such alleged Cure Costs; (c) comply with the Bankruptcy Rules and the LBRs; and (d) be filed with the Bankruptcy Court and served so as to be **actually received** on or before **(i) December 10, at 5:00 p.m. Eastern Time, or (iii) for those counterparties that receive a Supplemental Assumption Notice, the deadline set forth therein.**

Failure to timely file an objection shall constitute a waiver of any objections related to accepting performance by, or rendering performance to, the Stalking Horse Bidder for purposes of section 365(c)(1) of the Bankruptcy Code.

In the event the Auction results in a Successful Bidder other than the Stalking Horse Bidder, parties who have previously received this notice shall have **until December 14, 2020 at 5:00 p.m. Eastern Time** to file an objection related to adequate assurance of future performance or related to whether applicable law excuses the party from accepting performance by, or rendering performance to, the Successful Bidder for purposes of section 365(c)(1) of the Bankruptcy Code.

Any objections will be considered at the Sale Hearing, or as soon thereafter as counsel may be heard, and must be served on the following parties:

Debtors	Counsel to Debtors
Mackinac Partners, LLC 74 W Long Lake Road Suite 205 Bloomfield Hills, MI 48304 Attn: Craig M. Boucher	Alston & Bird LLP 90 Park Avenue New York, New York 10016 Attn: Gerard S. Catalanello William Hao (212)-210-9400
Counsel to the Debtors' Prepetition Lender and DIP Lender and Stalking Horse Bidder	United States Trustee
Goodwin Procter LLP The New York Times Building 620 Eighth Avenue New York, NY 10018 Attn: Michael H Goldstein Howard S. Steel	Office of the United States Trustee Southern District of New York U.S. Federal Office Building 201 Varick Street, Room 1006 New York, New York 10014 Attn: Shannon Scott.
United States Attorney	
Office of the United States Attorney for the Southern District of New York 86 Chambers Street, 3rd Floor New York, New York 10007	

Consequences of Failing to Timely File and Serve an Objection

Any counterparty to an Assumed Contract who fails to timely file and serve an Objection to the proposed assumption and assignment of an Assumed Contract in accordance with the Bidding Procedures Order and the Assumption Procedures shall be forever barred from asserting any Objection to the assumption and assignment of the Assumed Contract and/or the cure amount set forth on Exhibit 1, including asserting additional cure amounts with respect to the Assumed Contract relating to any period prior to the time of assumption and assignment.

Exhibit 1

Transferred Contracts and Assumed Leases