

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

In re:)	
)	Chapter 11
T&S FOOD SERVICES II, LLC,)	
)	Case No. 25-11178 (TMH)
Debtor.)	
)	

BIDDING PROCEDURES

1. On June 19, 2025 (the “Petition Date”), T&S Food Services II, LLC (the “Debtor”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”). The Debtor is operating its business and managing its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On September 26, 2025, the Court entered the *Order (I)(A) Approving Bidding Procedures for the Sale or Sales of the Debtor’s Assets, (B) Approving Assumption and Assignment Procedures, and (C) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtor’s Assets Free and Clear of Liens, Claims, Interests and Encumbrances, and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [Docket No. 110] (the “Bidding Procedures Order”)¹ by which the Court approved the following procedures (the “Bidding Procedures”) setting forth the process by which the Debtor is authorized to solicit bids and ultimately select a purchaser or purchasers for the Sale or Sales of all or substantially all of the Debtor’s assets or any portion thereof.

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Bidding Procedures Order or Motion, as applicable.

Any party interested in bidding on the Debtor’s Assets (defined below) should contact Debtor’s franchise broker, National Franchise Sales, Inc. (“NFS”), Attention: Alan Gallup (ag@nationalfranchisesales.com), with a copy to Debtor’s counsel, Clark Hill PLC, Attention: Kevin H. Morse (kmorse@clarkhill.com) and Karen M. Grivner (kgrivner@clarkhill.com) and Debtor’s Chief Restructuring Officer (“CRO”), Rolando Allen (rallen@tsfoodservices.com).

SUMMARY OF KEY BIDDING PROCEDURES DATES

<u>DATE</u>	<u>DEADLINE / EVENT</u>
October 1, 2025, at 2:00 p.m. (ET)	Bidding Procedures Hearing
October 29, 2025, at 4:00 p.m. (ET)	Bid Deadline
November 3, 2025	Deadline for Debtor to select the Successful Bidder(s) and Next-Highest Bidder(s) (“ <u>Buyer Selection Deadline</u> ”)
November 5, 2025	Deadline to file and serve Notice identifying the Successful Bidder and Next-Highest Bidder and to file a Notice of Motion for an Order to Sell the Assets
November 5-November 30, 2025	Successful Bidder to Negotiate and Obtain Approval from Denny’s Franchisor for the Purchase of the Restaurants
November 6, 2025	Deadline for the Debtor to file and serve the Cure Notice
November 20, 2025	Deadline for counterparties to Executory Contracts and Unexpired Leases to object to proposed cure amounts (“ <u>Cure Objection Deadline</u> ”)
November 26, 2025	Deadline for parties to Object to the Sale of the Assets (“ <u>Sale Objection Deadline</u> ”)

December 10, 2025, at 10:00 a.m. (ET)	Sale Hearing and Deadline to obtain order(s) authorizing the sale of applicable Assets to the Successful Bidder(s), or, as necessary, to the Next-Highest Bidder(s) (“ <u>Sale Order Deadline</u> ”)
December 31, 2025	Deadline to close the Sale(s) of the Assets (“ <u>Closing Deadline</u> ”)

I. DESCRIPTION OF THE ASSETS TO BE SOLD

3. The Debtor is seeking to sell substantially all of its assets, or any portion thereof to the persons or entities making the most value maximizing bid or bids through the process outlined in these Bidding Procedures. These assets include, but are not limited to, the restaurants located in Illinois, Missouri, and Louisiana, in bulk or in any value maximizing combination, plus unexpired leases, executory contracts, equipment, inventory, supplies, intellectual property, licenses, insurance proceeds, prepaid expenses and deposits, and books and records, in each case, free and clear of all liens, claims, interests, or other encumbrances (each an “Asset” and, collectively, the “Assets”). For the avoidance of doubt, the Assets do not include any fee simple real property or the Baton Rouge Property.²

4. The Sale of the Assets shall be subject to a competitive bidding process as set forth herein and approved by the Court pursuant to sections 105, 363, and 365 of the Bankruptcy Code, rules 2002, 6004, 6006, and 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 2002-1, 6004-1, and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

² As defined in the *Omnibus Declaration of Rolando Allen in Support of First Day Motions and Chapter 11 Case* [Docket No. 3].

II. CONFIDENTIALITY AGREEMENT

5. Unless otherwise ordered by the Court for cause shown, to participate in the Bidding Process (as defined below), each person or entity must enter into (unless previously entered into) with the Debtor, on or before the Bid Deadline, an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtor (the “Confidentiality Agreement”). Further, to participate in the diligence process and receive access to due diligence information, a party shall submit to the Debtor or its advisors sufficient information, as reasonably determined by the Debtor, to allow the Debtor to determine that the interested party intends to access the Data Room (as defined in Section IV below) for a purpose consistent with the Bidding Procedures and solely for the purpose of potentially purchasing the Assets. Each person or entity that enters into the Confidentiality Agreement with the Debtor on or before the Bid Deadline is hereinafter referred to as a “Potential Bidder.”

6. After a Potential Bidder enters into a Confidentiality Agreement with the Debtor, the Debtor shall provide such Potential Bidder access to the Data Room.

III. QUALIFIED BIDDERS

7. A “Qualified Bidder,” as used in these Bidding Procedures, shall mean a Potential Bidder who has delivered to NFS, Attention: Alan Gallup (ag@nationalfranchisesales.com), with a copy to Debtor’s counsel, Clark Hill PLC, Attention: Kevin H. Morse (kmorse@clarkhill.com) and Karen M. Grivner (kgrivner@clarkhill.com) and Debtor’s CRO, Rolando Allen (rallen@tsfoodservices.com) (collectively, the “Bid Notice Parties”), on or before the Bid Deadline, the following information and documentation in form and substance reasonably satisfactory to Debtor and NFS (collectively, the “Qualifying Material”):

- a. A statement of the Assets that the Potential Bidder intends to acquire;

- b. Sufficient information that the Potential Bidder has or can reasonably obtain the financial capacity to close a purchase of any portion, all, or substantially all of the Debtor's Assets, the adequacy of which must be acceptable to the Debtor;
- c. If the Potential Bidder seeks to operate the Assets as a Denny's restaurant, a statement that the Potential Bidder has (i) sought from Denny's, and has received from Denny's, in writing, preliminary approval to become a franchisee in the Denny's system with respect to the Assets such Potential Bidder intends to acquire, and (ii) provided to Denny's such documents and information as Denny's has requested that would permit Denny's to approve such Potential Bidder as a Denny's franchisee³; and
- d. A statement detailing whether the Potential Bidder is partnering with or otherwise working with any other interested party, including any insider of the Debtor in any capacity, in connection with the potential submission of a joint Bid to the extent reasonably practicable.

IV. DUE DILIGENCE

8. The Debtor, through NFS, has established a confidential electronic data room concerning the Assets (the "Data Room") and will grant each Potential Bidder, as applicable, access to such Data Room, provided that the Debtor has received a fully executed Confidentiality Agreement from any such Potential Bidder. Up to and including the Bid Deadline (such period, the "Diligence Period"), the Debtor shall afford any Potential Bidder such due diligence access or additional information as may be reasonably requested by the Potential Bidder that the Debtor, in its business judgment, determines to be reasonable and appropriate under the circumstances. The Debtor or NFS may designate a representative or representatives to coordinate all reasonable requests for additional information and due diligence access from such Potential Bidders. In the event that any such due diligence material is in written form and has not previously been provided to any other Potential Bidder, the Debtor will simultaneously provide access to such materials to all Potential Bidders. Each Potential Bidder shall be required to acknowledge that it has had an

³ Upon request, NFS may provide the Potential Bidder with the required Denny's franchise application form a list of the materials required by Denny's for prospective franchisees.

opportunity to conduct any and all due diligence regarding the Assets in conjunction with submitting its Bid.

9. Subject to the provisions of the Bidding Procedures Order and these Bidding Procedures, neither the Debtor nor any of its representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets to any person or entity who is not a Potential Bidder and who does not otherwise comply with the participation requirements set forth above.

10. The provision of information in the Data Room or otherwise does not constitute a representation or warranty by the Debtor, NFS, the CRO, or any of their employees, agents, or representatives regarding any matter, including without limitation the condition of the Assets or the terms or conditions that the Debtor may require in connection with any transaction pursuant to these Bidding Procedures. The Sale(s) of the Assets shall be as is, where is, with all faults.

V. BID DEADLINE

11. A Qualified Bidder that desires to make a Bid shall deliver written copies of its Bid and all other documentation and information required under the Bid Requirements (as defined below) in both Portable Document Format (.pdf) and Microsoft Word (.doc/.docx) to the Bid Notice Parties, no later than **October 29, 2025 at 4:00 p.m. (prevailing Eastern Time)** (the “Bid Deadline”).

12. The Debtor shall promptly provide the Office of the United State Trustee (the “U.S. Trustee”) copies of all Bids received by the Debtor; *provided, however*, that the U.S. Trustee must treat such Bids and any related information as confidential and shall not publicly disclose such information without the written consent of the Debtor and the applicable bidder.

VI. BID REQUIREMENTS

13. A Qualified Bidder must deliver to the Bid Notice Parties an irrevocable offer for the purchase of some or all of the Assets (any such offer, a “Bid”), and shall meet each of the following criteria (collectively, the “Bid Requirements”), in each case, on or prior to the Bid Deadline:

- a. **Purchased Assets and Assumed Liabilities:** Each Bid must clearly state the following: (i) the particular Assets (including identification of each restaurant location, or the portion thereof, identified with reasonable specificity) to be purchased; (ii) the liabilities and obligations to be assumed, including any debt and cure costs to be assumed; and (iii) any executory contracts (the “Executory Contracts”) and any unexpired leases (the “Unexpired Leases”) to be received upon assignment.
- b. **Good Faith Deposit:** The Bid must be accompanied by a cash deposit in the amount of \$20,000 per restaurant sought to be acquired in the Bid (any such deposit, a “Good Faith Deposit”).
- c. **Purchase Price:** Each Bid must (i) clearly set forth the purchase price to be paid, assuming a purchase of the applicable Assets and any assumption liabilities (the “Purchase Price”); (ii) identify separately the cash and non-cash components of the Purchase Price; and (iii) indicate the allocation of the Purchase Price among the different restaurants, if the Bid pertains to more than one of the restaurants. The Debtor reserves the right, in consultation with NFS, to ask any Qualified Bidder to allocate the value ascribed to a Bid for any particular Asset and to inquire about any significant assumptions on which such valuations are based.
- d. **Sources of Financing:** To the extent that the Bid is not accompanied by evidence of the Qualified Bidder’s capacity to consummate the transaction(s) set forth in its Bid with cash on hand, the Bid must include committed financing, documented to the Debtor’s satisfaction, that demonstrates that the Qualified Bidder has received sufficient debt and/or equity funding commitments to satisfy the Qualified Bidder’s obligations under the proposed transaction(s) and other obligations under its Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtor.
- e. **Same or Better Terms; Bid Documents:** Each Bid must include duly executed and non-contingent, where applicable, transaction documents necessary to effectuate the transactions contemplated in the Bid (the “Bid Documents”). The Bid

Documents shall include: (i) a purchase agreement (the “Form APA”),⁴ duly executed by such bidder obligating the Qualified Bidder to purchase the Assets identified in the Bid; (ii) a schedule of Executory Contracts and Unexpired Leases to be assumed or rejected to the extent applicable to the Bid; (iii) any other material documents integral to such Bid; (iv) a resume of the proposed franchise operator; (v) a financial statement of the Qualified Bidder with supporting documentation; and (vi) a statement from the Qualified Bidder that (x) it is prepared to enter into and consummate the transactions contemplated in the Form APA no later than the Closing Deadline (unless such deadline is extended by agreement between Debtor and the applicable Qualified Bidder), and (y) the Qualified Bid will be irrevocable (whether or not such Qualified Bid is selected as the Successful Bid or Next-Highest Bid (as those terms are defined below) until the consummation of the Sale Transaction(s)).

- f. **No Qualified Bidder Bid Protections:** A Qualified Bid must include a statement that the Bid does not entitle such bidder to any break-up 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 applicable Assets.
- g. **Employee Obligations:** Each Bid must indicate whether the Qualified Bidder intends to hire all or substantially all of the employees of the Debtor, or so many of the employees as relates to the Asset(s) to which the Bid pertains.
- h. **Authorization:** Each Bid must contain evidence that the Qualified Bidder has obtained all necessary authorizations or approvals from its shareholders and/or its board of managers or directors, or any other internal and other approvals, as applicable, with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
- i. **Contingencies; No Financing or Diligence Outs:** The Bid must not contain any contingencies as to the validity, effectiveness, or binding nature of the Bid, including, without limitation, contingencies for due diligence and inspection or financing of any kind (including any conditions pertaining to financial performance, conditions, or prospects) and all diligence must be completed before the Bid Deadline.
- j. **Identity:** Each Bid must fully disclose the identity of each entity and each entity’s shareholders, partners, investors, or ultimate controlling entities that will be bidding for or purchasing the applicable Assets or otherwise participating in connection with such Bid, including each equity holder or other financial backer of the bidder (including if such bidder is an entity formed for the purpose of consummating the transactions contemplated by such Bid), and the complete terms of any such participation, along with sufficient evidence that the Qualified Bidder is legally

⁴ NFS will provide Qualified Bidders with the Form APA for the restaurants. In order to most efficiently and effectively analyze Qualified Bids, it is highly encouraged that Qualified Bidders follow the Form APA with as little substantive change as possible.

empowered to complete the transactions on the terms contemplated by the parties. Each Bid must also include contact information for the specific person(s) whom the Debtor, NFS, and Clark Hill PLC should contact regarding such Bid.

- k. **As-Is, Where-Is:** Each Bid must include a written acknowledgement and representation that the Qualified Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Sale Transaction(s) prior to making its Bid; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the assets in making its Bid; and (iii) did not rely on or receive from any person or entity (including Debtor or its advisors or other representatives) any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the completeness of any information provided in connection therewith, except as expressly stated in the Qualified Bidder's purchase agreement.
- l. **Joint Bids and Merger Proposals:** The Debtor will be authorized to approve joint bids in its business judgment, including if a proposed bid contemplates additional financing from one or several participating parties, on a case-by-case basis, so long as such Bid meets the Bid Requirements and the applicable bidders otherwise comply with these Bidding Procedures.
- m. **Adequate Assurance of Future Performance:** Each Bid must (i) provide for the payment of all required cure amounts (the "Cure Amounts") related to applicable Executory Contracts and Unexpired Leases by the Qualified Bidder, and (ii) be accompanied by information which demonstrates, in the Debtor's business judgment, that the Qualified Bidder can provide adequate assurance of future performance under all such Executory Contracts and Unexpired Leases sufficient to satisfy the requirements of sections 365(b)(3) and 365(f)(2)(B) of the Bankruptcy Code.
- n. **No Collusion:** The Qualified Bidder must (i) acknowledge in writing that it has not engaged in any collusion with respect to any Bids or any transaction(s) contemplated thereby or the Bidding Procedures, specifying that it did not agree with any Qualified Bidders or Potential Bidders to control price or otherwise with respect to any of the Assets or the transaction(s) and processes contemplated by the Bidding Procedures; and (ii) agree not to engage in any collusion with respect to any Bids or the transaction(s) contemplated thereby or the Bidding Procedures. The Qualified Bidder must further indicate if it has or intends to coordinate its Bid, or otherwise bid with, any current or former member of the Debtor's or its affiliates' executive management or owners. For the avoidance of doubt, this requirement does not restrict Qualified Bidder(s) from working with other Qualified Bidder(s) with the Debtor's prior written consent, with such consent by e-mail being sufficient.

- o. **Deemed Qualified Bidders:** Denny's shall be deemed to be a Qualified Bidder for all purposes herein. For the further avoidance of doubt, Denny's shall have the right to submit a Bid for any of the Assets, or combination thereof.
 - p. **Irrevocable Next-Highest Bid:** Each Bid shall provide that the Qualified Bidder will serve as a Next-Highest Bidder (as defined below) if the Qualified Bidder's Bid is the next highest or otherwise best bid with respect to the applicable Assets and must state that in the event such Bid is chosen as the Next-Highest Bid, it shall remain irrevocable until the Debtor and the Successful Bidder (as defined below) consummate the transaction(s) contemplated by the Successful Bid (as defined below).
 - q. **Expected Closing Date and Time Frame for Closing:** Each Bid must state the Qualified Bidder's expected date of closing of the transaction(s) (the "Closing") and must be reasonably likely to be consummated, if selected as the Successful Bid, within a time frame acceptable to the Debtor's; provided, however, that in no event shall the Closing occur after the Closing Deadline.
 - r. **No Fees:** Each Qualified Bidder presenting a Bid or Bids will bear its own costs and expenses (including legal fees) in connection with the proposed transaction, and by submitting its Bid(s) is agreeing to disclaim any right to receive any payments or amounts analogous to a break-up fee, expense reimbursement, termination fee, or other similar form of compensation.
 - s. **Consent to Jurisdiction:** The Qualified Bidder must submit to the jurisdiction of the Court and waive any right to a jury trial in connection with any disputes relating to the Debtor's qualification of Bids, the Sale Transaction(s), and the construction and enforcement of these Bidding Procedures, Qualifying Material, Bid Requirements, the Bids, the Bid Documents, and any and all other agreements entered into in connection with any proposed Sale Transaction(s), the Closing, and any other related matters.
 - t. **Conditions to Closing:** Each Bid must identify with particularity each and every condition to closing, including the Executory Contracts and Unexpired Leases for which assumption and assignment is required.
14. Only Bids fulfilling all of the preceding Bid Requirements contained in this section as determined or otherwise waived in the Debtor's business judgment may be deemed to be qualified bids (each a "Qualified Bid," and collectively the "Qualified Bids"), and only those parties submitting Qualified Bids, in the Debtor's business judgment, may be deemed to be Qualified Bidders.

15. The Debtor and NFS will review each Bid received from a Qualified Bidder to determine whether it meets the Bid Requirements and, as soon as practicable after the Bid Deadline and in any event prior to the Buyer Selection Deadline, the Debtor will notify the Qualified Bidders whether Bids submitted constitute Qualified Bids. Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtor; *provided, however*, that if the Debtor receives a Bid prior to the Bid Deadline that does not meet the Bid Requirements, the Debtor may work with such Qualified Bidder to remedy any deficiencies prior to the Buyer Selection Deadline.

16. The Debtor, in its business judgment, reserves the right to reject any Bid if, and without limitation, such Bid:

- a. Requires any indemnification of the Qualified Bidder in any purchase agreement submitted as part of the Bid;
- b. Is not received by the Bid Deadline;
- c. Does not comport with the Bid Requirements;
- d. Is subject to any contingencies (including representations, warranties, covenants and/or timing requirements) of any kind or any other conditions precedent to such party's obligations to acquire the Assets;
- e. Does not, in the Debtor's determination, include a fair and adequate price or the acceptance of which would not be in the best interests of the Debtor's estate;
- f. Does not, in the Debtor's determination, include satisfactory evidence of the Qualified Bidder's financial capacity or experience in the ownership and operation of restaurants comparable to the Denny's restaurant; or
- g. Includes or omits terms or conditions related to the Assets that are unacceptable to the Debtor.

17. There shall be no communications between or amongst Potential Bidders and/or Qualified Bidders unless the Debtor's advisors have authorized such communication in writing. The Debtor reserves the right, in its business judgment, to disqualify any Potential Bidders or Qualified Bidders that have communications between or amongst themselves without the prior

authorization of the Debtor's advisors. For the avoidance of doubt, the joining of Bids between Qualified Bidders may be permitted by the Debtor in its business judgement.

VII. BIDDING PROCESS

18. Unless otherwise ordered by the Court for cause shown, only Qualified Bidders are eligible to participate in the Bidding Process and be selected as a Successful Bidder or a Next-Highest Bidder.

19. The Debtor shall determine which Qualified Bid constitutes the Successful Bid. In so doing, the Debtor shall take into account any factors the Debtor reasonably deems relevant to the value of the Qualified Bid to the Debtor's estate, including, among other things: (a) the amount and nature of the consideration, including any obligations to be assumed; (b) the Executory Contracts and Unexpired Leases of the Debtor, if any, for which assumption and assignment or rejection is required, and the costs and delay associated with any litigation concerning Executory Contracts and Unexpired Leases necessitated by such Bid; (c) the likelihood of the Qualified Bidder being able to close the proposed transaction and the timing thereof; (d) the net benefit to the Debtor's estate; and (e) the tax consequences of such Qualified Bid.

20. On or before the Buyer Selection Deadline, the Debtor will: (a) determine, consistent with the Bidding Procedures and its reasonable business judgment, which Qualified Bid constitutes the highest and best bid for each of the applicable Assets (each, a "Successful Bid"); and (b) notify all Qualified Bidders participating in the Bidding Process the name of the maker of each Successful Bid (each, a "Successful Bidder"), and the amount and other material terms of each Successful Bid. During the period between the Bid Deadline and the Buyer Selection Deadline, the Debtor and NFS may notify a Qualified Bidder that its Bid is a Successful Bid or that its Bid is rejected, or Debtor and NFS may negotiate terms of a Qualified Bid with the applicable Qualified Bidder. On or before the Buyer Selection Deadline, the Debtor shall also

designate the Next-Highest Bids (and the corresponding Next-Highest Bidders) to close with respect to the Assets in the event that the Successful Bidders do not close the Sale(s). Unless the Court orders otherwise, upon application by the Debtor, the Debtor shall not consider any Qualified Bids submitted after the conclusion of the Buyer Selection Deadline and any and all such Qualified Bids shall be deemed untimely.

21. Within two (2) business days following the Buyer Selection Deadline, the Debtor shall file notice of the Successful Bid(s) and the Successful Bidder(s) and any applicable Next-Highest Bid and Next-Highest Bidder(s), the amount of the Successful Bid(s) and the Next-Highest Bid(s). If any Successful Bidder or Next-Highest Bidder is a special purpose entity, the notice shall also identify the entity or entities that are the equity holders, or who otherwise control, the special purpose entity. At the same time, the Debtor shall serve notice of the same on all contract counterparties whose contracts are to be assumed and assigned and to all creditors who have filed an appropriate request for service of notices in accordance with Bankruptcy Rule 2002. Simultaneously, Debtor shall also provide notice of motion to sell the Assets to the Successful Bidder(s).

22. All Potential Bidders and Qualified Bidders participating in the Bidding Process will be deemed to have consented to the core jurisdiction and constitutional authority of the Court and waived any right to jury trial in connection with any disputes relating to the Bidding Process, any Sale, and all agreements entered into in connection with any proposed sale transaction related to the Assets.

VIII. CURE OBJECTION DEADLINE

23. On or before November 6, 2025, the Debtor shall file a list of all Cure Amounts for the Executory Contracts and Unexpired Leases. Any counterparty to an Executory Contract or Unexpired Lease may object to such proposed Cure Amount up to and including the Cure

Objection Deadline of **November 20, 2025**. The failure of such counterparty to timely object to the Cure Amount shall set such Cure Amount as the amount to be paid by the respective Successful Bidder for the respective Executory Contract or Unexpired Lease. In the event a counterparty to an Executory Contract or Unexpired Lease timely files and serves an objection to the Cure Amount, the Debtor and such objecting party shall in good faith negotiate a resolution of such Cure Amount from and to the Sale Hearing. The parties shall seek Court resolution if such Cure Amount objection is not resolved prior to the Sale Hearing.

IX. RETURN OF GOOD FAITH DEPOSIT

24. The Good Faith Deposits of all Qualified Bidders shall be held in escrow but shall not become property of the Debtor's estate absent further order of the Court. The Debtor shall retain any Good Faith Deposit submitted by the Successful Bidder(s). At the closing of a Sale contemplated by a Successful Bid, the applicable qualified buyer will be entitled to a credit for the amount of its Good Faith Deposit to the extent such a deposit was provided. The Good Faith Deposit of any Next-Highest Bidder shall be retained until three (3) business days after the closing of the applicable Sale. The Good Faith Deposits of any other Qualified Bidders will be returned as soon as reasonably practicable, but no later than three (3) business days following the Buyer Selection Deadline.

25. If a Successful Bidder (or, if a Sale is to be closed with a Next-Highest Bidder, then the Next-Highest Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the applicable purchase agreement, the Debtor and its estate shall be entitled to retain the Good Faith Deposit of such Successful Bidder (or, if the Sale is to be closed with the Next-Highest Bidder, then such Next-Highest Bidder) as part of the damages resulting to the Debtor and its estate for such breach or failure to perform. As actual damages would be difficult to ascertain in the event of a breach or failure to perform

prevents the Successful Bidder (or, if the Sale is to be closed with the Next-Highest Bidder, then such Next-Highest Bidder) from consummating the Sale, Debtor's retention of the Good Faith Deposit represents a fair and reasonable estimate of the damages Debtor would incur as a result of such breach.

X. RESERVATION OF RIGHTS AND MODIFICATIONS

26. Notwithstanding any of the foregoing, the Debtor, subject to the Court's approval, reserves the right to modify these Bidding Procedures with respect to extending the deadlines set forth herein, waiving terms and conditions set forth herein with respect to any or all Potential Bidders and Qualified Bidders (including, without limitation, the Bid Requirements), and imposing additional terms and conditions with respect to any or all Potential Bidders and Qualified Bidders; *provided, however*, that any such modification of these Bidding Procedures shall not be inconsistent with the Bankruptcy Code, the Bidding Procedures Order (not including these Bidding Procedures) or any other order of the Court entered in this case, and shall be disclosed to each Qualified Bidder at or prior to the Buyer Selection Deadline.

27. Debtor reserves the right to change the Bidding Process into a public auction held in person or by Zoom if Debtor determines, in its reasonable business judgment, that a public auction is in the best interest of its estate. If Debtor decides to change the Bidding Process into a public auction, it shall provide at least three (3) days advance notice to all Qualified Bidders, the U.S. Trustee, and the Court.

XI. NEXT-HIGHEST BIDDER

28. Notwithstanding anything to the contrary in these Bidding Procedures, in the event that a Successful Bidder fails to close a Sale prior to such date as specified in the applicable purchase agreement (or such date as may be extended by the Debtor) and as provided for herein, the Debtor, upon written notice to the applicable Next-Highest Bidder, may designate such Next-

Highest Bid as the Successful Bid for the applicable Assets, the Next-Highest Bidder will be deemed to be the Buyer for such Assets, and the Debtor will be authorized, but not directed, to close the Sale to the Next Highest Bidder subject to the terms of the Next-Highest Bid as approved by further order of the Court.