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*Counsel to the Debtors and Debtors in Possession*

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re: : Chapter 11  
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**RUBIE’S COSTUME COMPANY, INC., et al.,** : Case Nos. 20-71970 thru 20-71975 (AST)  
:
  
Debtors. : (Jointly Administered)  
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**NOTICE OF AUCTION AND HEARING TO CONSIDER APPROVAL OF THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS**

**NOTICE IS HEREBY GIVEN, that:**

1. On August 4, 2020, Rubie’s Costume Company, Inc. (“**Rubies**”), Forum Novelties Inc. (“**Forum**”), Buyseasons Enterprises, LLC (“**Buyseasons**”), Masquerade, LLC (“**Masquerade**”), The Diamond Collection LLC (“**Diamond Collection**”), and Rubie’s Masquerade Company LLC (“**Rubie’s Masquerade**”), the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) in the above-referenced chapter 11 cases (the “**Chapter 11 Cases**”), filed a motion (the “**Motion**”), which in pertinent part (the “**Bidding Procedures Motion**”), sought entry of an order (the “**Bidding Procedures Order**”), pursuant to sections 105, 363, and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002(a)(2) and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”): (a) approving the proposed Bidding Procedures to be utilized in connection with the proposed sale of the substantially all of the Debtors’ assets (the “**Acquired Assets**”), free and clear of all liens, claims, and encumbrances to the Buyer (as defined in the Motion) or to any competing bidder or bidders (the “**Successful Bidder(s)**”) that submits or collectively submit a higher or better offer or offers for the Acquired Assets; (b) scheduling an Auction and a Sale Hearing to approve the Sale of the Acquired Assets; (c) approving the form and manner of the



notice of the Auction and Sale Hearing; and (d) approving the Bid Protections and overbid procedures in connection therewith.

2. A copy of each of the Motion, the Bidding Procedures, and the Bidding Procedures Order may be obtained by: (i) accessing the Bankruptcy Court's website at [www.nyeb.uscourts.gov](http://www.nyeb.uscourts.gov); (ii) accessing the website of the Debtors' claims and noticing agent, Kurtzman Carson Consultant's LLC, at [www.kccllc.net/Rubies](http://www.kccllc.net/Rubies); or (iii) contacting Jordan D. Weiss, Esq. of Meyer, Suozzi, English & Klein, P.C., co-counsel to the Debtors, at 990 Stewart Avenue, P.O. Box 9194, Garden City, New York 11530, by telephone at (516) 592-5731, or by email at [jweiss@msek.com](mailto:jweiss@msek.com).

3. A copy of the Bidding Procedures is also attached hereto as Exhibit A.

4. As set forth in the Bidding Procedures, the sale of the Acquired Assets remains subject to: (i) higher or better offers for all of the Acquired Assets; and (ii) Bankruptcy Court approval.

5. All interested parties are invited to make competing offers for all or a portion of the Acquired Assets in accordance with the terms of the Bidding Procedures and Bidding Procedures Order. The deadline to submit competing offers is **September 16, 2020 at 12:00 p.m. EST** (the "**Bid Deadline**").

6. Pursuant to the Bidding Procedures Order, if a Qualified Bid is received, the Debtors may conduct an auction (the "**Auction**") for the sale of the Acquired Assets via Zoom video conference, on **September 17, 2020 at 10:00 a.m. EST**.

7. The Bidding Procedures Order further provides that a Sale Hearing will be held on **September 23, 2020 at 10:00 a.m. EST** before the Honorable Alan S. Trust, United States Bankruptcy Judge, at the United States Bankruptcy Court, Eastern District of New York, Alfonse M. D'Amato U.S. Courthouse, 290 Federal Plaza, Central Islip, New York 11722 (the "**Bankruptcy Court**").

8. At the Sale Hearing, the Bankruptcy Court may enter such Order or Orders as it deems appropriate under applicable law and as required by the circumstances and equities of this Chapter 11 case.

9. Objections, if any, to the Sale Motion, must be made in writing, must state with particularity the reasons for the objection or response, must conform to the Bankruptcy Rules and the Local Rules of the Bankruptcy Court, must set forth the name of the objecting party, the nature and basis of the objection and the specific grounds therefore and must be filed with the Clerk of the Bankruptcy Court and served upon (a) co-counsel to the Debtors, Meyer, Suozzi, English & Klein, P.C., 990 Stewart Avenue, Suite 300, Garden City, New York 11530, Attn: Edward J. LoBello, Esq., Howard B. Kleinberg, Esq. and Jordan D. Weiss, Esq., and Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York 10119, Attention: Frank A. Oswald, Esq. and Brian F. Moore, Esq.; (b) counsel to the Creditors' Committee, Arent Fox LLP, 1301 Avenue of the Americas, Floor 42, New York, New York 10019, Attn: George P. Angelich, Esq., Jordana L. Renert, Esq., and David J. Mayo, Esq.; (c) counsel to the DIP Lender, Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York 10020, Attn: Robert M. Hirsh, Esq.; (d) counsel to the Bank Group, Phillips Lytle LLP, 340 Madison Avenue, 17<sup>th</sup> Floor, New York, New York 10173, Attn: Nickolas Karavolas, Esq.; (e) counsel to the Buyer, Cooley LLP, 55 Hudson Yards, New York, New York 10001-2157, Attn: Cathy Hershcopf, Esq.; and (f) the Office of the United States Trustee, Alfonse D'Amato Federal Courthouse, 560 Federal Plaza, Central Islip, NY 11722, Attn: Christine H. Black, Esq., Assistant U.S. Trustee, so as to be actually received by 4:00 p.m. EST on September 18, 2020.

10. Requests for information concerning the sale of the Acquired Assets should be directed by written or telephonic request to: (i) co-counsel to the Debtors, Edward J. LoBello, Esq., Meyer, Suozzi, English & Klein, P.C., at 990 Stewart Avenue, P.O. Box 9194, Garden City, New York 11530, by telephone at (516) 592-5030, or by email at elobello@msek.com, or Frank A. Oswald, Esq., Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New

York 10119, by telephone at (212) 201-5590, or by email at frankoswald@teamtogut.com; or (ii) J. Scott Victor, SSG Capital Advisors, LLC, 300 Barr Harbor Drive, Suite 420, West Conshohocken, Pennsylvania 19428, by telephone at (610) 940-5802, or by email at jsvector@ssgca.com.

Dated: Garden City, New York  
August 20, 2020

RUBIE'S COSTUME COMPANY, INC., *et al.*,  
*Debtors and Debtors in Possession*  
By their Co-Counsel  
MEYER, SUOZZI, ENGLISH & KLEIN, P.C.

By: s/ Edward J. LoBello  
Edward J. LoBello  
Howard B. Kleinberg  
Jordan D. Weiss  
990 Stewart Avenue, Suite 300  
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- and -

TOGUT, SEGAL & SEGAL LLP  
Frank A. Oswald  
Brian F. Moore  
One Penn Plaza, Suite 3335  
New York, New York 10119  
(212) 594-5000

# **EXHIBIT A**

## **BIDDING PROCEDURES**<sup>1</sup>

On August 20, 2020 the United States Bankruptcy Court for the Eastern District of New York (the “**Bankruptcy Court**”) entered an order [dkt item 314] (the “**Bidding Procedures Order**”) approving, *inter alia*, these bidding procedures (the “**Bidding Procedures**”) and authorizing debtors and debtors-in-possession Rubie’s Costume Company Inc. (“**Rubie’s**”) Forum Novelties Inc. (“**Forum**”), Buyseasons Enterprises, LLC (“**Buyseasons**”), Masquerade, LLC (“**Masquerade**”), The Diamond Collection LLC (“**Diamond Collection**”), and Rubie’s Masquerade Company LLC (“**Rubie’s Masquerade**,” and, collectively, the “**Debtors**”) to sell, in the exercise of their good faith reasonable business judgment substantially all of the Debtors’ assets.

These Bidding Procedures set forth the process by which the Debtors are authorized to conduct the auction (“**Auction**”) for the sale (the “**Sale**”) of the Acquired Assets. Subject to entry of the Sale Order, the Sale may be implemented pursuant to the terms and conditions of such highest or otherwise best Bid (as defined below) received by the Debtors in accordance with these Bidding Procedures.

### **Bidding Process**

The Debtors, in the exercise of their good faith reasonable business judgment has designated the Buyer as the stalking horse bidder (the “**Stalking Horse Bidder**”) and the Purchase Agreement as a stalking horse bid (the “**Stalking Horse Bid**”). Pursuant to the Purchase Agreement and the Bidding Procedures Order, the Debtors may grant the Stalking Horse Bidder the following bid protections: (i) in the event the Sale is to a Bidder (as defined below) other than the Stalking Horse Bidder, an amount equal to 3% of the purchase price contained in the Stalking Horse Bid, in consideration of the Stalking Horse Bidder having expended considerable time and expense in connection with the Stalking Horse Bid and the negotiation thereof, and the identification and quantification of assets to be included in the Acquired Assets (the “**Break-Up Fee**”) and (ii) reimburse the Stalking Horse Bidder for its out of pocket costs, expenses and fees, in an amount not to exceed \$500,000, in connection with the evaluating, negotiating, documenting and performing the transactions contemplated by the Stalking Horse Bid, (the “**Expense Reimbursement**,” and together with the Break-Up Fee, the “**Bid Protections**”). Other than as set forth in the Bid Procedures Order or as separately approved by the Bankruptcy Court, no party submitting a bid, other than the Stalking Horse Bidder, shall be entitled to a break-up fee or expense reimbursement. For the avoidance of doubt, the Stalking Horse Bidder may not surrender or otherwise use its Bid Protections as currency in any Auction.

The Debtors and their advisors, in consultation with the Consultation Parties (as defined below), shall (i) determine whether any person is a Qualified Bidder (as defined below), (ii) coordinate the efforts of Potential Bidders (as defined below) in conducting their due diligence

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the motion for approval of, among other things, the Bidding Procedures (the “**Motion**”) or, if not defined therein, the Bidding Procedures Order.

investigations, (iii) receive offers from Potential Bidders, and (iv) negotiate any offers made to purchase the Acquired Assets.

### **Key Dates For Potential Competing Bidders**

The Debtors shall assist Potential Bidders (as defined below) in conducting their respective due diligence investigations and shall accept Bids (as defined below) until **September 16, 2020 at 12:00 p.m. (prevailing Eastern Time)** (the “**Bid Deadline**”).

No later than the Bid Deadline, a Potential Bidder that desires to make a bid to consummate the Sale shall deliver written copies of its Bid (as defined below) in electronic format to: (1) Rubie’s Costume Company, Inc. *et al.*, One Rubie Plaza, Richmond Hill, New York 11418, Attn: Marc P. Beige and Jeff Cohen; (2) co-counsel to the Debtors, Meyer, Suozzi, English & Klein, P.C., 990 Stewart Avenue, Suite 300, Garden City, New York 11530, Attn: Edward J. LoBello, Esq., Howard B. Kleinberg, Esq., and Jordan D. Weiss, Esq., and Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York 10119, Attn: Frank A. Oswald Esq. and Brian F. Moore, Esq.; (3) financial advisor to the Debtors, BDO USA, 1100 Peachtree Street NE, Suite 700, Atlanta, Georgia 30309, Attn: Baker Smith and James Schwarz; (4) investment banker to the Debtors, SSG Advisors, LLC, 300 Barr Harbor Drive, Suite 420, West Conshohocken, Pennsylvania 19428, Attn: J. Scott Victor; (5) counsel for the DIP Lender, Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York 10020, Attn: Robert M. Hirsh, Esq.; (6) counsel to the Official Committee of Unsecured Creditors, Arent Fox LLP, 1301 Avenue of the Americas, Floor 42, New York, New York 10019, Attn: George P. Angelich, Esq., Jordana L. Renert, Esq., and David J. Mayo, Esq.; (7) financial advisor to the Official Committee of Unsecured Creditors, CohnReznick Advisory, 4 Becker Farm Road, Roseland, New Jersey 07068, Attn: Kevin P. Clancy; (8) counsel to the Bank Group, Phillips Lytle LLP, 340 Madison Avenue, 17<sup>th</sup> Floor, New York, New York 10173, Attn: Nickolas Karavolas, Esq.; and (9) counsel to the Beige Family, Garfunkel Wild P.C., 111 Great Neck Road, Great Neck, New York 11021, Attn: Burton S. Weston, Esq.

The Debtors shall deliver, no later than twenty-four (24) hours following the Bid Deadline, written copies of any such Bid to counsel for each Qualified Bidder.

The key dates for the sale process are as follows:

September 16, 2020 at 12:00 p.m. EST	Bid Deadline – Due Date for Bids and Deposits
September 17, 2020 at 10:00 a.m. EST	Auction
September 18, 2020 at 10:00 a.m. EST	Sale Objection Deadline
September 21, 2020 at 4:00 p.m. EST	Sale Objection Response Deadline
September 23, 2020 at 10:00 a.m. EST	Sale Hearing

## Due Diligence

### *Access to Diligence Materials.*

To participate in the bidding process and to receive access to due diligence (the “**Diligence Materials**”), a party must submit to the Debtors (i) an executed confidentiality agreement in such form reasonably satisfactory to the Debtors, and (ii) reasonable evidence demonstrating the party’s financial capability to consummate a Sale as reasonably determined by the Debtors. A party who qualifies for access to Diligence Materials pursuant to the prior sentence shall be a “**Potential Bidder**.” The Stalking Horse Bidder will be deemed a Potential Bidder at all times.

The Debtors, and SSG will afford any Potential Bidder the time and opportunity to conduct reasonable due diligence, as determined by the Debtors, including reasonable access to management, access to the electronic data room and other information that a Potential Bidder may reasonably request, which information shall be substantially commensurate with that information given to the Stalking Horse Bidder; provided, however, that the Debtors shall not be obligated to furnish any due diligence information after the Bid Deadline to any party that has not submitted a Qualified Bid (as defined below). The availability of additional due diligence to a Qualified Bidder (as defined below) will cease on the Auction date; provided, however, that the Successful Bidder shall be permitted to continue to conduct due diligence until the closing of the Sale (subject to the terms of the Successful Bidder Purchase Agreement (as defined below)). The Debtors reserve the right to withhold any Diligence Materials that the Debtors determine are business-sensitive or otherwise not appropriate for disclosure to a Potential Bidder who is a competitor of the Debtors or is affiliated with any competitor of the Debtors. Neither the Debtors nor their representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Potential Bidder. The Debtors will make any diligence information available to the Stalking Horse Bidder if such diligence has been made available to any other Potential Bidder.

Each Potential Bidder will be deemed to acknowledge and represent that it (a) has had an opportunity to conduct any and all due diligence regarding the Debtors’ assets and liabilities that are the subject of the Auction to the extent of the assets and liabilities that are the subject of their Bid prior to making any such bids, (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the assets in making its bid, and (c) 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 Debtors’ assets or liabilities, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures. All due diligence requests must be directed to the Debtors and SSG.

### *Due Diligence from Potential Bidders.*

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



***Communications with Potential Bidders.***

There must be no communications between and amongst Potential Bidders, or between Potential Bidders and the Consultation Parties (as defined below), unless the Debtors have previously authorized such communication in writing or with the participation of representative of the Debtors or their advisors. Should any Potential Bidder attempt to communicate directly with a Consultation Party, such Consultation Party shall immediately direct the Potential Bidder to the Debtors' counsel and financial advisors. The Debtors reserve the right, in their reasonable business judgment, to disqualify any Potential Bidder(s) that have communications between and amongst themselves or with a Consultation Party without the participation of the Debtors (or a representative of the Debtors) or the Debtors' prior written consent. The Debtors further reserve their right, in their reasonable business judgment, to strip any Consultation Party that violates this provision (except as otherwise provided in this paragraph) of its consultation rights hereunder with approval of the Court; provided that the Debtors shall provide such Consultation Party with three days' notice that the Debtors are exercising their rights to strip the Consultation Party of their consultation rights and such Consultation Party shall have the ability to object on an emergency basis.

**Determination of Qualified Bid Status**

To be eligible for consideration as a Qualified Bid and to participate in the Auction, each Potential Bidder must deliver to the Debtors and their advisors a written, irrevocable offer (each, a "**Bid**") that must be determined by the Debtors, in their business judgment and in consultation with the Consultation Parties, to satisfy each of the following conditions:

- (a) **Good Faith Offer; Partial Bids:** Each Bid must constitute a good faith, *bona fide* offer to purchase some or all of the Acquired Assets.
- (b) **Good Faith Deposit:** Each Bid must be accompanied by a deposit in the amount of \$2,000,000 (the "**Good Faith Deposit**"). The Good Faith Deposit shall come in the form of a wire transfer, certified check or other form acceptable to the Debtors. Each Good Faith Deposit will be deposited and held in one or more interest-bearing escrow accounts by the Debtors, but shall not become property of the Debtors' estates absent further order of the Bankruptcy Court. Requests for wire instructions should be directed to Meyer, Suozzi, English, & Klein, P.C., Attn: James Garbus by email at [jgarbus@msek.com](mailto:jgarbus@msek.com).
- (c) **Same or Better Terms:** Each Bid must be on terms that in their totality are determined by the Debtors (in consultation with the Consultation Parties), in their business judgment, to be the same or better than the terms of the Stalking Horse Bid in their totality.
- (d) **Executed Agreement:** Each Bid must include executed transaction documents, signed by an authorized representative of such Potential Bidder, pursuant to which the Potential Bidder proposes to effectuate a Sale (a "**Modified Purchase Agreement**"). Each Bid must also include a copy of the Modified Purchase

Agreement marked against the Stalking Horse Bid to show all changes requested by the Potential Bidder (including those related to the assumption and assignment of contracts and licenses, and other material terms such that the Debtors may determine how such Bid compares to the terms of the Stalking Horse Bid and competing Bids). Each Modified Purchase Agreement must provide a commitment to close within two (2) business days after all closing conditions are met.

- (e) Minimum Bid: A Bid must propose a minimum purchase price, including any assumption of liabilities, that in the Debtors' reasonable business judgment (in consultation with the Consultation Parties) has a value greater than the sum of (i) the Cash Consideration<sup>2</sup> of the Stalking Horse Bid; (ii) the Break-Up Fee, (iii) the Expense Reimbursement, (iv) any assumed liabilities contained in the Stalking Horse Bid, and (v) a minimum Bid increment of \$1,000,000 (the "**Overbid Amount**") (the sum of which shall be the "**Minimum Bid Amount**").
- (f) Designation of Assigned Contracts and Leases: A Bid must identify any and all executory contracts and unexpired leases of the Debtors that the Potential Bidder wishes to be assumed pursuant to a Sale. A Bid must specify whether the Debtors or the Potential Bidder will be responsible for any cure costs associated with such assumption, and include a good faith estimate of such cure costs (which estimate shall be provided by the Debtors).
- (g) Designation of Assumed Liabilities: A Bid must identify all liabilities which the Potential Bidder proposes to assume.
- (h) Corporate Authority: A Bid must include written evidence reasonably acceptable to the Debtors demonstrating appropriate corporate authorization to consummate the proposed Sale; provided that, if the Potential Bidder is an entity specially formed for the purpose of effectuating the Sale, then the Potential Bidder must furnish written evidence reasonably acceptable to the Debtors of the approval of the Sale by the equity holder(s) of such Potential Bidder.
- (i) Disclosure of Identity of Potential Bidder: A Bid must fully disclose the identity of each entity that will be bidding for or purchasing the Acquired Assets or otherwise participating in connection with such Bid (including the identity of any parent companies of such entity), and the complete terms of any such participation, including any connections, agreements, arrangements or understandings with the Debtors, the Stalking Horse Bidder, or any other known,

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<sup>2</sup> The Cash Consideration component of a Bid shall be the sum of: (i) the amount due and owing under the DIP Loan; (ii) the amount due and owing under the Bank Group Indebtedness; and (iii) any cash payments proposed to be made to the Debtors estates. "Bank Group Indebtedness" shall mean the Prepetition Secured Obligations as defined in the DIP Financing Order (Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing (I) Granting Security Interests and Superpriority Administrative Expense Status; (III) Granting Adequate Protection to Certain Prepetition Secured Credit Parties; (IV) Modifying the Automatic Stay; (V) Authorizing the Debtors to Enter into Agreements with JMB Capital Partners Lending, LLC; and (VI) Authorizing Use of Cash Collateral). (dkt item 232).

potential, prospective bidder, or Potential Bidder, or any officer, director, or equity holder of the Debtors.

- (j) Proof of Financial Ability to Perform: A Bid must include written evidence that the Debtors may reasonably conclude, in consultation with their advisors and the Consultation Parties, demonstrates that the Potential Bidder has the necessary financial ability to timely consummate a Sale and must further contain information that can be publicly filed and/or disseminated providing adequate assurance of future performance of all contracts and leases to be assumed and assigned in such Sale. Such information must include, *inter alia*, the following:
- (1) contact names and numbers for verification of financing sources;
  - (2) written evidence of the Potential Bidder's internal resources and proof of any debt funding commitments from a recognized banking institution and, if applicable, equity commitments in an aggregate amount equal to the cash portion of such Bid or the posting of an irrevocable letter of credit from a recognized banking institution issued in favor of the Debtors in the amount of the cash portion of such Bid, in each case, as are needed to close the Sale;
  - (3) the Potential Bidder's most current audited (if any) and latest unaudited financial statements or, if the bidder is an entity formed for the purpose of making a bid, the current audited (if any) and latest unaudited financial statements of the equity holder(s) of the bidder or such other form of financial disclosure, and a guaranty from such equity holder(s);
  - (4) a description of the Potential Bidder's pro forma capital structure; and
  - (5) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors demonstrating that such Potential Bidder has the ability to promptly close the Sale.
- (k) Regulatory and Third Party Approvals: A Bid must set forth each regulatory and third-party approval required for the Potential Bidder to consummate the Sale, and the time period within which the Potential Bidder expects to receive such regulatory and third-party approvals, and the Debtors (in consultation with the Consultation Parties) may consider the timing of such approvals, and any actions the Potential Bidder will take to ensure receipt of such approvals as promptly as possible, when considering the other Bid Assessment Criteria (as defined below).
- (l) Conditions/Contingencies: A Bid must not be subject to material conditions or contingencies to closing, including without limitation governmental approval, obtaining financing, internal approvals or further due diligence.
- (m) Bid Irrevocable: A Bid must provide that it is irrevocable until two (2) business days after the closing of the Sale. Each Potential Bidder further agrees that its

Bid, if not chosen as the Successful Bidder, shall serve, without modification, as a Backup Bidder (as defined below) as may be designated by the Debtors at the Sale Hearing, in the event the Successful Bidder fails to close as provided in the Successful Bidder Purchase Agreement, as modified, if at all, and the Sale Order.

- (n) As-Is, Where-Is: A Bid must include the following disclaimer: (I) THE DEBTORS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, RELATING TO THE BUSINESS, THE ACQUIRED ASSETS OR THE ASSUMED LIABILITIES, INCLUDING ANY REPRESENTATION OR WARRANTY AS TO VALUE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR FOR ORDINARY PURPOSES, OR ANY OTHER MATTER, (II) THE DEBTORS MAKE NO, AND HEREBY DISCLAIM ANY, OTHER REPRESENTATION OR WARRANTY REGARDING THE BUSINESS, THE ACQUIRED ASSETS OR THE ASSUMED LIABILITIES, AND (III) THE ACQUIRED ASSETS AND THE ASSUMED LIABILITIES ARE CONVEYED ON AN “AS IS, WHERE IS” BASIS AS OF THE CLOSING, AND THE BUYER SHALL RELY UPON ITS OWN EXAMINATION THEREOF. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY ANCILLARY DOCUMENT DELIVERED BY THE DEBTORS PURSUANT TO THIS AGREEMENT, THE DEBTORS MAKE NO REPRESENTATION OR WARRANTY REGARDING ANY BUSINESS OTHER THAN THE BUSINESS, ANY ASSETS OTHER THAN THE ACQUIRED ASSETS OR ANY LIABILITIES OTHER THAN THE ASSUMED LIABILITIES, AND NONE SHALL BE IMPLIED AT LAW OR IN EQUITY.
- (o) Time Frame for Closing. A Bid by a Potential Bidder must be reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid, within a time frame acceptable to the Debtors (in consultation with the Consultation Parties), but in no event later than September 30, 2020. The Debtors reserve the right to seek Court approval of an extension of the date by which the transaction must close beyond September 30, 2020.
- (p) Consent to Jurisdiction. Each Potential Bidder must (i) submit to the jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Debtors, the Bidding Procedures, the Auction, any Modified Purchase Agreement, or the construction and enforcement of documents relating to any Sale, (ii) waive any right to a jury trial in connection with any disputes relating to the Debtors, the Bidding Procedures, the Auction, any Modified Purchase Agreement, or the construction and enforcement of documents relating to any Sale and (iii) commit to the entry of a final order or judgment in any way related to the Debtors, the Bidding Procedures, the Auction, any Modified Purchase Agreement, or the construction and enforcement of documents relating to any Sale 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.

- (q) No Bid Protections. A Bid must not entitle the Potential Bidder to any break-up fee, termination fee, transaction fee, expense reimbursement, or any similar type of payment or reimbursement and, by submitting a Bid, the Potential Bidder waives the right to pursue a substantial contribution claim under 11 U.S.C. § 503 related in any way to the submission of its Bid or participation in any Auction. Each Potential Bidder presenting a Bid will bear its own costs and expenses (including legal fees) in connection with any proposed Sale. For the avoidance of doubt, the Stalking Horse Bidder shall not be considered a Potential Bidder for purposes of this paragraph.

A Bid received from a Potential Bidder that meets the above requirements, as determined by the Debtors in consultation with the Consultation Parties, shall constitute a “**Qualified Bid**” for such assets (and such Potential Bidder, a “**Qualified Bidder**”); provided that if the Debtors receive a Bid prior to the Bid Deadline that is not a Qualified Bid, the Debtors may provide the Bidder with the opportunity to remedy any deficiencies prior to the Auction.

All information disclosed by any Bidder in connection with all of the preceding requirements will be made available by the Debtors to the Consultation Parties promptly upon the Debtors’ receipt thereof but in any event no later than twenty-four (24) hours following the earlier of receipt of a Bid and the Bid Deadline; provided that any confidential financing and/or equity commitment documents received from a Bidder shall only be shared with the Consultation Parties on a professional-eyes’-only basis.

Within two (2) business days after the Bid Deadline, the Debtors and their advisors (in consultation with the Consultation Parties) will determine which Potential Bidders are Qualified Bidders and will notify the Potential Bidders whether Bids submitted constitute Qualified Bids so as to enable such Qualified Bidders to bid at the Auction. Any Bid that is not deemed a Qualified Bid will not be considered by the Debtors. To the extent there is any dispute regarding whether a bidder is a Qualified Bidder, such dispute may be raised with the Bankruptcy Court on an expedited basis prior to the commencement of the Auction.

Prior to the Auction, the Debtors and their advisors will evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors’ reasonable business judgment and in consultation with the Consultation Parties, the highest or otherwise best bid (the “**Starting Bid**”). In making such determination, the Debtors will take into account, among other things, the execution risk attendant to any submitted bids. By September 16, 2020 at 5:00 p.m., the Debtors will (i) notify the Consultation Parties and the Stalking Horse Bidder as to which Qualified Bid is the Starting Bid and (ii) distribute copies of the Starting Bid to each Qualified Bidder who has submitted a Qualified Bid and the Consultation Parties.

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

By submitting its Bid, each Potential Bidder is agreeing with each other Potential Bidder to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after the Auction.

### **Auction**

If one or more Qualified Bids are received by the Bid Deadline, the Debtors will conduct an auction (the “Auction”) to determine the highest or otherwise best Qualified Bid. This determination shall take into account any factors the Debtors (in consultation with the Consultation Parties) reasonably deem relevant to the value of the Qualified Bid to the estates and may include, but are not limited to, the following: (a) the amount and nature of the consideration, including any assumed liabilities; (b) if applicable, the number, type and nature of any changes to the Stalking Horse Bid requested by each Qualified Bidder; (c) the extent to which such modifications or provisions are likely to delay closing of the sale of the Debtors’ assets and the cost to the Debtors of such modifications or delay; (d) the total consideration to be received by the Debtors; (e) the likelihood of the Qualified Bidder’s ability to close a transaction and the timing thereof; (f) the net benefit to the Debtors’ estates, taking into account, if applicable, the Stalking Horse Bidder’s right to any Break-Up Fee or Expense Reimbursement; and (g) any other qualitative or quantitative factor the Debtors deem reasonably appropriate under the circumstances (collectively, the “**Bid Assessment Criteria**”). For the avoidance of doubt, a combination of more than one Qualified Bid for less than all of the Debtors’ assets may be combined to form a Successful Bid.

If no Qualified Bids other than the Stalking Horse Bid are received prior to the Bid Deadline, then the Auction will not occur, the Debtors will pursue entry of an order by the Bankruptcy Court approving such Bid and authorizing the Sale to the Stalking Horse Bidder as soon as practicable.

### **Procedures for Auction**

The Auction, if necessary, shall take place on **September 17, 2020 at 10:00 a.m. (prevailing Eastern Time)** by Zoom videoconference, or in such other manner (phone and/or other video platform) as the Debtors shall notify all Qualified Bidders that have submitted Qualified Bids and the Consultation Parties. The Auction may be postponed, adjourned or cancelled as the Debtors (in consultation with the Consultation Parties) deem appropriate; provided, however, that the Auction may not be postponed or adjourned beyond September 18, 2020 without Court approval. Reasonable notice as is reasonably practicable under the circumstances of such postponement or adjournment and the time and place for the commencement or resumption of the Auction or cancellation shall be given to all Qualified Bidders. The Auction shall be conducted according to the following procedures:

#### ***Participation.***

Only the Debtors, the Consultation Parties, and any Qualified Bidder that has submitted a Qualified Bid, in each case, along with their representatives and counsel, or such other parties as the Debtors shall determine shall attend the Auction (such attendance to be by phone or video)

and only such Qualified Bidders (including the Stalking Horse Bidder) will be entitled to make any Bids at the Auction.

***The Debtors Shall Conduct the Auction.***

The Debtors and SSG, and the Debtors' other professionals shall direct and preside over the Auction and the Auction shall be transcribed. Other than as expressly set forth herein, the Debtors may conduct the Auction in the manner they reasonably determine (in consultation with the Consultation Parties) will result in the highest or otherwise best Qualified Bid. The Debtors shall provide each participant in the Auction with a copy of the Modified Purchase Agreement associated with the Starting Bid. In addition, at the start of the Auction, the Debtors shall describe the terms of the Starting Bid. Each Qualified Bidder (including the Stalking Horse Bidder) participating in the Auction must confirm that it (a) has not engaged in any collusion with respect to the bidding or sale of any of the assets described herein and (b) has reviewed, understands and accepts the Bidding Procedures.

All Qualified Bidders, including, if applicable, the Stalking Horse Bidder (each, a "**Competing Bidder**" and together, the "**Competing Bidders**"), if any, may submit further Bids, along with a markup or a further markup of the applicable Stalking Horse Bid or prior Bid of such Bidder. The Auction will be conducted in rounds. All Qualified Bidders are required to bid in each round or they forfeit their right to participate in subsequent rounds. At any time, a Qualified Bidder may request that the Debtors announce the then current highest and best bid. If requested, the Debtors shall use reasonable efforts to clarify any and all questions any Qualified Bidder may have regarding the Debtors' announcement of the Starting Bid or the then current and highest bid.

***Terms of Overbids.***

An "**Overbid**" is any bid made at the Auction subsequent to the Debtors' announcement of the respective Starting Bid. Any Overbid for purposes of this Auction must comply with the following conditions:

- (a) **Minimum Overbid Increments:** Any Overbid after and above the respective Starting Bid or any subsequent Overbid shall be made in increments valued at not less than \$500,000. Additional consideration in excess of the amount set forth in the respective Starting Bid may include cash and/or noncash consideration, provided, however, that the value for such non-cash consideration shall be determined by the Debtors in their reasonable business judgment and in consultation with the Consultation Parties.
- (b) **Remaining Terms Are the Same as for Qualified Bids:** Except as modified herein, an Overbid at the Auction must comply with the conditions for a Qualified Bid set forth above, provided, however, that (i) the Bid Deadline shall not apply and (ii) no additional Good Faith Deposit shall be required beyond the Good Faith Deposit previously submitted by a Qualified Bidder, provided that the Successful Bidder shall be required to make a representation at the end of the Auction that it will provide any additional deposit necessary so that its Good Faith Deposit is

equal to the amount of ten percent (10%) of the cash purchase price contained in the Successful Bid. Any Overbid must include, in addition to the amount and the form of consideration of the Overbid, if applicable, a description of all changes (if any) requested by the Qualified Bidder to the Stalking Horse Bid or a previously submitted Modified Purchase Agreement, in connection therewith (including any changes to the designated assigned contracts and leases and assumed liabilities). Any Overbid must remain open and binding on the Qualified Bidder until and unless the Debtors accept a higher or otherwise better Overbid from another Qualified Bidder (except, to the extent required hereby, to serve as the Backup Bid).

At the Debtors' discretion (in consultation with the Consultation Parties), to the extent not previously provided (which shall be determined by the Debtors), a Qualified Bidder submitting an Overbid at the Auction must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors) reasonably demonstrating such Qualified Bidder's ability to close the Sale proposed by such Overbid.

***Announcement and Consideration of Overbids.***

- (a) Announcement of Overbids: The Debtors shall announce at the Auction the material terms of each Overbid, the total amount of consideration offered in each such Overbid, the basis for calculating such total consideration and such other terms as the Debtors reasonably determine will facilitate the Auction.
- (b) Consideration of Overbids: Subject to the deadlines set forth herein, the Debtors (in consultation with the Consultation Parties) reserve the right in their reasonable business judgment, to make one or more continuances of the Auction to, among other things: facilitate discussions between the Debtors and individual Qualified Bidders or allow individual Qualified Bidders to consider how they wish to proceed.

***Closing the Auction.***

The Auction shall continue until there is one Qualified Bid that the Debtors determine in their reasonable business judgment (in consultation with the Consultation Parties) is the highest or otherwise best Qualified Bid at the Auction. Thereafter, the Debtors shall select such Qualified Bid as the overall highest or otherwise best Qualified Bid (such Bid, the "**Successful Bid**," the Qualified Bidder submitting such Successful Bid, the "**Successful Bidder**" and the Qualified Bidder's purchase agreement, the "**Successful Bidder Purchase Agreement**"). In making this decision, the Debtors shall consider the Bid Assessment Criteria.

The Auction shall close when the Successful Bidder submits fully executed sale and transaction documents memorializing the terms of the Successful Bid.



Promptly following the Debtors' selection of the Successful Bid and the conclusion of the Auction, the Debtors shall announce the Successful Bid and Successful Bidder and shall file with the Bankruptcy Court notice of the Successful Bid and Successful Bidder.

The Debtors shall not consider any Bids submitted after the conclusion of the Auction.

***Designation of Backup Bidder.***

Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next highest or otherwise best Bid at the Auction, as determined by the Debtors (in consultation with the Consultation Parties), in the exercise of their business judgment, will be designated as the backup bidder (the "**Backup Bidder**"). The Backup Bidder shall be required to keep its initial Bid (or if the Backup Bidder submitted one or more Overbids at the Auction, the Backup Bidder's final Overbid) (the "**Backup Bid**") open and irrevocable until the earlier of (i) 5:00 p.m. (prevailing Eastern Time) on the date that is at least thirty (30) calendar days after the date of entry of the Sale Order (the "**Outside Backup Date**"), or (ii) the closing of the transaction with the Successful Bidder.

Following the Sale Hearing, if the Successful Bidder fails to consummate an approved transaction, the Backup Bidder will be deemed to have the new prevailing bid, and the Debtors will be authorized, but not required, without further order of the Bankruptcy Court, to consummate the transaction with the Backup Bidder.

***Additional Procedures***

The Debtors may announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction so long as such rules are not inconsistent in any respect with the Bidding Procedures.

***Sale Is As Is/Where Is.***

Except as otherwise provided in the Successful Bidder Purchase Agreement or the Sale Order, the Acquired Assets or any other assets of the Debtors sold pursuant to the Bidding Procedures, shall be conveyed at the closing of a transaction with a Successful Bidder in their then-present condition, "**AS IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.**" Except as may be set forth in the Successful Bidder Purchase Agreement or the Sale Order, the Acquired Assets are sold free and clear of any and all liens, claims, interests, restrictions, charges and encumbrances of any kind or nature to the fullest extent permissible under the Bankruptcy Code, with such liens, claims, interests, restrictions, charges, and encumbrances to attach to the net proceeds of sale with the same validity and in the same order of priority.

***Sale Hearing.***

A hearing to consider approval of the Successful Bid (the "**Sale Hearing**") is presently scheduled to take place on **September 23, 2020, at 10:00 a.m., prevailing Eastern Time**, at the Bankruptcy Court.

At the Sale Hearing, the Debtors will present the Successful Bid to the Bankruptcy Court for approval.

### **Bid Protections**

In the event the Stalking Horse Bidder is not the Successful Bidder, the Debtors shall pay, in consideration of its being the Stalking Horse Bidder and to reimburse it for its reasonable and necessary out of pocket expenses, the Bid Protections, including the Breakup Fee and the Expense Reimbursement, to the Stalking Horse Bidder in accordance with the terms and conditions set forth in such Stalking Horse Bid and as approved by the Bankruptcy Court in the Bidding Procedures Order. No other bidder will be entitled to any expense reimbursement, break-up fee, termination or similar fee or payment.

### **Return of Good Faith Deposits of Qualified Bidders**

The Good Faith Deposits of all Qualified Bidders shall be held in one or more interest-bearing escrow accounts by the Debtors, but shall not become property of the Debtors' estates absent further order of the Bankruptcy Court. The Good Faith Deposit of any Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder shall be returned to such Qualified Bidder not later than five (5) business days after the Sale Hearing. If the Backup Bidder is not designated the Successful Bidder, the Good Faith Deposit of the Backup Bidder, if any, shall be returned to the Backup Bidder on the date that is the earlier of seventy-two (72) hours after (a) the closing of the transaction with the Successful Bidder and (b) the Outside Backup Date. The Good Faith Deposit of the Successful Bidder shall be held until the closing of the sale of the Acquired Assets and applied in accordance with the Successful Bid. In the case of a breach or failure to perform on the part of the Successful Bidder (including any Backup Bidder designated as a Successful Bidder), the defaulting Successful Bidder's Good Faith Deposit shall be forfeited to the Debtors as liquidated damages, in addition to any and all rights, remedies and/or causes of action that may be available to the Debtors at law or in equity, and, the Debtors shall be free to consummate the proposed transaction at the next highest price bid at the Auction by a Qualified Bidder, without the need for an additional hearings or orders of the Courts. The Debtors, on their behalf and on behalf of each of their respective estates, specifically reserve the right to seek all available damages, including specific performance, from any defaulting Successful Bidder (including any Backup Bidder designated as a Successful Bidder) in accordance with the terms of the Bidding Procedures. Upon the return of the Good Faith Deposits, their respective owners shall receive any and all interest that will have accrued thereon. If the Successful Bidder timely closes the winning transaction, its Good Faith Deposit shall be credited towards the purchase price.

### **The Consultation Parties**

The Debtors shall consult with the Committee, the DIP Lender and the Bank Group, (collectively, the "**Consultation Parties**") and each, a "**Consultation Party**") as explicitly provided for in the Bidding Procedures.

**Reservation of Rights of the Debtors**

Except as otherwise provided in the Bidding Procedures or the Bidding Procedures Order, the Debtors (in consultation with the Consultation Parties) further reserve the right as they may reasonably determine to be in the best interest of their estates and in the exercise of their fiduciary duties to: (a) determine which bidders are Qualified Bidders; (b) determine which Bids are Qualified Bids; (c) determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (d) reject any Bid that is (1) inadequate or insufficient, (2) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code or (3) contrary to the best interests of the Debtors and their estates; (e) impose additional terms and conditions with respect to all potential bidders; (f) extend the deadlines set forth herein (with the approval of the Stalking Horse Bidder); and (g) continue or cancel the Auction and/or Sale Hearing in open court without further notice.