

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

In re:

MRRC HOLD CO., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11164 (CTG)

(Jointly Administered)

Re: Docket Nos. 70, 149 & 170

ORDER (A) APPROVING BIDDING PROCEDURES FOR ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) AUTHORIZING THE DEBTORS TO DESIGNATE A STALKING HORSE BID, (C) SCHEDULING AN AUCTION AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (D) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES, AND (E) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (F) GRANTING RELATED RELIEF

This matter came before the Court on July 2, 2024 (the "Bid Procedures Hearing") upon the *Debtors' Motion for Entry of Orders (I)(A) Approving Bidding Procedures for All or Substantially All of the Assets of Rubio's Restaurants, Inc. and Rubio's Incentives, LLC, (B) Authorizing the Debtors to Designate a Stalking Horse Bid, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, and (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors' 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. 70]* (the "Sale

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: MRRC Hold Co. (1242); Rubio's Restaurants, Inc. (0303); and Rubio's Incentives, LLC (9359). The Debtors' mailing address is 2200 Faraday Avenue, Suite 250, Carlsbad, CA 92008.

Motion)² filed by the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”); the Court having reviewed the Sale Motion and the Rubin Declaration and the Stratton Declaration, and having considered the statements of counsel and the evidence adduced with respect to certain of the relief requested in the Sale Motion at the Bid Procedures Hearing; and after due deliberation, this Court having determined that the legal and factual bases set forth in the Sale Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates and their creditors, and the Debtors having demonstrated good, sufficient and sound business justifications for the relief granted herein;

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. Jurisdiction and Venue. The Court has jurisdiction over this matter pursuant to 28 U.S.C. Sections 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. Section 157(b). Venue is proper before this Court pursuant to 28 U.S.C. Sections 1408 and 1409.

B. Statutory and Legal Predicates. The statutory and legal predicates for the relief requested in the Sale Motion are Sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code; Bankruptcy Rules 2002, 6004, 6006, 9007, and 9008; and Local Rules 2002-1 and 6004-1.

C. Sale Process. The Debtors and their advisors have engaged pre-petition with a number of potentially interested parties to solicit and develop the highest and otherwise best stalking horse bid or other offers for the Assets.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Sale Motion or in the Bid Procedures, as applicable.

³ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent 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.

D. Bid Procedures. The Debtors have articulated good and sufficient business reasons for the Court to approve the bidding procedures attached hereto as **Exhibit 1** (the “Bid Procedures”). The Bid Procedures are fair, reasonable, and appropriate and are designed to maximize the value of the proceeds of one or more sales (each, a “Sale Transaction”) of all or substantially all of the Debtors’ assets (the “Assets”). The Bid Procedures were negotiated in good faith and at arm’s length and are reasonably designed to promote a competitive and robust bidding process to generate the greatest level of interest in the Assets.

E. Sale Notice. The sale notice, the form of which is attached as **Exhibit 2** (the “Sale Notice”), is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale Hearing (as defined in the Bid Procedures), the Bid Procedures, the Sale Transaction(s), and all relevant and important dates and objection deadlines with respect to the foregoing, and no other or further notice of the Sale Hearing, the Sale Transaction(s), or the Auction shall be required.

F. Assumption and Assignment Provisions. The Debtors have articulated good and sufficient business reasons for the Court to approve the assumption and assignment procedures set forth herein and in the Bid Procedures (the “Assumption and Assignment Procedures”) and the assumption and assignment notice attached hereto as **Exhibit 3** (the “Assumption and Assignment Notice”), which are fair, reasonable, and appropriate. The Assumption and Assignment Procedures comply with the provisions of Section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

G. Assumption and Assignment Notice. The Assumption and Assignment Notice is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Assumption and Assignment Procedures, as well as any and all objection deadlines

related thereto, and no other or further notice shall be required for the Sale Motion and the procedures described therein, except as expressly required herein.

H. Notice. Notice of the Sale Motion, the proposed Bid Procedures, the proposed designation of a stalking horse and the Bid Procedures Hearing was (i) appropriate and reasonably calculated to provide all interested parties with timely and proper notice, (ii) in compliance with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules and (iii) adequate and sufficient under the circumstances of the Debtors' Chapter 11 Cases, such that no other or further notice need be provided except as set forth in the Bid Procedures and the Assumption and Assignment Procedures. A reasonable opportunity to object and be heard regarding the relief granted herein has been afforded to all parties in interest.

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

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

A. The Bid Procedures

3. The Bid Procedures attached hereto as Exhibit 1 are hereby approved, are incorporated herein by reference, and shall govern the bids and proceedings related to the sale of the Assets and the Auction. The procedures and requirements set forth in the Bid 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 necessary or appropriate to implement the Bid Procedures.

4. The failure to specifically include or reference any particular provision of the Bid Procedures in the Sale Motion or this Order shall not diminish or otherwise impair the effectiveness of such procedures, it being the Court's intent that the Bid Procedures are approved in their entirety, as is fully set forth in this Order.

5. Subject to this Order and the Bid Procedures, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law and in consultation with the Consultation Parties, shall have the right to (a) determine which bidders qualify as Qualified Bidders (as defined in the Bid Procedures) and which bids qualify as Qualified Bids, *provided, however* that TREW shall be a Qualified Bidder under all circumstances, (b) make final determinations as to Auction Packages, if any (as defined in the Bid Procedures), (c) select the Baseline Bid; (d) determine the amount of each Minimum Overbid (as defined in the Bid Procedures), (e) determine the Leading Bid (as defined in the Bid Procedures); (f) determine which Qualified Bid is the Successful Bid and which Qualified Bid is the Backup Bid (each as defined in the Bid Procedures) after the Successful Bid; (g) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of this Order or any other applicable order of the Court, the Bid Procedures, the Bankruptcy Code or other applicable law, and/or (iii) contrary to the best interests of the Debtors and their estates; (h) schedule and conduct Sub-Auctions, as necessary; (i) cancel the Auction with respect to any or all of the Assets in accordance with the Bid Procedures; and (j) adjourn or reschedule the Sale Hearing with respect to a Sale Transaction involving any or all of the Assets in accordance with the Bid Procedures; provided, that such determinations, decisions, or actions (i) do not conflict with and are not inconsistent with this

Order, the Sale Procedures, the interim and final DIP Orders and DIP Agreement (the “**DIP Documents**”), the Bankruptcy Code, or any order of the Bankruptcy Court, and (iii) are in form and substance acceptable to TREW in its capacity as DIP Lender.

6. The Debtors shall have the right to, in their reasonable business judgment, and in a manner consistent with their fiduciary duties and applicable law, in consultation with any Stalking Horse Bidder (as defined below) and the Consultation Parties, modify the Bid Procedures, including to, among other things, (a) extend or waive deadlines or other terms and conditions set forth therein, (b) adopt new rules and procedures for conducting the bidding and Auction process, (c) if applicable, provide reasonable accommodations to any Stalking Horse Bidder, or (d) otherwise modify the Bid Procedures to further promote competitive bidding for and maximizing the value of the Assets; provided, that such extensions, waivers, new rules and procedures, accommodations and modifications (i) do not conflict with and are not inconsistent with this Order, the Bid Procedures, the DIP Documents the Bankruptcy Code or any order of the Bankruptcy Court, (ii) are promptly communicated to each Qualified Bidder and (iii) are in form and substance acceptable to TREW.

B. The Stalking Horse Bid

7. The Debtors may enter into a stalking horse asset purchase agreement (“Stalking Horse APA”) with the DIP Lender (in such capacity, the “Stalking Horse Bidder”) upon filing a Notice of Intent to Enter into a Stalking Horse APA and a proposed form of Order approving such Stalking Horse APA (the “Stalking Horse Notice”) and service of such notice on the Office of the U.S. Trustee for the District of Delaware, counsel for any official committee appointed in these cases, and all parties requesting notice under Bankruptcy Rule 2002. If no objection to the proposed Stalking Horse Notice is filed within 5 business days of notice thereof, the Debtors may

submit an order under certification of no objection for approval of the Stalking Horse APA and the Stalking Horse Bidder. If such an objection is timely filed, the Debtors may seek an expedited hearing to consider approval of the Stalking Horse APA and the Stalking Horse Bidder. For the avoidance of doubt, the Debtors shall not provide bid protections to the DIP Lender.

C. Bid Deadline and Auction

8. Any Prospective Bidder (as defined in the Bid Procedures) that intends to participate in the Auction must submit in writing to the Bid Notice Parties (as defined in the Bid Procedures) a Bid on or before **July 25, 2024, at 5:00 p.m. (prevailing Eastern Time)** (the “Bid Deadline”). The deadline for the Debtors (in consultation with the Consulting Parties and TREW) to notify Qualified Bidders is **July 26, 2024**, or as soon as practicable thereafter.

9. The Debtors may consider a Bid for less than all of the Assets (each such Bid, a “Partial Bid”) if the Debtors receive one or more Partial Bids for the Assets such that, when taken together, and after considering the risks associated with consummating several individual Bids, the Partial Bids collectively constitute a higher and otherwise better bid as compared to the highest and best bid for all or substantially all of the Assets.

10. The Auction, if required, will be conducted on **July 30, 2024, at 11 a.m. (prevailing Pacific Time)**, at the offices of Raines Feldman Littrell LLP, 1900 Avenue of the Stars, 19th Floor, Los Angeles, CA 90067, or at such other time and place as the Debtors will timely notify all Sale Notice Parties (as defined in the Bid Procedures). If held, the Auction proceedings will be transcribed or recorded.

11. Only a Qualified Bidder that has submitted a Qualified Bid shall be eligible to participate in the Auction, subject to any other limitations as the Debtors may reasonably impose in accordance with the Bid Procedures. Qualified Bidders participating in the Auction must appear

at the Auction (which appearance must be in person unless the Auction takes place via Zoom), directly or through a duly authorized representative with authority to enter into any bid or asset purchase agreement that may be presented on behalf of the Qualified Bidder. The Debtors may establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of or accompany each Qualified Bidder at the Auction. Notwithstanding the foregoing, the Auction shall be conducted openly, and all creditors shall be permitted with prior registration to attend in person (or via Zoom if the Auction is held in such manner).

12. Each Qualified Bidder participating in the Auction shall confirm in writing on the record at the Auction that (a) it has not engaged in any collusion with respect to the Auction or the submission of any bid for any of the Assets, and (b) its Qualified Bid that gained the Qualified Bidder admission to participate in the Auction and each Qualified Bid submitted by the Qualified Bidder at the Auction constitutes a binding, good-faith and *bona fide* offer to purchase the Assets identified in such bids.

13. In the event the Debtors (in consultation with the Consultation Parties and TREW) determine not to hold an Auction for some or all of the Assets, the Debtors shall file with the Court, serve on the Sale Notice Parties and cause to be published on the website maintained by Stretto located at <https://cases.stretto.com/rubios/> (the “Claims Agent Website”), a notice of cancellation of the Auction.

14. No later than 12:00 p.m. (prevailing Eastern Time) on **July 31, 2024**, the Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Claims Agent Website, a notice setting forth the results of the Auction (the “Notice of Auction Results”), which shall (i) identify each Successful Bidder and each Backup Bidder, (ii) include a copy of each Successful Bid, including any assumption and assignment of Contracts (as defined in the Bid

Procedures) contemplated thereby, as well as a copy of, or a summary of the material terms of, each Backup Bid, and (iii) set forth the Post-Auction Objection Deadline, the date, time and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

D. Credit Bidding

15. TREW shall be deemed to be a Qualified Bidder, and TREW (or its designee) may credit bid pursuant to and subject to Section 363(k) of the Bankruptcy Code and thus is not required to provide a Deposit to the Debtors. TREW (or its designee) has the unqualified right at any time to credit bid on a dollar-for-dollar basis up to \$45 million of the Prepetition Obligations, the DIP Loan Obligations, and Adequate Protection Superpriority Claims, if any.

16. Each counterparty to an unexpired lease of nonresidential real property (“Landlord”) shall be deemed to be a Qualified Bidder for any bid on such lease, and may offset the proposed purchase price for such lease with all or a portion of the applicable cure amount owed by the Debtors for such lease. If a Landlord is the Successful Bidder on its lease, and it is later determined by this Court or agreement by and among the Debtors and the Landlord that the actual cure amount is a lesser amount, then the Landlord shall pay the difference in cash upon the later to occur of (i) the closing of such sale, or (ii) such determination or agreement.

E. Sale Hearing and Objection Procedures

17. Consummation of any Sale Transaction pursuant to a Successful Bid shall be subject to Court approval. The Sale Hearing shall be held before the Court on **August 5, 2024, at 3:30 p.m. (prevailing Eastern Time)**.

18. By July 15, 2024 (prevailing Eastern Time), the Debtors shall file with the Court and serve on all parties requesting notice pursuant to Bankruptcy Rule 2002 the proposed form of order approving the Sale Transaction

19. All general objections to any Sale Transaction (each, a “Sale Objection”) shall be (i) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, (ii) be filed with the Court, and (iii) served on the Objection Notice Parties (as defined in the Bid Procedures) by no later than **July 26, 2024, at 5:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”).

20. Following service of the Notice of Auction Results, parties may object (each such objection, a “Post-Auction Objection”) to: (i) the conduct of the Auction, (ii) adequate assurance of future performance for any Successful Bid or Backup Bid (including any Stalking Horse Bid if designated as the Successful Bid or Backup Bid), and (iii) other than with respect to any Stalking Horse Bid, the particular terms of any proposed Sale Transaction in a Successful Bid or Backup Bid. Any Post-Auction Objection shall be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, (b) be filed with the Court, and (c) served on the Objection Notice Parties by no later than **August 1, 2024, at 5:00 p.m. (prevailing Eastern Time)** (the “Post-Auction Objection Deadline”).

21. Any party who fails to file and serve a timely Sale Objection or Post-Auction Objection in accordance with the terms of this Order shall be forever barred from asserting, at the Sale Hearing or thereafter, any Sale Objection or Post-Auction Objection to the relief requested in the Sale Motion, or to the consummation or performance of the applicable Sale Transaction(s), including the transfer of Assets to the applicable Successful Bidder free and clear of liens, claims,

interests and encumbrances pursuant to Section 363(f) of the Bankruptcy Code, and shall be deemed to “consent” to such sale for purposes of Section 363(f) of the Bankruptcy Code.

F. Notice of Sale Transaction

22. The Sale Notice, substantially in the form attached hereto as **Exhibit 2**, is approved, and no other or further notice of the proposed sale of the Assets, the Auction, the Sale Hearing, the Sale Objection Deadline or the Post-Auction Objection Deadline shall be required if the Debtors serve on the Sale Notice Parties, and on all known creditors (for whom identifying information and addresses are available to the Debtors), and publish the Sale Notice in the manner provided in the Bid Procedures and this Order. A copy of the Sale Notice shall also be provided to all parties who have executed confidentiality agreements with the Debtors under the marketing process by Hilco Corporate Finance, LLC, the Debtors’ proposed investment banker.

23. By the later of July 5, 2024, or two (2) business days after the entry of this Order, the Debtors shall file with the Court, serve on the Sale Notice Parties and cause to be published on the Claims Agent Website, the Sale Notice.

24. Within five (5) business days after the entry of this Order, or as soon thereafter as reasonably practicable, the Debtors shall cause the information contained in the Sale Notice to be published once in *The Wall Street Journal* (national edition), *Los Angeles Times*, or a similar regional or national publication (the “Publication Notice”).

25. The Publication Notice complies with the provisions of Bankruptcy Rule 9008 and is deemed sufficient and proper notice of the proposed sale of the Assets, the Auction, the Sale Hearing, the Sale Objection Deadline, and the Post-Auction Objection Deadline to any other interested parties whose identities are unknown to the Debtors.

G. Assumption and Assignment Procedures

26. 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, Bankruptcy Rules, and Local Rules, and are approved.

27. The Assumption and Assignment Notice, substantially in the form attached hereto as **Exhibit 3**, is approved, and no other or further notice of the Debtors' proposed Cure Amounts (as defined in the Assumption and Assignment Notice) with respect to Contracts listed on an Assumption and Assignment Notice is necessary or required. The Assumption and Assignment Notice will be filed no later than July 2, 2024, and shall be promptly served on the Sale Notice Parties. When issued, the Assumption and Assignment Notice shall (i) identify the relevant Contract(s), (ii) set forth a good faith estimate of the Cure Amount(s), (iii) include a statement that assumption and assignment of each such Contract is not required nor guaranteed, and (iv) inform such Counterparty of the requirement to file any Contract Objection(s) (as subsequently defined) by the Contract Objection Deadline (as subsequently defined).

28. Any objection to the Debtors' proposed Cure Amounts (as defined in the Assumption and Assignment Notice) or assumption and assignment on any basis (each such objection, a "Contract Objection") (except objections solely related to adequate assurance of future performance by a Successful Bidder or any Stalking Horse Bidder) shall (a) be in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, (b) be filed with the Court; and (c) be served on the Objection Notice Parties by no later than the date that is **14 calendar days after service of the applicable Assumption and Assignment Notice** (the "Contract Objection Deadline").

29. The Debtors and any objecting Counterparty shall first confer in good faith to attempt to resolve the Contract Objection without Court intervention. If the parties are unable to consensually resolve the Contract Objection prior to the commencement of the Sale Hearing (each such Contract Objection, an “Adjourned Contract Objection”), the Court shall make all necessary determinations relating to such Contract Objection at a subsequent hearing scheduled pursuant to this Order on at least five (5) days’ notice to the applicable Counterparty. If a Contract Objection is resolved in a manner that is not in the best interests of the Debtors and their estates, whether or not such resolution occurs prior to or after the closing of the applicable Sale Transaction, the applicable Successful Bidder may determine that any Contract subject to such resolved Contract Objection no longer will be assumed and assigned in connection with the applicable Sale Transaction (subject to the terms of the applicable Sale Transaction); provided, however, that such determination must occur before the expiration of the Debtors’ deadline pursuant to section 365(d)(4) of the Bankruptcy Code, as such deadline may be extended by an order of the Court. All other objections to the Debtors’ proposed assumption and assignment of the Debtors’ right, title and interest in, to and under a Contract shall be heard at the Sale Hearing.

30. An Adjourned Contract Objection may be resolved after the closing date of the applicable Sale Transaction; provided, however, that such determination must occur before the expiration of the Debtors’ deadline pursuant to section 365(d)(4) of the Bankruptcy Code, as such deadline may be extended by an order of the Court. Upon resolution of an Adjourned Contract Objection and the payment of the applicable Cure Amount or resolution of the assumption and assignment issue, if any, the Contract that was the subject of such Adjourned Contract Objection shall be deemed assumed and assigned to the applicable Successful Bidder as of the closing date

of the applicable Sale Transaction or as otherwise set forth in an applicable order of the Bankruptcy Court.

31. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Contract Objection, the Counterparty forever shall be barred from asserting any objection with regard to the proposed assumption and assignment of such Contract and the cost to cure any defaults under the applicable Contract and shall be deemed to have consented to the assumption and assignment of the Contract in connection therewith. In such case, unless otherwise agreed in writing by the Counterparty and the applicable Successful Bidder, the Cure Amounts set forth in the applicable Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the Contract and satisfy the requirements of section 365(b) of the Bankruptcy Code, and the Counterparty to the Contract shall be bound by and deemed to have consented to the Cure Amounts.

32. In accordance with the Bid Procedures, Qualified Bids shall be accompanied by Adequate Assurance Information (as defined in the Bid Procedures) and any Stalking Horse Bidder shall provide Adequate Assurance Information to the Debtors on or before the Bid Deadline. The Debtors shall (i) serve all available Adequate Assurance Information to applicable Counterparties (i) by mail no later than July 26, 2024, and (ii) by email no later than July 26, 2024 at 12:00 pm (PT) to such address as requested by any such Counterparty (or counsel thereto), with any such request made by email no later than July 25, 2024 to counsel for the Debtors, subject line "Request for Adequate Assurance." Any Counterparty that receives any Adequate Assurance Information with respect to any Stalking Horse Bidder or any other Qualified Bidder shall review such information on a confidential basis and shall not disclose such information to any party. Such Counterparty may not use or disclose, except to representatives, attorneys, advisors and financing

sources (“Representatives”), any confidential Adequate Assurance Information for any purpose other than: (a) evaluating whether adequate assurance of future performance as required under the Bankruptcy Code has been provided; and (b) to support an objection to adequate assurance by such Counterparty. Any objection by a Counterparty that includes confidential, non-public Adequate Assurance Information shall be filed under seal, subject to a motion to seal by such Counterparty and approval of this Court. Any Representative receiving Adequate Assurance Information shall be notified of and shall be deemed to have agreed to, and to be bound by, the restrictions set forth in this Order.

33. Any objection to the proposed assumption and assignment of a Contract on the grounds of the Successful Bidder’s (or any other relevant assignee’s) adequate assurance of future performance with respect to the Contract (each such objection, an “Adequate Assurance Objection”), shall (a) be in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (b) be filed with the Court; and (c) served on the Objection Notice Parties by no later than the Post-Auction Objection Deadline.

34. The Debtors, the applicable Successful Bidder or Backup Bidder, and any Counterparty that has filed an Adequate Assurance Objection shall first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, the Adequate Assurance Objection and all issues of adequate assurance of future performance of the applicable Successful Bidder shall be determined by the Court at a subsequent hearing scheduled pursuant to this Order on at least five (5) days’ notice to the applicable Counterparty.

35. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Adequate Assurance Objection: (a) the Counterparty shall be forever barred from asserting any objection to the assumption and/or assignment of a Contract with regard to adequate assurance of future performance; and (b) the applicable Successful Bidder (or any other relevant assignee) shall be deemed to have provided adequate assurance of future performance with respect to a Contract in accordance with Sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code and, if applicable, Section 365(b)(3) of the Bankruptcy Code, notwithstanding anything to the contrary in the Contract or any other document.

36. Successful Bidders (including any Stalking Horse Bidder or Backup Bidder ultimately named a Successful Bidder) may, pursuant to the terms of an applicable asset purchase agreement executed with the Debtors (including the Stalking Horse APA), designate (a) for assumption and assignment Contracts that were not originally included in the Assets to be acquired in connection with the applicable Successful Bid and (b) Contracts that previously were included among the Assets to be acquired in connection with the applicable Successful Bid as “excluded assets” that will not be assigned to or otherwise acquired by the Successful Bidder. The Debtors shall use commercially reasonable efforts to, as soon as reasonably practicable after the Debtors receive notice of any such designation, file with the Court, (i) serve on the applicable Counterparties and cause to be published on the Claims Agent Website, a notice of such designation containing sufficient information to apprise Counterparties of the designation of their respective Contracts, and (ii) serve the Adequate Assurance Information of such bidders (if not previously provided) on the applicable Counterparties or counsel thereto by overnight mail and by email as provided in paragraph 33 above. Counterparties receiving such notices shall have seven (7) days to object to such notice. Nothing in this Order or any asset purchase agreement shall

modify the Debtors' deadline to assume or reject leases pursuant to section 365(d)(4) of the Bankruptcy Code, as such deadline may be extended by further order of this Court.

37. As soon as reasonably practicable after the closing of a Sale Transaction, the Debtors will file with the Court, serve on the applicable Counterparties and cause to be published on the Claims Agent Website, a notice containing the list of Contracts that the Debtors assumed and assigned pursuant to any asset purchase agreement with a Successful Bidder, and the applicable assignment effective date for each Contract.

38. The inclusion of a Contract or Cure Amounts with respect to any Contract on any Assumption and Assignment Notice or any Notice of Auction Results, shall not constitute or be deemed a determination or admission by the Debtors, any Successful Bidder or any other party that such Contract is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code, and shall not be a guarantee that such Contract ultimately will be assumed or assigned. The Debtors reserve all of their rights, claims and causes of action with respect to each Contract listed on any Assumption and Assignment Notice.

H. Other Related Relief

39. All persons and entities that participate in the Auction or bidding for any Asset during the Sale Transaction process shall be deemed to have knowingly and voluntarily (a) consented to the core jurisdiction of the Court to enter any order related to the Bid Procedures, the Auction or any other relief requested in the Sale Motion or granted in this Order, (b) waived any right to a jury trial in connection with any disputes relating to the Bid Procedures, the Auction or any other relief requested in the Sale Motion or granted in this Order, and (c) consented to the entry of a final order or judgment in connection with any disputes relating to the Bid Procedures, the Auction or any other relief requested in the Sale Motion or granted in this Order, if it is

determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the relevant parties.

40. The Debtors are authorized to take all steps and pay all amounts necessary or appropriate to implement the relief granted in this Order.

41. This Order shall be binding on the Debtors and its successors and assigns, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

42. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

43. To the extent any provisions of this Order are inconsistent with the Sale Motion, the terms of this Order shall control. To the extent any provisions of this Order are inconsistent with the Bid Procedures, the terms of this Order shall control.

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

45. The Debtors, in consultation with TREW, are authorized to make non-substantive changes to the Bid Procedures, the Assumption and Assignment Procedures, and any related documents with copy of any such revised documents to the Office of the U.S. Trustee, without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors.

46. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.



EXHIBIT 1

Bid Procedures

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

In re: MRRC HOLD CO., <i>et al.</i> , ¹ Debtors.	Chapter 11 Case No. 24-11164 (CTG) (Jointly Administered)
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BID PROCEDURES

The debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”) will use the procedures set forth herein (the “Bid Procedures”) in connection with a sale or disposition of all or substantially all of the Debtors’ assets (the “Assets”) in one or more sale transactions (each, a “Sale Transaction”).

On June 11, 2024, the Debtors filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) the *Debtors’ Motion for Entry of Orders (I)(A) Approving Bidding Procedures for All or Substantially All of the Assets of Rubio’s Restaurants, Inc. and Rubio’s Incentives, LLC, (B) Authorizing the Debtors to Designate a Stalking Horse Bid, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures and (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors’ 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. 70] (the “Sale Motion”). By the Sale Motion, the Debtors sought, among other things, entry of an order approving Bid Procedures² for soliciting bids for, conducting an auction (the “Auction”) of, and consummating one or more Sale Transactions of, the Assets, as further described herein.

On [•] [•], 2024, the Court entered an *Order (A) Approving Bidding Procedures for All or Substantially All of the Debtors’ Assets, (B) Authorizing the Debtors to Designate a Stalking Horse Bid, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: MRRC Hold Co. (1242); Rubio’s Restaurants, Inc. (0303); and Rubio’s Incentives, LLC (9359). The Debtors’ mailing address is 2200 Faraday Avenue, Suite 250, Carlsbad, CA 92008.

² All capitalized terms not herein defined shall have the meanings ascribed to them in the Sale Motion and/or the Bid Procedures Order (as defined herein), as applicable.

the Form and Manner of Notice Thereof and (F) Granting Related Relief [Docket No. [•]] (the “Bid Procedures Order”).

I. ASSETS FOR SALE

The sale of the Assets shall be subject to a competitive bidding process as set forth herein and approval by the Court pursuant to Sections 105, 363, and 365 of Title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007, and 9008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1 and 6004-1 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

The ability to undertake and consummate any sale of the Assets shall be subject to competitive bidding as set forth herein and approval by the Court. In addition to the Stalking Horse Bid submitted by TREW Capital Management Private Credit, LLC (“TREW”), if any, and as set forth herein, the Debtors will consider bids for any or all of the Assets in a single bid from a single bidder or in multiple bids from multiple bidders. Any bid for an individual Asset, even if such bid is the highest or otherwise best bid for such individual Asset, is subject to higher or otherwise better bids on packages of Assets that include the individual Asset. Additionally, any bid on all of the Assets is subject to bids on individual Assets or packages of Assets (including Credit Bids) that are, in the aggregate, higher or otherwise better bids. Any party interested in submitting a bid for any of the Assets should contact Hilco Corporate Finance, LLC, tstratton@hilcofc.com, Attn: Teri Stratton.

II. KEY DATES AND DEADLINES

SALE PROCESS KEY DATES AND DEADLINES	
Two (2) business days after entry of the Bid Procedures Order	Deadline for the Debtors to file and serve the Sale Notice and publish it on the website for this case.
Five (5) business days after the entry of the Bid Procedures Order	Deadline for the Debtors to publish the Publication Notice.
July 2, 2024	Deadline for the Debtors to file the Assumption and Assignment Notice.
July 16, 2024	Deadline to object to the Assumption and Assignment Notice.
July 25, 2024, at 5 p.m. (prevailing Eastern Time)	Bid Deadline.
July 26, 2024, at 5 p.m. (prevailing Eastern Time)	Deadline for Debtors to Notify Bidders of Status as Qualified Bidders Sale Objection Deadline

SALE PROCESS KEY DATES AND DEADLINES	
July 30, 2024, at 11 a.m. (prevailing Pacific Time)	Auction (if any)
July 31, 2024, at 12 p.m. (prevailing Eastern Time)	Deadline for Debtors to file Notice of Auction Results
August 1, 2024, at 5 p.m. (prevailing Eastern Time)	Post-Auction Objection Deadline
August 5, 2024, at 3:30 p.m. (prevailing Eastern Time)	Sale Hearing
August 5, 2024	Deadline for entry of Sale Order
August 19, 2024	Deadline to consummate approved Sale Transactions

III. DUE DILIGENCE

The Debtors have posted copies of all material documents related to the Assets to the Debtors' confidential electronic data room (the "Data Room"). Each person or entity (other than TREW) that desires to participate in the Auction process (each, a "Prospective Bidder") and seeks access to the Data Room must first deliver to each of the Bid Notice Parties (as defined herein) the following:

- A. An executed confidentiality agreement in form and substance satisfactory to the Debtors and containing terms no more favorable to the Prospective Bidder than those contained in any confidentiality agreement executed by any Stalking Horse Bidder (unless such party is already a party to an existing confidentiality agreement with the Debtors that is acceptable to the Debtors for this due diligence process, in which case such agreement shall govern) regarding: (i) the nondisclosure of confidential information, (ii) prohibitions on contacting third parties in connection with a Sale Transaction, (iii) covenants to not solicit employees of the Debtors, (iv) prohibitions on purchasing or otherwise acquiring the Debtors' debt and equity securities, and (v) the survival of certain provisions of the Confidentiality Agreement; and
- B. sufficient information to allow the Debtors to determine that the interested party intends to access the Data Room for a bona fide purpose consistent with the Bid Procedures and that such Prospective Bidder has the financial and managerial wherewithal to submit a Qualified Bid and to consummate the Sale Transactions contemplated thereby.

The Debtors shall grant TREW and, upon execution of a valid confidentiality agreement and up to and including the Bid Deadline, any Prospective Bidder, access to the Data Room or additional information allowing such Prospective Bidder to conduct due diligence on the potential

acquisition of some or all of the Assets. Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets (a) to any person or entity who (i) is not a Prospective Bidder, (ii) does not comply with the participation requirements set forth above, or (iii) in the case of competitively sensitive information, is a competitor of the Debtors and (b) if and to the extent doing so would (1) violate any law to which the Debtors are subject, including any privacy law, (2) result in the disclosure of any trade secrets of third parties in breach of any contract with such third party, (3) violate any legally-binding obligation of any Debtor with respect to confidentiality, non-disclosure or privacy, or (4) jeopardize protections afforded to any Debtor under the attorney-client privilege or the attorney work product doctrine (provided that, in the case of each of clauses (1) through (4), the Debtors shall use commercially reasonable efforts to (x) provide such access as can be provided (or otherwise convey such information regarding the applicable matter as can be conveyed) without violating such privilege, doctrine, contract, obligation or law and (y) provide such information in a manner without violating such privilege, doctrine, contract, obligation or law). Notwithstanding the foregoing, the Debtors reserve the right, in their discretion, to withhold or limit access to any information that the Debtors determine to be sensitive or otherwise not appropriate to disclose to any Prospective Bidder. The Debtors shall provide any Stalking Horse Bidder with any information provided to a Prospective Bidder that has not already been provided to the Stalking Horse Bidder.

The Debtors may terminate access to the Data Room and any other non-public information in their reasonable discretion at any time, including if (a) a Prospective Bidder fails to become a Qualified Bidder (as defined herein) or (b) these Bid Procedures are terminated. The Prospective Bidder shall return or destroy any non-public information the Debtors or their advisors provided to the Prospective Bidder in accordance with the terms of the confidentiality agreement executed by the Debtors and the Prospective Bidder.

The Debtors will work to accommodate all reasonable requests from any Stalking Horse Bidder and any Prospective Bidders for additional information and due diligence access. Each Prospective Bidder shall be required to acknowledge that it has had an opportunity to conduct any and all due diligence regarding the Assets in conjunction with submitting its Bid (as defined herein). All due diligence requests shall be directed to Hilco Corporate Finance, LLC, tstratton@hilcofc.com; Attn: Teri Stratton.

IV. BID DEADLINE

Any Prospective Bidder that intends to participate in the Auction must submit in writing to the Bid Notice Parties a bid (a "Bid") on or before **July 25, 2024, at 5:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline").

The Debtors may, in their reasonable judgment, and in consultation with the Consultation Parties, extend the Bid Deadline for all or certain Prospective Bidders; **provided, that TREW's written consent is required for any extension beyond the Milestones set forth in the DIP Documents.**

V. BID REQUIREMENTS

A. Qualified Bid Requirements

To qualify as a “Qualified Bid,” a Bid must be in writing and determined by the Debtors (in consultation with the Consultation Parties) to satisfy the following requirements:

1. Identification of Bidder. A Qualified Bid must fully disclose the following: (a) the legal identity of each person or entity bidding for the applicable Assets and/or otherwise sponsoring, financing (including through the issuance of debt in connection with such Bid) or participating in (including through license or similar arrangement with respect to the Assets to be acquired in connection with such Bid) the Auction in connection with such Bid and the complete terms of any such participation; and (b) any past or present connections or agreements with the Debtors or their non-Debtor affiliates, TREW, any other known Prospective Bidder or Qualified Bidder, or any officer or director of any of the foregoing (including any current or former officer or director of the Debtors or their non-Debtor affiliates).
2. Purchased Assets. A Qualified Bid must identify the following:
 - a. the Assets to be purchased (including any then-known executory contracts and unexpired leases (collectively, the “Assigned Contracts”) such Prospective Bidder wishes to bid on.
 - b. the liabilities (including applicable Cure Costs if any, to be assumed by the Prospective Bidder in the Sale Transaction), including any debt to be assumed; and
 - c. if a Bid is for less than the entire business, an allocation of the purchase price across the individual desired Assets.
3. Form of Consideration.
 - a. Credit Bidding. TREW (or its designee) shall be a Qualified Bidder and may, in its sole and absolute discretion, credit bid up to \$45 million of its claims for the collateral in which it holds a perfected security interest (a “Credit Bid”) on Assets at the Auction, subject to and in accordance with Section 363(k) of the Bankruptcy Code, which it has voluntarily agreed to cap at the amount of \$45 million. TREW shall not be prohibited from making such Credit Bid “for cause” under Section 363(k) of the Bankruptcy Code. Moreover, TREW shall be considered a Qualified Bidder and shall not be required to provide a Good Faith Deposit (as defined herein).

- b. Form of Consideration and Allocation. A Qualified Bid must propose a purchase price payable in cash and specified assumed liabilities. With the exception of any bid from TREW, or a bid from a landlord with respect to an unexpired lease of nonresidential real property to which such landlord is a counterparty, bids proposing a purchase price other than in cash shall not be Qualified Bids.
 - c. Purchase Price. Each Bid must clearly set forth the purchase price to be paid for the Assets (the “Purchase Price”) and (i) indicate the source of cash consideration, including funding commitments, and confirm that such consideration is not subject to any contingencies, (ii) identify separately the non-cash components of the Purchase Price, which non-cash components shall be limited to the Credit Bid (with respect to TREW) and any assumed liabilities, and (iii) allocate the Purchase Price amongst the purchased Assets. For the avoidance of doubt, a Qualified Bid must at a minimum allocate the Purchase Price to (i) the leases proposed to be assumed and assigned, and (ii) any furniture, fixtures, or equipment proposed to be purchased; provided that any such allocation shall not prejudice the rights of any party in interest to contest that allocation. The Purchase Price must include the payment of all allowed cure amounts and all other amounts required to effect the assumption and assignment of any applicable executory contracts and unexpired leases pursuant to § 365. The Debtors may consider a Bid for less than all of the Assets (each such bid, a “Partial Bid”) if the Debtors receive one or more other Partial Bids for the Assets such that, when taken together, and after considering the risks associated with consummating several individual Bids, the Partial Bids collectively constitute a higher or otherwise better bid as compared to the highest and best bid for substantially all of the Assets.
4. Proposed Asset Purchase Agreement and Sale Order: A Qualified Bid must constitute a binding and irrevocable offer and be in the form of an asset purchase agreement approved for use by the Debtors and reflecting the terms and conditions of the Bid either (a) in the form of a Stalking Horse Asset Purchase Agreement with TREW and approved pursuant to Paragraph B.7 of this Order or (b) if TREW and the Debtors have not entered into a Stalking Horse Asset Purchase Agreement prior to the Bid Procedures Hearing, in the form of the a proposed asset purchase agreement submitted by the Debtors, in consultation with the Consultation Parties, and approved by the Court for use by Qualified Bidders as set forth in the Motion (each, a “Proposed Asset Purchase Agreement”). A Proposed Asset Purchase Agreement shall: (a) be duly authorized and executed; (b) be based on, and marked against the Asset Purchase Agreement or such other form

purchase agreement provided by the Debtors after consultation with TREW to reflect the proposed Sale Transaction and to show any other proposed modifications to the form purchase agreement; (c) specify the proposed purchase price for the applicable Assets; and (d) identify any then-known Assigned Contracts proposed for or that may be proposed for assumption and assignment in connection with the proposed Sale Transaction. A Qualified Bid must also contain a sale order based on, and marked against, the Sale Order (as defined herein) for the applicable Assets to reflect the proposed Sale Transaction and to show any other proposed modifications to the applicable Sale Order.

5. Financial Information. A Qualified Bid must include the following:
 - a. a statement that the Prospective Bidder is financially capable of timely consummating the Sale Transaction contemplated by the Prospective Bidder's Proposed Asset Purchase Agreement;
 - b. sufficient evidence, as reasonably determined by the Debtors (in consultation with the Consultation Parties), to determine that the Prospective Bidder has, or can obtain, the financial wherewithal to timely consummate the Sale Transaction contemplated by the Prospective Bidder's Proposed Asset Purchase Agreement; provided that the Debtors and Consultation Parties—without disclosing the identity of any Prospective Bidder or the amount of any proposed bid—will consult with TREW with respect to the adequacy of any proposed consideration other than cash consideration and will provide TREW with a representation that they have otherwise determined that the Prospective Bidder has, or can obtain, the financial wherewithal time timely consummate the proposed Sale Transaction; and
 - c. Adequate Assurance Information (as defined herein) with respect to any Assigned Contracts included or that may be included in the Prospective Bidder's Bid.
6. Good Faith Deposit. Each Qualified Bid must be accompanied by a good faith deposit (each, a "Good Faith Deposit") in the form of cash (or other form acceptable to the Debtors in consultation with the Consulting Parties and TREW) in an amount equal to ten percent (10%) of the proposed purchase price for the Assets; *provided*, that no Good Faith Deposit shall be required for TREW in connection with a Stalking Horse Bid.

Good Faith Deposits shall be deposited into a trust account maintained on behalf of the Debtors (and to be designated by Debtors) and handled in accordance with these Bid Procedures. To the extent a Qualified Bidder increases the purchase price before, during, or after the Auction, the Debtors (in consultation with the Consultation Parties) reserve the

right to require that such Qualified Bidder adjust its Good Faith Deposit so that it equals ten percent (10%) of the increased purchase price. The Debtors reserve the right to increase or decrease the Good Faith Deposit for one or more Qualified Bidders in their sole discretion except with respect to any Qualified Bid from TREW; provided the Debtors may not decrease or waive any Good Faith Deposit without consulting with the Consultation Parties and TREW.

7. Adequate Assurance. A Qualified Bid must include evidence of the Prospective Bidder's (or any other relevant assignee's) ability to comply with Section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Prospective Bidder's (or any other relevant assignee's) ability to perform future obligations arising under any Assigned Contracts included in its Bid. The Debtors (in consultation with the Consultation Parties) may require the following information in connection with demonstrating adequate assurance of future performance: information evidencing the Prospective Bidder's (or any other relevant assignee's) financial wherewithal and willingness to perform under any Assigned Contracts included in the Bid, which information may include: (i) a corporate organizational chart or similar disclosure identifying corporate ownership and control; (ii) financial statements; (iii) tax returns (iv) annual reports; and (v) summaries of the proposed assignee's experience in the industry, including the number of restaurants currently operating and all trade names used (the information described herein, the "Adequate Assurance Information"). All Adequate Assurance Information must be in a form that will permit its immediate dissemination to the applicable Counterparties (as defined herein).
8. Representations and Warranties. A Qualified Bid must include the following representations and warranties:
 - a. a statement that the Prospective Bidder has had an opportunity to conduct any and all due diligence regarding the Debtors' businesses and the Assets prior to submitting its Bid;
 - b. a statement that the Prospective Bidder has relied solely upon its own independent review, investigation and/or inspection of any relevant documents and the Assets in making its Bid and did not rely on any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Debtors' businesses or the Assets or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Stalking Horse APA;

- c. a statement that all proof of financial ability to consummate the Sale Transaction in a timely manner and all information provided to support adequate assurance of future performance is true and correct; and
 - d. a statement that the Prospective Bidder agrees to be bound by the terms of the Bid Procedures.
- 9. Authorization. A Qualified Bid must: (a) include evidence of authorization and approval from the Prospective Bidder's board of directors (or comparable governing body) with respect to the submission, execution and delivery of any bid for the Assets, participation in the Auction and closing of the Sale Transaction contemplated by the Prospective Bidder's proposed asset purchase agreement; or (b) if the Prospective Bidder is an entity formed for the purpose of effecting the proposed Sale Transaction, a Qualified Bid must provide written evidence acceptable to the Debtors of authorization and the approval by the equity holder(s) of such Prospective Bidder.
- 10. Joint Bids. The Debtors will be authorized to approve joint Bids in their discretion on a case-by-case basis.
- 11. Disclosures. A Qualified Bid must identify with particularity each and every condition to closing and all executory contracts and unexpired leases to be assumed and assigned and must include a commitment to close by no later than August 19, 2024. A Bid should, but is not required to, propose a contemplated transaction involving all or substantially all of the Assets.
- 12. Other Requirements. A Qualified Bid must:
 - a. state that the Prospective Bidder agrees to serve as a backup bidder (a "Backup Bidder") if such bidder's Qualified Bid is selected at the Auction as the next highest or next best bid after the Successful Bid (as defined herein) for the Assets (each such bid, a "Backup Bid");
 - b. state that the Bid, as may be modified before or during the Auction, represents a binding, irrevocable, good-faith and *bona fide* offer to purchase the Assets and is not subject to or conditioned on any due diligence, financing, or other contingency (other than the conditions to closing under the applicable agreement), and is irrevocable until the later of (i) the applicable outside date for consummation of the Sale Transaction or (ii) the Backup Bid Expiration Date (as defined herein);
 - c. expressly state and acknowledge that the Prospective Bidder shall not be entitled to a break-up fee, termination fee, expense reimbursement or other "bidding protection" in connection with the

submission of a bid for the Assets or otherwise participating in the Auction or the Sale Transaction process, unless otherwise granted by the Debtors (in consultation with the Consultation Parties) and approved by an order of the Court;

- d. state that the Prospective Bidder is committed to closing the Sale Transaction contemplated in its Bid as soon as practicable and in any case no later than August 19, 2024;
- e. specify (i) whether the Qualified Bidder intends to hire any of the Debtors' employees and (ii) the proposed treatment of the Debtors' prepetition compensation, incentive, retention, bonus or other compensatory arrangements, plans, or agreements, including offer letters, employment agreements, consulting agreements, retiree benefits, and any other employment related agreements (collectively, the "Employee Obligations");
- f. expressly waive any claim or right to assert any substantial contribution administrative expense claim under Section 503(b) of the Bankruptcy Code or the payment of any broker fees or costs in connection with bidding for any of the Assets and/or otherwise participating in the Auction or the Sale Transaction process;
- g. include a covenant to cooperate with the Debtors (i) to provide pertinent factual information regarding the Prospective Bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and any other applicable regulatory requirements and (ii) to obtain Court approval of the Sale Transaction;
- h. state or otherwise estimate the types of transition services, if any, the Prospective Bidder would require of and/or provide to the Debtors, including an estimate of the time any such transition services would be required of and/or provided to the Debtors, if the Prospective Bidder's Bid were selected as the Successful Bid for the applicable Assets;
- i. certify that the Prospective Bidder did not collude with any other bidders and is not otherwise a partnership, joint venture or other entity in which more than one bidder (or any affiliates of a bidder) has a direct or indirect interest, unless consented to in writing by the Debtors (in consultation with the Consultation Parties);
- j. include a covenant to comply with the terms of these Bid Procedures and the Bid Procedures Order; and

- k. include contact information for the specific person(s) the Debtors should contact in the event they have any questions about the Prospective Bidder's bid.
13. Landlords and Unexpired Leases. A landlord may submit a bid to assume/terminate any unexpired lease to which it is a counterparty. Such bid may include any or all of the outstanding amounts owed under the applicable lease. Such landlord shall be considered a Qualified Bidder as to its unexpired lease(s) without the need to satisfy subsections 4 (other than to submit a binding bid in writing in form and substance reasonably acceptable to the Debtors, in consultation with the Consultation Parties, in their discretion), 5, 6, and 7 of this Section A (Qualified Bid Requirements).

Bid Review Process

The Debtors (in consultation with the Consultation Parties) will review each Bid received from a Prospective Bidder to determine whether it meets the requirements set forth above. Based upon their evaluation of the content of each Bid, the Debtors may, as they deem appropriate in their business judgment and in a manner consistent with their fiduciary duties and applicable law, and in consultation with the Consultation Parties, engage in negotiations with any Prospective Bidder for the purposes of: (i) curing any deficiencies in a Bid that prevents it from constituting a Qualified Bid; (ii) improving the terms of the Prospective Bidder's Bid; or (iii) otherwise promoting a more competitive bidding and Auction process with the ultimate goal of maximizing the value of the Assets.

A Bid received from a Prospective Bidder for all or any portion of the Assets that the Debtors determine meets the requirements set forth above and is otherwise satisfactory to the Debtors (in consultation with the Consultation Parties, and with respect to Article V.A. 4, 5, and 6, TREW; provided, that notwithstanding the foregoing, the Debtors shall not provide the identity of any Bidder or other confidential bid information to TREW), will be considered a Qualified Bid and each Prospective Bidder that submits a Qualified Bid will be considered a "Qualified Bidder." The Debtors shall inform Qualified Bidders that their Bids have been designated as Qualified Bids by July 26, 2024, or as soon thereafter as practicable (but prior to the Auction).

For the avoidance of doubt, any Stalking Horse APA will be deemed a Qualified Bid, and any Stalking Horse Bidder will be deemed a Qualified Bidder, for all purposes and requirements pursuant to the Bid Procedures, notwithstanding the requirements that a Prospective Bidder must satisfy to be a Qualified Bidder. The Debtors shall, within two (2) calendar days following the Bid Deadline, inform any Stalking Horse Bidder of the Baseline Bid received relevant to the Assets under the Stalking Horse APA and shall provide copies of the Baseline Bid at the same time other Qualified Bidders receive such information.

In evaluating a Bid, the Debtors may take into consideration any and all factors that the Debtors deem reasonably pertinent, including, without limitation:

- (i) the amount of the proposed purchase price;

- (ii) any Assets and liabilities included in, or excluded from, the Bid, including any Contracts marked for assumption and assignment;
- (iii) the value to be provided to the Debtors under the Bid, including the net economic effect on the Debtors' estates (taking into account any wind-down expenses, the DIP Obligations, and additional outstanding debt, in each case, as applicable);
- (iv) any benefit to the Debtors' estates from any assumption or waiver of liabilities contemplated by the Bid;
- (v) any benefit to the Debtors' estates arising from the avoidance of additional costs that may be incurred as a result of the Bid;
- (vi) the structure of the proposed Sale Transaction and any attendant execution risk, including conditions to, timing of and certainty of closing, termination provisions, financing contingencies, availability of financing and general financial wherewithal to meet all commitments, and any required governmental approvals;
- (vii) the impact of the proposed Sale Transaction on employees and the proposed treatment of the Employee Obligations;
- (viii) the impact of the proposed Sale Transaction on the Debtors' trade creditors, licensees, clients and any other parties in interest; and
- (ix) any other factors the Debtors may reasonably deem relevant and consistent with their fiduciary duties.

The Debtors will make a determination regarding the Bids that qualify as Qualified Bids and as Baseline Bids and will notify bidders by July 26, 2024, or as soon as practicable thereafter (but prior to the Auction), whether they have been selected as Qualified Bidders. A Qualified Bidder shall not (without the consent of the Debtors), modify, amend or withdraw its Qualified Bid, unless for the purposes of increasing the purchase price or otherwise improving the terms of the bid, as determined by the Debtors in their business judgment.

The Debtors, in their business judgment, reserve the right to reject any Bid (other than any Stalking Horse Bid from TREW) if such Bid, among other things, (i) is on terms that are more burdensome or conditional than the terms of any Stalking Horse APA with TREW; (ii) requires any indemnification of the Prospective Bidder in its asset purchase agreement; (iii) is not received by the Bid Deadline; (iv) is subject to any contingencies (including representations, warranties, covenants and timing requirements) of any kind or any other conditions precedent to such party's obligation to acquire the relevant Assets; (v) seeks any bid protections; or (vi) does not, in the Debtors' determination, include a fair and adequate price or the acceptance of which would not be in the best interests of the Debtors' estates.

Without prejudice to the rights of TREW under any Stalking Horse APA or the DIP Documents, the Debtors may (in consultation with the Consultation Parties), among other things: (i) amend or waive the conditions precedent to qualifying as a Qualified Bidder; (ii) extend the Bid Deadline as to any party or with respect to any Assets; (iii) with respect to any Bid that is not

a Qualified Bid, the Debtors may provide (but shall not be obligated to provide) the Bidder with the opportunity to remedy any deficiencies prior to the Auction; and/or (iv) postpone or cancel the Auction and terminate the proposed sale(s) for any Assets. Any contrary provision hereof notwithstanding, nothing in this Bidding Procedures shall modify or extend, or permit the Debtors to modify or extend, the Milestones (as defined in the DIP Motion and DIP Documents); provided, that TREW's written consent is required for any extension beyond the Milestones set forth in the DIP Documents.

Bidding Protections

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

VI. THE AUCTION

If the Debtors receive more than one Qualified Bid (including any Stalking Horse Bid) for an Asset or combination of Assets, the Debtors will conduct an Auction for such Asset(s). If more than one Qualified Bid exists for acquiring specific combinations of the Assets, then the Debtors may, in the exercise of their reasonable business judgment, first conduct a separate Auction (a "Sub-Auction") for such Assets that have at least one Qualified Bid pursuant to the Bid Procedures.

In the event the Debtors determine not to hold an Auction for some or all of the Assets, the Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Claims Agent Website, a notice containing the following information, as applicable: (i) a statement that the Auction for the relevant Assets has been canceled; (ii) the identity of the Successful Bidder; (iii) a copy of the Successful Bid or a summary of the material terms of such Successful Bid, including any assumption and assignment of Contracts contemplated thereby; and (iv) the date, time and location of the applicable Sale Hearing.

The Auction, if required, will be conducted on **July 30, 2024, at 11:00 a.m. (prevailing Pacific Time)**, in person at Raines Feldman Littrell LLP, 1900 Avenue of the Stars, 19th Floor, Los Angeles, California 90067, after providing notice to the Sale Notice Parties; provided, however, the Debtors shall have the right to hold the Auction at a different location, remotely, including telephonically or by other electronic means (including, without limitation, video conferencing) as the Debtors may choose in their sole discretion. If held, the Auction proceedings will be transcribed and/or video recorded.

A. Participants and Attendees

Only Qualified Bidders are eligible to participate in the Auction or any Sub-Auction, subject to other limitations as may be reasonably imposed by the Debtors in accordance with these Bid Procedures. At least one (1) day prior to the Auction or any Sub-Auction, each Qualified Bidder must inform the Debtors in writing whether it intends to participate in the Auction. Qualified Bidders participating in the Auction or specific Sub-Auction must appear in person at the Auction or Sub-Auction, as applicable (unless the Auction takes place via Zoom), or through

a duly authorized representative. Subject to the Auction procedures set forth in these Bid Procedures, all Qualified Bidders and TREW are permitted to attend the Auction or any Sub-Auction; provided, that the Debtors may, in consultation with the Consultation Parties, establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of or accompany each Qualified Bidder at the Auction or specific Sub-Auction. Any creditor and its advisors wishing to attend the Auction may do so by contacting, no later than one (1) day prior to the start of the Auction, the Debtors' advisors.

Each Qualified Bidder participating in the Auction or specific Sub-Auction will be required to confirm in writing and on the record at the Auction or Sub-Auction, as applicable, that (i) it has not engaged in any collusion with respect to the Auction or the submission of any bid for any of the Assets; and (ii) its Qualified Bid that gained the Qualified Bidder admission to participate in the Auction and each Qualified Bid submitted by the Qualified Bidder at the Auction or specific Sub-Auction is a binding, good-faith and *bona fide* offer to purchase the Assets identified in such bids.

All Prospective Bidders and Qualified Bidders (including any Stalking Horse Bidder, Successful Bidder and Backup Bidder) shall be deemed to have: (i) consented to the core jurisdiction of the Court to enter any order related to these Bid Procedures, the Auction or, any other relief requested in the Sale Motion or granted pursuant to the Bid Procedures Order or the construction or enforcement of any agreement or any other document relating to any Sale Transaction; (ii) waived any right to a jury trial in connection with any disputes relating to these Bid Procedures, the Auction or the construction or enforcement of any agreement or any other document relating to any Sale Transaction; and (iii) consented to the entry of a final order or judgment in connection with any disputes relating to these Bid Procedures, the Auction or specific Sub-Auction, the construction or enforcement of any agreement or any other document relating to any Sale Transaction, if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the relevant parties.

B. Auction Procedures

The Auction shall be governed by the following procedures, subject to the Debtors' right to modify such procedures in their business judgment, subject to and in accordance with these Bid Procedures and the applicable parties' rights under the Stalking Horse APA:

1. Baseline Bids. Prior to the commencement of the Auction, the Debtors will determine, in their business judgment, the highest and/or best Qualified Bid (each such Qualified Bid, a "Baseline Bid"). Bidding at the Auction shall commence at the amount of the Baseline Bid.
2. Sub-Auctions. The Debtors reserve the right to host Sub-Auctions for Assets at their discretion (each such package an "Auction Package").
3. Minimum Overbid. Any overbid to the initial Baseline Bid at the start of the Auction, and each subsequent bid, shall be in increments of no less than \$250,000.00. Bidding at the Auction will begin with the Baseline Bid and continue, in one or more rounds of bidding, so long as during each round at

least one subsequent bid (a “Subsequent Bid”) is submitted by a Qualified Bidder that (i) improves on such Qualified Bidder’s immediately prior Qualified Bid and (ii) the Debtors determine is (A) for the first round, a higher or otherwise better offer than the Baseline Bid, and (B) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined herein).

The Debtors will announce at the outset of the Auction the minimum required increments for successive Bids (each, such Bid, a “Minimum Overbid”). The Debtors may, in their discretion, announce increases or reductions to Minimum Overbids at any time during the Auction.

Upon a Qualified Bidder’s declaration of a Bid at the Auction, the Qualified Bidder (other than TREW) must state on the record its commitment to pay within two (2) business days following the Auction, if such Bid were to be selected as the Successful Bid or as the Backup Bid, the incremental amount of the Qualified Bidder’s Good Faith Deposit calculated based on the increased purchase price of such Bid (such Good Faith Deposit so increased, the “Incremental Deposit Amount”) if applicable. Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by any Bid subsequent to a Baseline Bid, the Debtors will, at each round of bidding, consider and/or give effect to (a) any additional liabilities to be assumed by a Qualified Bidder under the Bid, including whether such liabilities are secured or unsecured, (b) any additional costs that may be imposed on the Debtors, and (c) the provision of any Wind-Down Expenses, treatment of the DIP Obligations, and any additional outstanding debt, as applicable.

4. Leading Bid. After the first round of bidding and between each subsequent round of bidding, the Debtors (in consultation with the Consultation Parties) will announce the bid that they believe to be the highest or otherwise best offer (each such bid, a “Leading Bid”) and describe the material terms thereof. Each round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the material terms of the Leading Bid, subject to the Debtors’ authority to revise the Auction procedures to the extent permitted hereby.

The Auction or any Sub-Auction will be conducted by open bidding in the presence of all other Qualified Bidders and each Qualified Bidder shall have the right to be present for all rounds of open bidding and to submit additional Bids and make modifications to its Proposed Asset Purchase Agreement at the Auction to improve its Bid. The Debtors may, in their business judgment, engage in discussions and negotiate with any and all Qualified Bidders participating in the Auction or Sub-Auction outside the presence of other bidders before each round of bidding, including to improve or clarify the terms of bids made.

The Debtors shall have the right to determine (in consultation with the Consultation Parties) which Bid is the highest or otherwise best Bid and, in accordance with the terms of these Bid Procedures, reject, at any time, without liability, any bid that the Debtors deem to be inadequate or insufficient, not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, these Bid Procedures, any order of the Court, or the best interests of the Debtors and their estates, including, without limitation, the provision of any Wind-Down Expenses, treatment of the DIP Obligations, and any additional outstanding debt, as applicable.

The determination of which Qualified Bid(s) constitutes the Baseline Bid(s) and which Qualified Bid(s) constitutes the Successful Bid(s) shall take into account any factors the Debtors, in consultation with the Consultation Parties, reasonably deem relevant to the value of the Qualified Bid(s) to the Debtors' estates, which may include, among other things: (a) the type and amount of Assets sought to be purchased in the Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof; (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Baseline Bid; (e) the tax consequences of such Qualified Bid; (f) the assumption of obligations, including contracts and leases; (g) the cure amounts to be paid; and (h) the impact on employees, including the number of employees proposed to be transferred and employee-related obligations to be assumed (collectively, the "Bid Assessment Criteria").

5. Conclusion of Each Overbid Round. Upon the solicitation of each round of Overbids, the Debtors may announce a deadline (as the Debtors may, in their business judgment, and upon consultation with the Consultation Parties, extend from time to time, the "Overbid Round Deadline") by which time any Overbids must be submitted to the Debtors.
6. No Round-Skipping. Round-skipping, as described herein, is explicitly prohibited. To remain eligible to participate in the Auction, in each round of bidding, (i) each Qualified Bidder must submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding Bid submitted by a Qualified Bidder in such round of bidding and (ii) to the extent a Qualified Bidder fails to bid in such round of bidding or to submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding Bid submitted by a Qualified Bidder in such round of bidding, such Qualified Bidder shall be disqualified from continuing to participate in the Auction for the Assets.
7. Announcing Highest Bid. With respect to the Auction, the Debtors shall, subsequent to each Overbid Round Deadline, announce whether the

Debtors, in consultation with the Consultation Parties, have identified (a) in the initial Overbid round, an Overbid as being higher or otherwise better than the Baseline Bid in respect of the Assets that are the subject of the Auction or (b) in subsequent rounds, an Overbid as being higher or otherwise better than the Overbid previously designated by the Debtors 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 as the Prevailing Highest Bid as well as the value attributable to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria.

H. Closing the Auction. The Auction shall continue until there is only one Qualified Bid that the Debtors and the Consultation Parties determine, to be the highest or otherwise best Qualified Bid for the Assets. Such Qualified Bid shall be declared the “Successful Bid,” and such Qualified Bidder, the “Successful Bidder,” at which point the Auction will be closed. The Auction shall 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. Such acceptance of such Successful Bid is conditioned upon approval by the Court of such Successful Bid. For the avoidance of doubt, nothing in these Bidding Procedures shall prevent the Debtors from exercising their fiduciary duties under applicable law. As soon as reasonably practicable after closing the Auction, the Debtors shall finalize definitive documentation to implement the terms of the Successful Bid, and, as applicable, cause such definitive documentation to be filed with the Court.

C. Auction Results

1. Successful Bids. Immediately prior to the conclusion of the Auction, the Debtors will notify all Qualified Bidders at the Auction of the identity of the Successful Bidder and the amount of the purchase price and other material terms of the Successful Bid. As a condition to remaining the Successful Bidder, the Successful Bidder shall, by August 1, 2024, (i) if applicable, wire to the Debtors in immediately available funds the Incremental Deposit Amount, calculated based on the purchase price in the Successful Bid(s) and (ii) submit to the Debtors fully executed documentation memorializing the terms of the Successful Bid(s).
2. Backup Bids. Immediately prior to the conclusion of the Auction, the Debtors will (a) determine, in a manner consistent with these Bid Procedures, which Qualified Bid is the Backup Bid and (b) notify all Qualified Bidders at the Auction of the identity of the Backup Bidder and the amount of the purchase price and other material terms of the Backup Bid. By August 1, 2024, the Backup Bidder shall submit to the Debtors execution versions of the documentation memorializing the terms of the Backup Bid(s). Notwithstanding anything to the contrary herein, any

Stalking Horse Bidder shall not be required to serve as a Backup Bidder, notwithstanding such Stalking Horse Bidder's Stalking Horse Bid being the next highest or best Bid after a Successful Bid for the Assets, without its prior written consent.

A Backup Bid will remain binding on the applicable Backup Bidder until the first business day after the closing of a Sale Transaction with the Successful Bidder (the "Backup Bid Expiration Date"). If the Sale Transaction with the applicable Successful Bidder is terminated prior to the Backup Bid Expiration Date, the Backup Bidder shall be deemed the new Successful Bidder and shall be obligated to consummate the Backup Bid as if it were the Successful Bid at the Auction; provided, that the Debtors may, in their business judgment and after providing notice to the Sale Notice Parties, elect not to pursue the Sale Transaction contemplated by the Backup Bid.

3. Notice of Auction Results. By July 31, 2024 at 12:00 p.m. (prevailing Eastern time), the Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Claims Agent Website, a notice setting forth the results of the Auction or any Sub-Auction (the "Notice of Auction Results"), which will (a) identify each Successful Bidder and each Backup Bidder, (b) include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bids, including any proposed assumption and assignment of Contracts contemplated thereby, and (c) set forth the Post-Auction Objection Deadline (as defined herein), the date, time and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction or any Sub-Auction.
4. The Debtors' presentation to the Bankruptcy Court for approval of a selected Qualified Bid as a Successful Bid does not constitute the Debtors' acceptance of such Bid. The Debtors will have accepted a Successful Bid only when such Successful Bid has been approved by the Bankruptcy Court at the Sale Hearing.

D. Additional Auction Procedures

The Debtors (in consultation with the Consultation Parties) may announce at the Auction or a specific Sub-Auction additional procedural rules (*e.g.*, among other things, the amount of time to make Subsequent Bids, the amount of the Minimum Overbid, or the requirement that parties submit "best and final" Bids) for conducting the Auction or specific Sub-Auction or otherwise modify these Bid Procedures; provided, that such rules (i) are not materially inconsistent with the Bid Procedures Order, the DIP Documents, these Bid Procedures, the Bankruptcy Code or any order of the Bankruptcy Court; (ii) are disclosed to each Qualified Bidder during the Auction or Sub-Auction; and (iii) are in form and substance acceptable to TREW. For the avoidance of doubt, any Bid for any Assets included in any Auction Package shall be subject to a determination by the Debtors, in their business judgment and in accordance with the other provisions of these Bid

Procedures, that (i) a Bid for substantially all of the Debtors' Assets and/or (ii) a combination of Bids that groups the Assets together differently is the highest or otherwise best offer for such Assets.

E. Disposition of Good Faith Deposit

1. Prospective Bidders. Within five (5) business days after the Debtors make final determinations as to which Prospective Bidders qualify as Qualified Bidders, a Prospective Bidder's Good Faith Deposit shall be returned to any such Prospective Bidder that did not qualify as a Qualified Bidder, as confirmed by the Debtors. Upon the authorized return of a Prospective Bidder's Good Faith Deposit, the Bid of such Prospective Bidder shall be deemed terminated and no longer binding against the Prospective Bidder.
2. Qualified Bidders.
 - a. Forfeiture of Good Faith Deposit. The Good Faith Deposit of a Qualified Bidder shall be forfeited if the Qualified Bidder attempts to withdraw its Qualified Bid, except as may be permitted by these Bid Procedures, during the time the Qualified Bid remains binding and irrevocable under these Bid Procedures. The Debtors and their estates shall be entitled to retain the Qualified Bidder's Good Faith Deposit as partial compensation for the damages caused to the Debtors and their estates as a result of the Qualified Bidder's failure to adhere to the terms of these Bid Procedures and/or the relevant Qualified Bid. In the event that a Qualified Bidder's Good Faith Deposit is deemed forfeited, such Qualified Bidder's Good Faith Deposit shall be released by wire transfer of immediately available funds to an account designated by the Debtors within two (2) business days after receipt of written notice by an authorized officer of the Debtors stating that the applicable Qualified Bidder has breached or otherwise failed to satisfy its obligations in accordance with these Bid Procedures and the applicable Qualified Bid.
 - b. Return of Good Faith Deposit. With the exception of the Good Faith Deposits of Successful Bidders and Backup Bidders and any forfeiture of a Good Faith Deposit as described above, any other Qualified Bidder's Good Faith Deposit shall be returned within five (5) business days after the conclusion of the Auction.
 - c. Backup Bidder. Any Backup Bidder's Good Faith Deposit shall be returned within five (5) business days after the occurrence of the Backup Bid Expiration Date.
 - d. Successful Bidder. At the closing of a Sale Transaction, the Successful Bidder shall be entitled to a credit against the purchase price for the applicable Assets in the amount of the Successful

Bidder's Good Faith Deposit. The Good Faith Deposit of a Successful Bidder shall be forfeited if the Successful Bidder fails to consummate the applicable Sale Transaction because of a breach that entitles the Debtors to terminate the applicable asset purchase agreement with such Successful Bidder, and the Debtors and their estates shall be entitled to retain the Successful Bidder's Good Faith Deposit as partial compensation for the damages caused to the Debtors and their estates as a result of such breach. In the event that a Successful Bidder's Good Faith Deposit is deemed forfeited, such Good Faith Deposit shall be released by wire transfer of immediately available funds to an account designated by the Debtors within two (2) business days after receipt of written notice by an authorized officer of the Debtors stating that the applicable Successful Bidder has breached or otherwise failed to satisfy its obligations in accordance with these Bid Procedures and the applicable Successful Bid.

VII. SALE HEARING

Each Successful Bid (including any Backup Bid that is subsequently deemed a Successful Bid) will be subject to approval by the Bankruptcy Court. The hearing to approve any Sale Transaction consummated in accordance with these Bid Procedures (except in the case of a Sale Transaction contemplated by a Backup Bid that subsequently is deemed a Successful Bid) shall take place on **August 5, 2024, at 3:30 p.m. (prevailing Eastern Time)** (the "Sale Hearing") before the Honorable Craig T. Goldblatt, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware.

At the Sale Hearing, the Debtors will seek entry of one or more orders (each, a "Sale Order") approving, among other things, one or more sales of the Assets to the Successful Bidder(s).

Without prejudice to the rights of the any Stalking Horse Bidder under the Stalking Horse APA, the Debtors may, in their business judgment (after consulting with the Successful Bidder(s) and the Consultation Parties), adjourn or reschedule the Sale Hearing with sufficient notice to the Sale Notice Parties, including by announcing such adjournment or rescheduling at the Auction or in Court on the date of the originally scheduled Sale Hearing; provided that TREW's written consent is required for any extension beyond the Milestones set forth in the DIP Documents.

At the Sale Hearing, the Debtors will seek entry of an order that, among other things: (i) authorizes and approves the Sale Transaction(s) to the Successful Bidder(s) and/or the Backup Bidder(s); (ii) includes a finding that the Successful Bidder(s) and/or the Backup Bidder(s) is a good faith purchaser pursuant to Section 363(m) of the Bankruptcy Code; and (iii) as appropriate, exempts the Sale Transaction(s) and conveyance(s) of the Assets from any transfer tax, stamp tax or similar tax, or deposit under any applicable bulk sales statute.

VIII. RESERVATION OF RIGHTS TO MODIFY BID PROCEDURES

The Debtors (in consultation with the Consultation Parties) reserve the right to, in their business judgment, in a manner consistent with their fiduciary duties and applicable law, and in consultation with TREW, modify these Bid Procedures, including to, among other things: (a) extend or waive deadlines or other terms and conditions set forth herein; (b) adopt new rules and procedures for conducting the bidding and Auction process; (c) if applicable, provide reasonable accommodations to any Stalking Horse Bidder; or (d) otherwise modify these Bid Procedures to further promote competitive bidding for and maximizing the of value of the Assets; provided, that such extensions, waivers, new rules and procedures, accommodations and modifications (i) do not conflict with and are not inconsistent with the Bid Procedures Order, these Bid Procedures, the Bankruptcy Code or any order of the Bankruptcy Court; and (ii) are promptly communicated to each Qualified Bidder; provided, that such extensions, waivers, new rules and procedures, accommodations and modifications (i) do not conflict with and are not inconsistent with the Bid Procedures Order, the Bid Procedures, the Bankruptcy Code, the DIP Documents, or any other order of the Bankruptcy Court and (ii) are promptly communicated to each Qualified Bidder..

IX. NOTICING

Bid Notice Parties

Qualified Bids must be submitted in writing to the following parties by email (collectively, the “Bid Notice Parties”):

- the Debtors, c/o Force 10 Partners, Attn: Nicholas Rubin, nrubin@force10partners.com, and Brian Weiss, bweiss@force10partners.com;
- investment banker for the Debtors, Hilco Corporate Finance, LLC, by email to tstratton@hilcofc.com; and
- counsel for the Debtors, Raines Feldman Littrell LLP, hrafatjoo@raineslaw.com and dforsh@raineslaw.com.

Sale Notice Parties

The “Sale Notice Parties” shall mean the following persons and entities:

- all persons and entities known by the Debtors to have asserted any lien, claim, interest or encumbrance in the Assets (for whom identifying information and addresses are available to the Debtors), including TREW;
- all non-Debtor parties (each, a “Counterparty”) to any Contract that may be assumed or rejected in connection with a Sale Transaction;
- any governmental authority known to have a claim against the Debtors in these Chapter 11 Cases;

- the Federal Trade Commission;
- the Bureau of Consumer Protection;
- the Consumer Protection Financial Bureau;
- the office of the U.S. Trustee;
- all applicable federal, state and local taxing authorities, including the Internal Revenue Service;
- the United States Attorney’s Office for the District of Delaware;
- United States Attorney General’s Office for the District of Delaware;
- the Office of the Attorney General and the Secretary of State in each state in which the Debtors operate;
- counsel for any official committee appointed in these Chapter 11 Cases;
- all of the parties entitled to notice pursuant to Bankruptcy Rule 2002; and
- all other parties as directed by the Court.

Sale Notice and Publication Notice

By the later of (i) **July 5, 2024**, and (ii) four (4) business days after entry of the Bid Procedures Order, the Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Claims Agent Website a notice (the “Sale Notice”) setting forth (A) a description of the Assets available for sale in accordance with these Bid Procedures, (B) the date, time and location of the Auction and Sale Hearing, and (C) the Sale Objection Deadline and Post-Auction Objection Deadline (each as defined herein) and the procedures for filing such objections.

Within five (5) business days after entry of the Bid Procedures Order, or as soon as reasonably practicable thereafter, the Debtors will cause the information contained in the Sale Notice to be published once in *The Wall Street Journal* (national edition), *Los Angeles Times*, or a similar regional or national publication (the “Publication Notice”).

Sale Objections

Objections to a sale of the Assets, including (i) any objection to a sale of the Assets free and clear of all liens, claims, interests and encumbrances pursuant to Section 363(f) of the Bankruptcy Code and (ii) entry of any Sale Order shall, by **no later than July 26, 2024, at 5:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”), be filed with the Court and served on the following parties (collectively, the “Objection Notice Parties”):

- the Debtors, c/o Force Ten Partners, LLC, 5271 California Ave., Suite 270, Irvine, CA 92617 (Attn: Nicholas Rubin, nrubin@force10partners.com and Brian Weiss, bweiss@force10partners.com);
- counsel for the Debtors, (a) Raines Feldman Littrell LLP, 3200 Park Center Drive, Suite 250, Costa Mesa, CA 92626 (Attn: Hamid Rafatjoo, Esq., hrafatjoo@raineslaw.com, and David Forsh, dforsh@raineslaw.com) and (b) Whiteford, Taylor & Preston LLC, 600 North King Street, Suite 300, Wilmington, DE 19801 (Attn: Richard W. Riley, rriley@whitefordlaw.com; and
- counsel for any official committee appointed in these Chapter 11 Cases;
- counsel for TREW: (a) Culhane PLLC, 3441 Silverside Road, Baynard Building, Suite 104-13, Wilmington, DE 19810 (attn: Mette Kurth, mkurth@cm.law; and (b) Culhane PLLC, 13101 Preston Road, Ste. 110-1593, Dallas, TX 75240, lwarman@cm.law

Notices Regarding Assumption and Assignment of Contracts

The Debtors will provide all notices regarding the proposed assumption and assignment of Contracts in accordance with the Assumption and Assignment Procedures (as defined in the Bid Procedures Order).

X. CONSULTATION BY THE DEBTORS

Throughout the Sale Transaction process, the Debtors and their advisors will consult with the following parties (collectively, the “Consultation Parties”), as provided in these Bid Procedures, or as is otherwise necessary or appropriate, as determined in the Debtors’ business judgment: (a) the legal and financial advisors for any official committee appointed in these Chapter 11 Cases; and (b) TREW, provided that, if and when TREW submits a Bid (whether on or before the Bid Deadline), TREW will no longer be a Consultation Party.

Notwithstanding the foregoing, the Debtors will not provide copies of any Bids or other confidential information to any Consultation Party or any insider or affiliate of the Debtors if such party is an active or prospective bidder for the relevant Asset(s) at the applicable time. If, however, a member of an official committee appointed in these Chapter 11 Cases submits a Qualified Bid for any of the Assets, the applicable committee will maintain its consultation rights as a Consultation Party, provided, that such committee excludes the bidding committee member from any discussions or deliberations regarding a transaction involving the relevant Assets, and shall not provide any confidential information regarding the Assets or otherwise involving the Sale Transaction process to the bidding committee member.

For the avoidance of doubt, any consultation rights afforded to the Consultation Parties by these Bid Procedures or the Bid Procedures Order shall not in any way limit the Debtors’ discretion and shall not include the right to veto any decision made by the Debtors in the exercise of their business judgment.

EXHIBIT 2
NOTICE OF THE SALE HEARING

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

In re:

MRRC HOLD CO., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11164 (CTG)

(Jointly Administered)

NOTICE OF SALE BY AUCTION AND SALE HEARING

PLEASE TAKE NOTICE that on June 11, 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion for Entry of Orders (I)(A) Approving Bidding Procedures for All or Substantially All of the Assets of Rubio’s Restaurants, Inc. and Rubio’s Incentives, LLC, (B) Authorizing the Debtors to Designate a Stalking Horse Bid, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures and (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors’ 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. 70] (the “Sale Motion”)² with the United States Bankruptcy Court for the District of Delaware (the “Court”) seeking, among other things, entry of an order (the “Sale Order”) authorizing and approving: (a) the sale of substantially all of the assets of the Debtors, free and clear of all liens, claims, encumbrances, and other interests (the “Sale”); and (b) the assumption and assignment of certain executory contracts and unexpired leases (collectively, the “Contracts”).

PLEASE TAKE FURTHER NOTICE that the Debtors are soliciting offers for the purchase of the substantially all of the assets of the Debtors consistent with the bidding procedures (the “Bid Procedures”) approved by the Court by entry of an order on [•] [•], 2024 [Docket No. [•]] (the “Bid Procedures Order”). **All interested bidders should carefully read the Bid Procedures and Bid Procedures Order.** To the extent that there are any inconsistencies between this notice and the Bid Procedures or Bid Procedures Order, the Bid Procedures or Bid Procedures Order, as applicable, shall govern in all respects.

PLEASE TAKE FURTHER NOTICE that, if the Debtors receive qualified competing bids within the requirements and time frame specified by the Bid Procedures, the Debtors will conduct an auction (the “Auction”) of the Assets on **July 30, 2024 at 11:00 a.m. (prevailing**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: MRRC Hold Co. (1242); Rubio’s Restaurants, Inc. (0303); and Rubio’s Incentives, LLC (9359). The Debtors’ mailing address is 2200 Faraday Avenue, Suite 250, Carlsbad, CA 92008.

² Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Sale Motion or Bid Procedures Order, as applicable.

Pacific Time) at the offices of Raines Feldman Littrell LLP, 1900 Avenue of the Stars, 19th Floor, Los Angeles, CA 90067 (or at any other location or electronically as the Debtors may hereafter designate on proper notice).

PLEASE TAKE FURTHER NOTICE that the Debtors will seek approval of the Sale at a hearing scheduled to commence on or before **August 5, 2024, at 3:30 p.m. (prevailing Eastern Time)** (the “Sale Hearing”) before the Honorable Craig T. Goldblatt, United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3d Floor, Courtroom 7, Wilmington, DE 19801.

PLEASE TAKE FURTHER NOTICE that, except as otherwise set forth in the Bid Procedures Order with respect to any objections to proposed cure amounts or the assumption and assignment of Contracts, objections to the relief requested in the Sale Motion ***must***: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual bases for the objection and the specific grounds therefor; and (d) be filed with the Court by **July 26, 2024 at 5:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”).

PLEASE TAKE FURTHER NOTICE THAT ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE 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 DEBTORS’ ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion, Bid Procedures, and Bid Procedures Order, as well as all related exhibits, including any applicable asset purchase agreement, is available: (a) free of charge upon request by calling 855-316-2464 toll free in the United States and 714-716-1950 outside of the United States; (b) online at <https://cases.stretto.com/rubios/>; or (c) for a fee via PACER at <https://ecf.deb.uscourts.gov/>.

PLEASE TAKE FURTHER NOTICE that you may obtain additional information concerning the Debtors’ bankruptcy cases at <https://cases.stretto.com/rubios/>.

Dated: July __, 2024

WHITEFORD, TAYLOR & PRESTON LLC

Richard W. Riley (No. 4052)
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- and -

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- and -

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT 3
ASSUMPTION AND ASSIGNMENT NOTICE

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

In re:

MRRC HOLD CO., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11164 (CTG)

(Jointly Administered)

**NOTICE TO CONTRACT PARTIES OF POTENTIAL ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU OR ONE OF YOUR
AFFILIATES IS A COUNTERPARTY TO AN EXECUTORY CONTRACT OR
UNEXPIRED LEASE AS SET FORTH ON EXHIBIT A ATTACHED HERETO.**

PLEASE TAKE NOTICE that on June 11, 2024, the Debtors in the above-captioned bankruptcy cases filed a motion seeking, among other things, approval of sale procedures in connection with a potential sale of all or any part of the Debtors' assets [Docket No. 70] (the "**Sale Motion**") in a bidding and auction process governed by certain procedures (the "**Bid Procedures**") to be approved by the United States Bankruptcy Court for the District of Delaware (the "**Court**").

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bid Procedures and the terms of any Successful Bid, the Debtors **may** assume and assign to the Successful Bidder any of the contracts or agreements listed on the attached **Exhibit A** (the "**Potentially Assigned Contracts**"), including but not limited to those contracts or leases to which you or one of your affiliates is a party ("**Your Contracts**").

PLEASE TAKE FURTHER NOTICE that the Debtors, after a review of their books and records, have determined that the cure amounts for unpaid monetary obligations under such Potentially Assigned Contracts is set forth on **Exhibit A** (the "**Cure Amounts**").

PLEASE TAKE FURTHER NOTICE that if you disagree with the proposed Cure Amounts for any of Your Contracts, or object to the assumption and assignment of any of Your Contracts (except on the basis of adequate assurance of future performance), you must file an objection, stating with specificity the grounds for the objection (including but not limited to stating the correct cure amount, if your objection pertains to the proposed Cure Amounts) and include all relevant documentation in support thereof, with the Court and serve such objection on the undersigned counsel, no later than **July 17, 2024**.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: MRRC Hold Co. (1242); Rubio's Restaurants, Inc. (0303); and Rubio's Incentives, LLC (9359). The Debtors' mailing address is 2200 Faraday Avenue, Suite 250, Carlsbad, CA 92008.

PLEASE TAKE FURTHER NOTICE that if no objection to (a) the Cure Amounts, or (b) the proposed assignment and assumption of any Potentially Assigned Contract, then (i) you will be deemed to have stipulated that the Cure Amounts are correct, (ii) you will be forever barred, estopped, and enjoined from asserting any additional cure amounts for any of Your Contracts, and (iii) you will be forever barred, estopped, and enjoined from objecting to the proposed assumption and assignment of Your Contracts on any grounds (other than adequate assurance of future performance).

PLEASE TAKE FURTHER NOTICE that any objection to the proposed assumption and assignment of any Potentially Assigned Contracts or related Cure Amounts in connection with the Successful Bid that otherwise complies with these procedures yet remains unresolved as of the commencement of the Sale Hearing, shall be heard by the Court at a date and time to be determined.

PLEASE TAKE FURTHER NOTICE that, notwithstanding anything herein, the listing of any executory contract or unexpired lease on the attached **Exhibit A** does not require or guarantee that any such contract or lease will at any time be assumed by the Debtors and assigned, and all rights of the Debtors and the Successful Bidder with respect to such executory contracts and unexpired leases are reserved. Moreover, the Debtors explicitly reserve their rights to seek to reject or assume each Potentially Assigned Contract pursuant to section 365(a) of the Bankruptcy Code and in accordance with the procedures allowing the Debtors and/or the Successful Bidder, as applicable, to designate any Assigned Contract as either rejected or assumed on a post-closing basis.

PLEASE TAKE FURTHER NOTICE that, nothing herein (i) alters in any way the prepetition nature of the Potentially Assigned Contracts or the validity, priority, or amount of any claims of a counterparty to any Potentially Assigned Contract against the Debtors that may arise under such Potentially Assigned Contract, (ii) creates a postpetition contract or agreement, or (iii) elevates to administrative expense priority any claims of a counterparty to any Potentially Assigned Contract against the Debtors that may arise under such Potentially Assigned Contract.

PLEASE TAKE FURTHER NOTICE that you may obtain additional information concerning the above-captioned bankruptcy cases, including but not limited to copies of the Sale Motion and related filings, free of charge at <https://cases.stretto.com/rubios>.

Dated: July __, 2024
Wilmington, Delaware

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