

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

In re:

BLACK NEWS CHANNEL, LLC,¹

Debtor.

Case No. 4:22-bk-40087-KKS

Chapter 11

DEBTOR’S EMERGENCY MOTION FOR (A) APPROVAL OF BIDDING PROCEDURES, (B) AUTHORIZATION FOR DEBTOR TO DESIGNATE STALKING HORSE BIDDER AND GRANT CERTAIN STALKING HORSE INDUCEMENTS, (C) SCHEDULING AUCTION, SALE HEARING AND RELATED DATES, (D) APPROVAL OF THE FORM AND MANNER OF NOTICE THEREOF, (E) ESTABLISHMENT OF NOTICE AND PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (F) APPROVAL OF THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS AND (G) RELATED RELIEF

Debtor Black News Channel, LLC (“BNC” or the “Debtor”), by and through its undersigned counsel, submits this motion (the “Motion”), pursuant to sections 105, 363, 365, 503 and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-2 and 6004-1(C) of the Local Rules of the United States Bankruptcy Court for the Northern District of Florida (the “Local Bankruptcy Rules”) for entry of: (a) an order, in substantially the form attached hereto as **Exhibit A** (the “Bidding Procedures Order”), (i) approving Bidding Procedures for, *inter alia*, the sale of some or substantially all of the Debtor’s assets (the “Acquired Assets”) attached thereto as **Exhibit 1**, (ii) authorizing the Debtor to designate a Stalking Horse Bidder and to grant certain Stalking Horse Inducements (each as defined herein), (iii) scheduling an Auction and Sale Hearing (each as defined herein)

¹ The Debtor’s address is 2320 Killearn Center Blvd., Building D, Tallahassee, Florida 32309. The last four digits of the Debtor’s federal tax identification number are 5082.

and establishing related dates, (iv) approving the form and manner of notice (the “Notice Procedures”) in connection with the Sale Process (as defined herein), (v) approving procedures for the assumption and assignment of certain executory contracts and unexpired leases, and (vi) granting related relief; and (b) an order (the “Sale Order”), (i) authorizing the sale free and clear of all liens, claims, interests, and encumbrances (except for any permitted liens and encumbrances), (ii) authorizing the assumption and assignment of the Designated Contracts, and (iii) granting related relief. In support of this Motion, the Debtor relies on and incorporates by reference the *Declaration of Maureen Brown in Support of Chapter 11 Petition and First Day Relief* (the “Brown Declaration”) (ECF No. 60), and respectfully states:

Preliminary Statement

1. As discussed more fully in the Brown Declaration, the Debtor commenced this chapter 11 case on an emergency basis in order to preserve the going concern value of its assets and business. Immediately prior to seeking bankruptcy protection, the Debtor, having exhausted its traditional funding sources and concluded an extended campaign to identify alternative financing sources, was experiencing financial distress of such severity as to place the Debtor’s ability to continue as a going concern in serious doubt. Indeed, on March 25, 2022, when it became apparent that the Debtor would not have sufficient funds on hand to make a scheduled payroll, the Debtor’s management made the difficult chose to substantially scale back its operations and reduce its workforce to a core group of 17 employees.

2. Notwithstanding a contemporaneous statement from BNC’s Board of Managers (the “Board”) indicating that such actions had been taken to conserve resources, preserve core assets and facilitate the company’s ability to consider all available options, these events were widely misreported in the broader media as meaning that BNC was going off air and

permanently discontinuing its operations. The rapid, albeit inaccurate, spread of the news of BNC's demise over the course of that day had an unintended benefit to the Debtor. By the end of the business day on March 25th, the Debtor had received multiple inquiries from facially legitimate sources about a potential acquisition of the Debtor's business and/or assets.

3. With the benefit of this new information suggesting that BNC may still have an opportunity to pursue a value-maximizing going concern transaction that would also allow BNC to continue its socially important journalistic mission, on March 26th, the Board, with the support of BNC's primary equity holder and prepetition lender, Beatnik Investments, LLC ("Beatnik"), immediately redirected efforts to preparing the company for a potential chapter 11 filing as a means to achieve these goals. To this end, Beatnik - an entity affiliated with Mr. Shahid Khan, who has been one of BNC's longest-term and most committed supporters - provided \$1.2 million in emergency funding to BNC immediately prior to its bankruptcy filing for BNC to pay the wages and other compensation owed to its employees from the March 25th payroll and to provide resources for the company to engage restructuring professionals and prepare for a potential chapter 11 filing.

4. However, before BNC's restructuring preparations could advance materially, BNC's Board determined that BNC needed to seek bankruptcy protection in this Court to avoid BNC's assets and business from being dismembered. Specifically, BNC became aware of efforts by a network carrier to terminate its relationship with BNC and that certain other network partners were at least contemplating removing BNC from their channel lineups. To forestall these disastrous events, BNC, at the direction of its Board, filed its voluntary chapter 11 petition in this Court on the evening of March 28, 2022 (the "Petition Date").

5. During the initial weeks of BNC's chapter 11 case, BNC and its counsel had to triage several high priority needs of BNC simultaneously, including completing arrangements with Stache Investments Corporation ("Stache" or the "DIP Lender"), another entity affiliated with Mr. Khan, and Busey Bank ("Busey" or the "Prepetition Lender") for a debtor-in-possession financing facility (the "DIP Facility") and other actions necessary to preserve and secure BNC's assets and business. The Debtor and its counsel also rushed during the initial weeks of this case to prepare and file motions for traditional "first day" chapter 11 bankruptcy relief designed to ease BNC's transition into bankruptcy and to communicate with its current and former employees, network partners, advertisers, vendors and others concerning the company's current status and its goals for this chapter 11 proceeding.

6. Simultaneously, BNC also began to lay the groundwork for what it hopes will be a robust and successful postpetition sale and restructuring process (the "Sale Process"). BNC recognized that to give itself the best chance to pursue a value-maximizing sale transaction, it would need the assistance of a skilled financial advisor with extensive experience in restructuring and selling distressed businesses such as BNC. To that end, after receiving proposals from and interviewing several candidates during the first week of this case, BNC decided to engage Ankura Consulting Group, LLC, and its affiliate, Ankura Capital Advisors, LLC (together, "Ankura"). In addition, until its advisors for the Sale Process could be engaged and get up to speed, BNC continued to communicate with those parties that had recently expressed interest in pursuing a sale or other transaction with BNC and responded to several additional inquiries it received during this period from potential acquirors.

7. With these important early tasks now behind it, BNC is now in a position to focus in earnest on the Sale Process that was, and is, BNC's principal impetus for commencing

this chapter 11 case. The Debtor, with support and guidance from Ankura and its other restructuring professionals, believes that it has formulated a Sale Process that will give the Debtor the best possible chance under the circumstances of maximizing the value of its bankruptcy estate for the benefit of the Debtor's creditors and stakeholders, optimally through a going-concern sale or restructuring transaction that will both preserve and restore jobs and allow BNC continue with its important mission delivering quality news and other content focused on the unique perspectives, challenges and successes of the nation's Black and Brown communities.

8. To that end, this Motion seeks expedited approval of Bidding Procedures and additional relief that the Debtor and its advisors believe will help implement the ongoing Sale Process by, among other things, providing the Debtor with the resources and flexibility to engage with bidders, foster a competitive bidding process, and ultimately enable the Debtor to select the highest and best offer for the Debtor's assets and business or another restructuring transaction. For example, the proposed Bidding Procedures Order authorizes the Debtor, after consultation with certain representatives of its lenders and unsecured creditors, to designate a Stalking Horse Bidder for its assets and business and provide certain bid protections on the terms described herein and in the Bidding Procedures Order if in the Debtor's business judgment such inducements are likely to help the Debtor maximize the value of its estate. As of the filing of this Motion, the Debtor does not have an agreement with any party to serve as a Stalking Horse Bidder but has received several expressions of interest to serve in that role.

9. The Debtor is pursuing the Restructuring Transaction (as defined below) to maximize the value of the estate and will accept bids in the form of either a purchase of the Debtor's assets or as a plan sponsor proposal, resulting in either an asset sale restructuring,

whereby the Debtor will enter into a sale transaction for the sale or disposition of some or substantially all of the Debtor's assets, or a plan of reorganization. Permitting a Restructuring Transaction to take the form of either an asset sale or plan of reorganization provides the Debtor with the latitude necessary to negotiate the precise terms of its ultimate emergence from chapter 11. This Motion lays the groundwork for the Restructuring Transaction.

10. The Debtor believes that the relief requested by this Motion will enable it to pursue a robust, value-maximizing Sale Process. Accordingly, the Debtor respectfully requests that the Court grant the relief requested in this Motion.

Jurisdiction and Venue

11. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Reference from the United States District Court for the Northern District of Florida, dated June 5, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

12. The Debtor confirms its consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

13. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

14. The statutory predicates for the relief sought herein are sections 105, 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9014, and Local Bankruptcy Rules 2002-2 and 6004-1(C).

Background

15. On the Petition Date, the Debtor commenced this bankruptcy case (the “Chapter 11 Case”) by its filing of a voluntary petition with this Court under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business as a debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On April 12, 2022, the United States Trustee for Region 21 (the “U.S. Trustee”) appointed (ECF No. 90) an Official Committee of Unsecured Creditors in this Chapter 11 Case (as reconstituted from time to time, the “Committee”), initially consisting of two members. On April 20, 2022, the U.S. Trustee issued an amended notice (ECF No. 131) appointing three additional members of the Committee. No trustee or examiner has been appointed or requested in this Chapter 11 Case.

16. Initially formed as a Florida limited liability company in 2004, BNC launched operations as the nation’s first news channel dedicated to covering the unique perspectives, challenges and successes of Black and Brown communities in February 2020. Based in Tallahassee, Florida, BNC has state of the art news studios located in its Tallahassee headquarters facility and in Washington, DC.

17. Additional information concerning, among other things, BNC’s finances and operations can be found in the Brown Declaration.

The Sale Process

I. The Prepetition Marketing Process.

18. As detailed in the Brown Declaration, by the summer of 2021, it was becoming increasingly evident that for BNC to realize upon its corporate vision, it would require substantial additional capital beyond that which Shahid Khan and Beatnik were prepared to provide. Accordingly, with the support of Mr. Khan and Beatnik, BNC engaged a reputable

investment banker to, among other things, develop and implement a comprehensive process to identify, engage with, and negotiate terms with additional potential minority or majority investors. Through November 2021, BNC's investment banker contacted approximately 86 potential strategic and financial investor candidates. Out of this pool, approximately 35 parties expressed interest in pursuing a transaction with BNC, 9 parties went under NDAs and engaged in meaningful due diligence, and 2 actually submitted investment proposals to BNC. Unfortunately, neither of the November 2021 proposals that BNC received proved to be viable.

19. Over the next few months, BNC continued its efforts to investigate and pursue strategic alternatives and to implement cost-cutting measures. BNC's exploration of strategic alternatives during this period included, with the assistance of the same investment banker, outreach to many of the same parties to explore other options, including a potential sale of the business. BNC's efforts to right-size the business included workforce reductions in December 2021 and January 2022 that eliminated approximately 88 positions at the company. Despite these efforts, no other suitable transaction opportunities were identified, and BNC continued to experience problematic negative cash flow.

II. Postpetition Sale Process.

A. Debtor's Postpetition Marketing Efforts to Date.

20. In connection with the Debtor's chapter 11 filing, among other things, the Debtor has determined to pursue a marketing process for bids to sell some or substantially all the Debtor's assets under section 363 of the Bankruptcy Code (a "Sale") or to reorganize the Debtor through a plan of reorganization (a "Plan", and together with a Sale, a "Restructuring Transaction"). The DIP Lender, the Prepetition Lender, and Beatnik all have expressed support for the Debtor's Sale Process. Further, the DIP Lender, with the consent of the Prepetition

Lender, has agreed to provide financial support for the Debtor's efforts to consummate a Restructuring Transaction in the form of a \$3.3 million financing commitment through the DIP Facility.

21. As discussed above and further detailed in the Brown Declaration, the Debtor, subject to Court approval, has retained Ankura, a nationally respected and reputable financial advisory and investment banking firm, to provide it with sale advisory services in connection with this Chapter 11 Case. With Ankura's assistance, the Debtor continues to engage with those parties that have expressed interest to the Debtor or its advisors in pursuing a potential Restructuring Transaction. Indeed, as of the filing of this Motion, several of such parties have already executed non-disclosure agreements with the Debtor and have commenced limited due diligence.

22. Further, promptly upon the Debtor's engagement of Ankura, the Debtor and Ankura initiated the steps necessary to conduct a postpetition marketing process, including preparing a teaser, confidential information memorandum and other marketing and due diligence materials, compiling a list of potential bidders, and establishing and populating a virtual data room (the "Data Room"). The Debtor and Ankura intend to launch the marketing process immediately. Soon after the filing of this Motion, the Debtor will distribute the teaser to the prospective purchasers and plan sponsors and expects to execute additional confidentiality agreements with certain prospective purchasers and plan sponsors shortly thereafter. Ankura and the Debtor will work with all interested parties and any additional parties to provide all necessary diligence and will continue to actively seek potential interested purchasers and plan sponsors.

B. Postpetition Sale Timeline and Selection of Stalking Horse Bidder to Date.

23. The marketing process and the Bidding Procedures proposed in this Motion provide sufficient time for the Debtor to market its assets and business, receive and evaluate bids and proposals, execute a stalking horse agreement, and hold an Auction (if necessary) to determine the highest or otherwise best bid. Specifically, the timeline of the Bidding Procedures is aligned with the milestones negotiated for and set forth in that certain *DIP Financing Facility Term Sheet*, dated April 22, 2022 (the “DIP Term Sheet”), annexed as Exhibit 1 to the proposed *Interim Order Granting, in Part, Debtor’s Emergency Motion Seeking Entry of Interim and Final Orders (i) Authorizing the Debtor to (a) Obtain Postpetition Financing and (b) Utilize Cash Collateral, (ii) Granting Liens and Superpriority Administrative Expense Claims, (iii) Granting Adequate Protection, (iv) Modifying the Automatic Stay, (v) Scheduling a Final Hearing for May [__, 2022, at _0:_0 A/P.M], Eastern Standard Time, and (vi) Granting Related Relief* (the “Proposed Interim DIP Order”).² The Debtor’s timely filing of this Motion, the entry of the Bidding Procedures Order within 21 days after the filing of this Motion, a Bid Deadline not later than 42 days after the Bidding Procedures Order is entered are all among the milestones to which the Debtor’s continued access to cash collateral and DIP financing proceeds are tied under the terms of the Proposed Interim DIP Order and DIP Term Sheet.

24. In the Debtor’s considered judgment, formed after consultation with Ankura and the Debtor’s bankruptcy counsel, the timeline provided for in the Bidding Procedures Order will provide ample opportunity for potential buyers to review the Debtor’s assets and business and formulate bids or proposals. Indeed, the Debtor notes that many of the most likely bidders in

² As of the filing of this Motion, the Proposed Interim DIP Order, having been uploaded to the Court on April 22, 2022, was pending before the Court for consideration. The Debtor believes the Proposed Interim DIP Order to be unopposed by the Committee, the U.S. Trustee, the DIP Lender or the Prepetition Lender.

connection with this Sale Process also were participants in the Debtor's prepetition marketing process and, in that context, many have already conducted meaningful due diligence of the Debtor's assets and business.

25. To foster competitive bidding, the Debtor believes it is important to establish a floor price for its assets and business. To this end, the Debtor is seeking authority to select one or more bidders to act as stalking horse bidders (each, a "Stalking Horse Bidder") and enter into a purchase agreement with each such Stalking Horse Bidder (each such agreement, a "Stalking Horse Agreement"). To induce a qualified party to serve as a Stalking Horse Bidder without the delay and expense that may be occasioned by further motion practice and Court proceedings, the Debtor further proposed that, in connection with any Stalking Horse Agreement, after the Debtor has consulted with the Consultation Parties³ (defined below), the Debtor should be permitted to offer the following bid protections to a Stalking Horse Bidder (in each case payable only from the proceeds of a consummated alternative Restructuring Transaction): (a) a breakup fee of up to three percent (3%) of the cash portion of the purchase price set forth in a Stalking Horse Bidder's executed Stalking Horse Agreement; and (b) expense reimbursement of such Stalking Horse Bidder's reasonable and documented out of pocket expenses incurred by the up to a maximum of two percent (2%) of the cash purchase price set forth in a Stalking Horse Bidder's Stalking Horse Agreement (collectively, the "Pre-Approved Stalking Horse Inducements"). Pursuant to the proposed Bidding Procedures Order, the Debtor may designate a Stalking Horse Bidder at any time on or before May 27, 2022, by filing a Stalking Horse Bidder Notice (as defined in the Bidding Procedures Order) that discloses: (x) the name of any

³ As set forth in the Bidding Procedures, the Consultation Parties are: (a) the Committee; (b) the DIP Lender; and (b) the Prepetition Lender.

Stalking Horse Bidder(s) designated by the Debtor; (y) a description of any Pre-Approved Stalking Horse Inducements that the Debtor has agreed to provide to such Stalking Horse Bidder(s); and (z) a copy of any such Stalking Horse Bidder's(s') Stalking Horse Agreement(s). The Debtor will contemporaneously serve the Stalking Horse Bidder Notice by email or similarly expeditious means upon (i) the U.S. Trustee, (ii) counsel for the Prepetition Lender, (iii) counsel for the DIP Lender, and (iv) counsel for the Committee (collectively, the "Notice Parties").

26. Further, should the Pre-Approved Stalking Horse Inducements prove to be inadequate to attract a qualified Stalking Horse Bidder to execute an acceptable Stalking Horse Agreement, the Debtor requests that the Court approve the procedures set forth in paragraphs 22 and 23 of the proposed Bidding Procedures Order for the Court's consideration on an expedited basis of the Debtor's request for approval of bid protections for the Stalking Horse Bidder beyond the Pre-Approved Stalking Horse Inducements (such bid protections, the "Additional Stalking Horse Inducements," and together with the Pre-Approved Stalking Horse Inducements, the "Stalking Horse Inducements"). As described more fully in the proposed Bidding Procedures Order, the Debtor will only be authorized to provide a Stalking Horse Bidder with the Additional Stalking Horse Inducements upon the Court's entry of the Bid Protections Order (as defined in the Bidding Procedures), which will only be entered, if the Court deems appropriate to grant such relief, following at least three (3) business days' notice to the Notice Parties (again via email or similarly expeditious electronic means) of the opportunity to object and demand a hearing before this Court on the Debtor's request for approval of the Additional Stalking Horse Inducements.

27. Having the flexibility to designate a Stalking Horse Bidder and provide the Stalking Horse Inducements will provide the Debtor with the ability to maximize the value of its estate through the Sale Process. Given the Debtor's need to maximize value for creditors and other stakeholders through a timely and efficient marketing and sale process, the ability to designate a Stalking Horse Bidder and offer Stalking Horse Inducements to such bidder (although the Debtor ultimately may, in the exercise of its business judgment, not designate a Stalking Horse Bidder at all) is a reasonable and sound exercise of the Debtor's business judgment and provides an actual benefit to the Debtor's estate.

Relief Requested

28. The Debtor seeks entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Bidding Procedures Order"):

- a) authorizing and approving the Bidding Procedures attached as Exhibit 1 to the Bidding Procedures Order (the "Bidding Procedures");
- b) establishing the below dates and deadlines for the marketing and bidding process:

Event	Date
Deadline to serve Notice of Auction and Sale Hearing	Within three (3) business days following entry of the Bidding Procedures Order
Deadline to serve Notice of Assumption and Assignment	Within five (5) business days following entry of the Bidding procedures Order
Cure Cost/Assignment Objection Deadline⁴	May 25, 2022, at 5:00 p.m. (prevailing Eastern Time)
Deadline for Debtor to Designate any Stalking Horse Bidders	May 27, 2022

⁴ The Cure Cost/Assignment Objection Deadline applies to all objections to the sale of the Assets and the assumption and assignment of the Designated Contracts (including adequate assurance of future performance by a Stalking Horse Bidder), with the exception of objections related to a adequate assurance of future performance by a Successful Bidder other than the Stalking Horse Bidder, which are due by the Post-Auction Objection Deadline.

Event	Date
Sale Objection Deadline	June 10, 2022, at 5:00 p.m. (prevailing Eastern Time)
Bid Deadline	June 14, 2022, at 5:00 p.m. (prevailing Eastern Time)
Deadline for Debtor to Designate Qualified Bids and Baseline Bid	Not later than 24 hours prior to the scheduled start of the Auction
Auction (If Necessary)	June 20, 2022, at 10:00 a.m. (prevailing Eastern Time)
Deadline to File and Serve Notice of Successful Bidder	As soon as reasonably practicable after conclusion of the Auction
Post-Auction Objection Deadline	June 22, 2022, at 5:00 p.m. (prevailing Eastern Time)
Sale Hearing (subject to the Court's availability)	June 24, 2022, at [__:_0_.m.] (prevailing Eastern Time)
Sale Closing	July 15, 2022

- c) approving the form and manner of notice of the Auction, if any, the Sale and the Sale Hearing, attached as **Exhibit 2** to the Bidding Procedures Order (the “Notice of Auction and Sale Hearing”);
- d) approving the Assignment Procedures for the assumption and assignment of the Designated Contracts in connection with the Sale and approving the form and manner of notice thereof, attached as **Exhibit 3** to the Bidding Procedures Order (the “Notice of Assumption and Assignment”);
- e) authorizing the Debtor in its discretion to (i) select one or more Stalking Horse Bidders and enter into a Stalking Horse Agreement and (ii) in connection with any Stalking Horse Agreement, provide, in the exercise of the Debtor’s discretion exercised after consulting with the Consultation Parties (A) the Pre-Approved Stalking Horse Inducements, if any, without further order of the Court and (B) the Additional Stalking Horse Inducements, if any, subject to the Court’s entry of a Bid Protections Order following the Debtor’s provision of notice and an opportunity to object to the Notice Parties in accordance with the Bidding Procedures Order; and
- f) granting related relief.

29. In the event that the Sale Process results in the selection of a Sale Bid as a Successful Bid, the Debtor will seek entry of the Sale Order at the Sale Hearing:

- a) authorizing and approving the Sale to the Successful Bidder (as defined in the Bidding Procedures) on the terms substantially set forth in the Successful Bid;
- b) authorizing and approving the Sale free and clear of liens, claims, encumbrances, and other interests to the extent set forth in the definitive purchase agreement, substantially in the form that shall be attached to the Sale Order (the “Definitive Purchase Agreement”);⁵
- c) authorizing the assumption and assignment of the Designated Contracts as set forth in the Definitive Purchase Agreement; and
- d) granting any related relief.

Overview of the Bidding Procedures, Notice Procedures and Assignment Procedures

I. The Bidding Procedures

30. The Debtor seeks approval of the Bidding Procedures to establish an open process for the solicitation, receipt, and evaluation of (i) bids on a timeline that will allow the Debtor to consummate a sale of substantially all of its assets in an efficient and value-maximizing manner, and (ii) bids for sale or non-sale transactions involving the sponsoring of a plan of reorganization. The current marketing process for the Debtor’s assets has already begun. As of the date hereof, the Debtor and its advisors have already begun engaging with a number of potentially interested parties and intend to canvas the market for other potentially interested parties in the coming days. The timeline set forth in the Bidding Procedures was calculated to balance the need to provide adequate notice to parties in interest and potential bidders with the need to run an expeditious and efficient sale process. The Bidding Procedures are designed to generate the highest or otherwise best available recoveries to the Debtor’s

⁵ The Debtor will file a proposed form of Sale Order and Definitive Purchase Agreement in advance of the hearing to consider the Sale Order.

stakeholders by encouraging prospective bidders to submit competitive, value-maximizing bids for the assets.

31. The Debtor believes that timeline set forth in the Bidding Procedures Order and Bidding Procedures and summarized above is appropriate in light of the circumstances of this Chapter 11 Case. The Debtor believes that the Bidding Procedures will provide sufficient time for potential bidders to put forth actionable competing bids, and for the Debtor and its advisors to sufficiently vet any such bids. As discussed above, the Debtor's business was the subject of an extended campaign conducted pre-bankruptcy by another reputable investment banker the Debtor had engaged. During the course of those efforts, that investment banker provided certain diligence information to parties that expressed interest in the Debtor and permitted such potential bidders to conduct diligence on the Debtor's business. And in the initial weeks of this Chapter 11 Case, Ankura has begun engaging on the Debtor's behalf with those and other parties that have expressed interest in pursuing a transaction with the Debtor. To the extent that any potential bidder has not previously conducted diligence, such bidder will have prompt access to, subject to the execution of an appropriate confidentiality agreement, the information regarding the Debtor's assets contained in the Data Room.

32. Pursuant to the Bidding Procedures Order, the Debtor is further authorized, but not directed, to select one or more bidders to act as the Stalking Horse Bidder and enter into a Stalking Horse Agreement with such Stalking Horse Bidder. Specifically, by no later than May 27, 2022, the Debtor may file with the Court and serve on the Notice Parties (as defined in the Bidding Procedures) a Stalking Horse Designation Notice that will identify Stalking Horse Bidder, summarize the key terms of the proposed transaction, including any Stalking Horse

Inducements the Debtor has agreed to provided, and attach a copy of an executed Stalking Horse Agreement (without schedules).

33. The Debtor has determined that the foregoing Bidding Procedures—including the provisions for designation of a Stalking Horse Bidder and the granting of certain Stalking Horse Inducements—are in the best interests of the Debtor’s estate, will establish whether and to what extent a market exists for the Debtor’s assets, and will provide interested parties with sufficient opportunity to participate. Because the Bidding Procedures are attached as **Exhibit 1** to the proposed Bidding Procedures Order, they are not restated fully herein. However, the Bidding Procedures generally provide, among other things:

- a) Promptly following the entry of the Bidding Procedures Order and in accordance with the deadlines set forth therein, the Debtor will serve the Bidding Procedures Order, Bidding Procedures, Notice of Auction and Sale Hearing, and the Notice of Assumption and Assignment upon the applicable notice parties identified in the Bidding Procedures Order;
- b) access to due diligence by Acceptable Bidders;
- c) the deadlines and requirements for submitting competing bids and the method and criteria by which such competing bids are deemed to be “Qualified Bids” sufficient to trigger the Auction, including the minimum consideration that must be provided, the terms and conditions that must be satisfied, and the deadline that must be met by any bidder to be considered a “Qualified Bidder” and participate in the Auction;
- d) the Debtor’s ability to designate one or more Stalking Horse Bidders, enter into one or more Stalking Horse Agreements, and grant certain Stalking Horse Inducements subject to the detailed requirements for doing so set forth in the Bidding Procedures Order;
- e) the manner in which Qualified Bids will be evaluated by the Debtor to determine the Baseline Bid for the Auction;
- f) the conditions for having the Auction and procedures for conducting the Auction, if any; and

- g) various other matters relating to the sale process generally, including the designation of the Backup Bid, return of any good faith deposits, and certain reservations of rights.

34. Importantly, the Bidding Procedures recognize and comply with the Debtor's fiduciary obligations to maximize sale value and, as such, do not impair the Debtor's ability to consider all qualified bid proposals and, as noted, preserve the Debtor's right to modify the Bidding Procedures as necessary or appropriate to maximize value for the Debtor's estates.

II. Form and Manner of Notice of Auction and Sale Hearing.

35. Within three (3) business days after entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter, the Debtor will cause the notice, substantially in the form attached as **Exhibit 2** to the Bidding Procedures Order (the "Notice of Auction and Sale Hearing"), to be served by first class U.S. mail, postage prepaid, on the following entities: (a) the Office of the United States Trustee; (b) counsel for the Prepetition Lender; (c) counsel for the DIP Lender; (d) counsel for the Committee; (e) those entities who have formally appeared and requested notice and service in these proceedings pursuant to Bankruptcy Rule 2002; (f) all persons known to the Debtor to have expressed written interest within one year prior to the Petition Date in acquiring the Debtor's business or some or all of the Acquired Assets; (g) all known Non-Debtor Counterparties to contracts and leases with the Debtor; (h) all other known holders of liens, encumbrances, and other claims secured by any of the Acquired Assets; (i) the United States Internal Revenue Service; (j) the U.S. Attorney for the Northern District of Florida; (k) the Federal Communications Commission; (l) the Attorney General for the State of Florida; and (m) to the extent not already identified as party to be serviced in clauses (a) through (l) above, all other known creditors of the Debtor.

36. In addition, on or before five (5) business days after entry of the Bidding Procedures Order, the Debtor shall, subject to applicable submission deadlines, publish a notice containing substantially the same information as the Notice of Auction and Sale Hearing (which may be reformatted or modified as necessary to the publication process) once in the national edition of the USA Today or another nationally circulated newspaper, with any modifications necessary for ease of publication, and post the Notice of Auction and Sale Hearing and the Bidding Procedures Order on the website of the Debtor's claims and noticing agent, at: <https://cases.stretto.com/BlackNewsChannel/>.

III. Summary of the Assignment Procedures.

37. The Debtor also seeks approval of the Assignment Procedures to facilitate the fair and orderly assumption and assignment of the Designated Contracts in connection with the Sale. Because the Bidding Procedures Order sets forth the Assignment Procedures in detail, they are not restated herein. Generally, however, the Assignment Procedures: (a) outline the process by which the Debtor will serve the Notice of Assumption and Assignment to all known counterparties to the Designated Contracts (the "Non-Debtor Counterparties") regarding the proposed assumption and assignment and related cure amounts, if any, informing such parties of their right and the procedures to object thereto; and (b) establish objection and other relevant deadlines and the manner for resolving disputes relating to the assumption and assignment of the Designated Contracts to the extent necessary.

Basis for Relief

I. The Bidding Procedures Are in the Best Interests of the Debtor's Estate and Should Be Approved.

A. The Bidding Procedures Are Reasonable and Appropriate, and Will Maximize Value

38. The paramount goal in a sale under section 363 of the Bankruptcy Code is to maximize the value of the debtor's estate. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir 2004) (debtor-in-possession "had a fiduciary duty to protect and maximize the estate's assets"); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564–65 (8th Cir. 1997) (in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand"). "To accomplish that goal, bankruptcy courts are necessarily given discretion and latitude in conducting the sale." *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998); *see also In re 160 Royal Palm, LLC*, 600 B.R. 119, 127 (S.D. Fla.), *aff'd*, 785 F. App'x 829 (11th Cir. 2019) ("[T]he Debtor had broad discretion to determine the appropriate procedures for marketing and selling the bankruptcy estate's sole asset . . ."). Accordingly, courts routinely approve bidding procedures designed to foster competitive bidding and maximize value. *See, e.g., In re Integrated Res., Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (bidding procedures "are important tools to encourage bidding and to maximize the value of the debtor's assets"); *Edwards*, 228 B.R. at 561 ("The purpose of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate."). A debtor's business judgment is entitled to deference with respect to the procedures to be used in selling an estate's assets. *See, e.g., In re Gulf States Steel, Inc. of Alabama*, 285 B.R. 497, 514 (Bankr. N.D. Ala. 2002) ("The Trustee is responsible for the administration of the estate and his or her judgment on the sale and the procedure for the sale is entitled to respect and deference from the Court, so long as the burden

of giving sound business reasons is met.”); *Integrated Res.*, 147 B.R. at 656–57 (noting bidding procedures negotiated by a trustee are to be reviewed according to deferential “business judgment” standard, under which such procedures and arrangements are “presumptively valid”).

39. The Debtor believes that the proposed Bidding Procedures will promote active bidding from seriously interested parties and will elicit the highest or otherwise best offers available for the Debtor’s assets. The proposed Bidding Procedures will allow the Debtor to conduct the Sale Process in a controlled, fair, and open fashion that will encourage participation by financially capable bidders who will offer the best package for the Debtor’s assets and who can demonstrate the ability to close a transaction. Specifically, the Bidding Procedures contemplate an open auction process with minimum barriers to entry and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid.

40. At the same time, the Bidding Procedures provide the Debtor with a robust opportunity to consider competing bids and select the highest or otherwise best offer for the completion of the Sale Process. Affording the Debtor the ability to designate a Stalking Horse Bidder and execute a Stalking Horse Agreement will help ensure that the Debtor obtains fair market value for its assets by setting a minimum purchase price that will then be tested in the marketplace. As such, creditors of the Debtor’s estate can be assured that the consideration obtained will be fair and reasonable and at or above market. The Debtor respectfully submits that the proposed Bidding Procedures will encourage competitive bidding and are an appropriate exercise of the Debtor’s business judgment.

41. This Court, and others, have approved bidding procedures similar to those contemplated by this Motion. *See, e.g., In re Fla. First City Banks, Inc.*, No. 20-30037 (KKS)

(Bankr. N.D. Fla. Feb. 24, 2020) (approving bid procedures, bid protections for stalking horse bidder, form and manner of sale notice, and scheduling sale hearing); *In re Beach Cmty. Bancshares, Inc.*, No. 18-30334 (HAC) (Bankr. N.D. Fla. Apr. 17, 2018) (similar); *In re Premier Bank Holding Co.*, No. 12-40550 (KKS) (Bankr. N.D. Fla. Sept. 13, 2012) (similar); *In re Liberty Power Holdings, LLC*, No. 21-13797 (SMG) (Bankr. S.D. Fla. May 28, 2021) (approving bid procedures, form and manner of sale notice, form and manner of executory contract assumption and cure notice and procedures, and scheduling sale hearing); *In re Akorn, Inc.*, No. 20-11177 (KBO) (Bankr. D. Del. June 15, 2020) (similar); *In re Adams Street Lofts, LLC*, No. 14-40483 (KKS) (Bankr. N.D. Fla. Nov. 4, 2014) (similar).

B. The Proposed Stalking Horse Inducements Have a Sound Business Purchase, Will Serve to Help the Debtor Maximize the Value of Its Estate, and Should Be Approved.

42. Through the Bidding Procedures, the Debtor also seeks authority to designate a Stalking Horse Bidder and offer Stalking Horse Inducements to any such Stalking Horse Bidder. The use of a stalking horse in an auction process is a customary practice in chapter 11 cases and serves to maximize value by “establish[ing] a framework for competitive bidding and facilitat[ing] a realization of that value.” *Off. Comm. of Unsecured Creditors v. Interforum Holding LLC*, 2011 WL 2671254, at *1 (E.D. Wis. July 7, 2011). Stalking horse bidders generally require break-up fees and other forms of bidding protections as an inducement for “setting the floor at auction, exposing its bid to competing bidders, and providing other bidders with access to the due diligence necessary to enter into an asset purchase agreement.” *Id.* (citation omitted).

43. Indeed, break-up fees and other bidding protections are a normal and necessary component of bankruptcy sale processes. *See Integrated Res.*, 147 B.R. at 659–60 (“Break-up

fees are important tools to encourage bidding and to maximize the value of the debtor's assets In fact, because the directors of a corporation have a duty to encourage bidding, break-up fees can be necessary to discharge the directors' duties to maximize value.”). Indeed, bid protections “may be legitimately necessary to convince a ‘white knight’ to enter the bidding by providing some form of compensation for the risks it is undertaking.” *In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (citation and quotations omitted); *see also Integrated Res.*, 147 B.R. at 660–61 (noting bid protections can prompt bidders to commence negotiations and “ensure that a bidder does not retract its bid”).

44. As a result, courts routinely approve such bidding protections in connection with proposed bankruptcy sales where they provide a benefit to the estate. *See In re O'Brien Env'tl. Energy, Inc.*, 181 F.3d 527, 535 (3d Cir. 1999) (“In other words, the allowability of break-up fees, like that of other administrative expenses, depends upon the requesting party's ability to show that the fees were actually necessary to preserve the value of the estate.”); *In re Reliant Energy Channelview LP*, 594 F.3d 200, 206 (3d Cir. 2010) (similar). Authorizing the Debtor to provide the proposed Stalking Horse Inducements, in the event the Debtor executes a Stalking Horse Agreement, is in the best interests of the Debtor's estates and its creditors, as any Stalking Horse Agreement will establish a floor for further bidding that may increase the consideration obtained for the Debtor's assets.

45. The Debtor believes having the ability to grant a Stalking Horse Bidder the Stalking Horse Inducements is necessary to attract and retain a Stalking Horse Bidder, and any Stalking Horse Inducements that are ultimately offered will be the result of arm's length negotiations. By inducing the Stalking Horse Bidder to hold its offer open as a baseline from which other potential bidders can submit higher or better offers, the Stalking Horse Inducements

will serve to encourage competitive bidding, which will hopefully increase the purchase price of the assets. As such, the Stalking Horse Inducements will, among other things, enable the Debtor to maximize the value of its estate for the benefit of all economic stakeholders in this chapter 11 case. Courts in other districts have pre-approved bid protections in a similar manner in other chapter 11 cases. *See e.g., In re Alex & Ani, LLC*, No. 21-10918 (CTG) (Bankr. D. Del. July 16, 2021) (pre-approving bid protections in amount of up to 3% of purchase price plus expense reimbursement of up to \$250,000); *In re the McClatchy Co.*, No. 20-10418 (MEW) (Bankr. S.D.N.Y. May 11, 2020) (pre-approving bid protections in an amount of up to 3% of the proposed purchase price); *In re PES Holdings, LLC*, No. 19-11626 (KG) (Bankr. Del. Nov. 14, 2019) (pre-approving bid protections in an amount of up to 3% of the proposed purchase price).

46. If the Court does not approve the Stalking Horse Inducements, the Debtor may be unable to attract a Stalking Horse Bidder. In contrast, if the Stalking Horse Inducements are approved and a Stalking Horse Bidder is ultimately designated, the Stalking Horse Inducements would necessarily only be paid if the Debtor receives a higher or otherwise superior offer for its assets than any such Stalking Horse Bidder. Accordingly, authorizing the Debtor to provide the Stalking Horse Inducements to any potential Stalking Horse Bidder will necessarily inure to the benefit of the Debtor's estate. Moreover, the proposed Stalking Horse Inducements are fair and reasonable and are "reasonably related to the risk, effort, and expenses of the prospective purchaser." *Integrated Res.*, 147 B.R. at 662 (quoting *995 Fifth Ave.*, 96 B.R. at 28). Accordingly, the Stalking Horse Inducements should be approved as a sound exercise of the Debtor's business judgment and are in the best interests of the Debtor, its estate, and all stakeholders in this chapter 11 case.

C. The Notice Procedures for the Sale, Bidding Procedures, Auction, and Sale Hearing Are Reasonable and Appropriate, and Should Be Approved.

47. Pursuant to Bankruptcy Rules 6004(a) and 2002(a), the Debtor is required to provide creditors with 21 days' notice of the Sale Hearing. Pursuant to Bankruptcy Rule 2002(c), such notice must include the time and place of the Auction and the Sale Hearing and the deadline for filing any objections to the relief requested herein. Bankruptcy Rule 6004(c) and Local Bankruptcy Rule 6004-1(C) also provide that the foregoing notice must be provided to any party holding a lien or other interest in the property to be sold.

48. As noted above, within three (3) business days of entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter, the Debtor will serve the Notice of Auction and Sale Hearing upon (a) the Office of the United States Trustee; (b) counsel for the Prepetition Lender; (c) counsel for the DIP Lender; (d) counsel for the Committee; (e) those entities who have formally appeared and requested notice and service in these proceedings pursuant to Bankruptcy Rule 2002; (f) all persons known to the Debtor to have expressed written interest within one year prior to the Petition Date in acquiring the Debtor's business or some or all of the Acquired Assets; (g) all known Non-Debtor Counterparties to contracts and leases with the Debtor; (h) all other known holders of liens, encumbrances, and other claims secured by any of the Acquired Assets; (i) the United States Internal Revenue Service; (j) the U.S. Attorney for the Northern District of Florida; (k) the Federal Communications Commission; (l) the Attorney General for the State of Florida; and (m) to the extent not already identified as party to be serviced in clauses (a) through (l) above, all other known creditors of the Debtor.

49. In addition, within five (5) business days after entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter, the Debtor will provide notice of the Sale Hearing through the publication of the Notice of Auction and Sale Hearing once in a newspaper of national circulation (subject to applicable publication deadlines) and on the website of the claims and notice agent retained by the Debtor in this chapter 11 case, Stretto, at <https://cases.stretto.com/BlackNewsChannel/>.

50. The Debtor submits that notice of this Motion and the related hearing to consider entry of the Bidding Procedures Order, coupled with service of the Notice of Auction and Sale Hearing and the Notice of Assumption and Assignment, constitutes good and adequate notice of the Sale and all related proceedings and procedures with respect thereto in compliance with the requirements of Bankruptcy Rule 2002. The Debtor further submits that the form and manner of service of the proposed Notice of Auction and Sale Hearing complies with the requirements of Local Bankruptcy Rule 6004-1(C), and the form of *Report and Notice of Intent to Sell Property of the Estate* promulgated thereunder.⁶ Accordingly, the Debtor requests that this Court approve the form and manner of the Notice of Auction and Sale Hearing.

D. The Assignment Procedures Are Appropriate and Should Be Approved.

51. As set forth above, any Sale of the Debtor's assets will likely contemplate the assumption and assignment of contracts to any Stalking Horse Bidder or other Successful Bidder arising from the Auction. In connection with this process, the Debtor believes it is necessary to establish the Assignment Procedures by which: (a) the Debtor and contract

⁶ To the extent the proposed Notice of Auction and Sale Hearing does not precisely comply with the form *Report and Notice of Intent to Sell Property of the Estate* provided on the Court's website, the Debtor seeks a waiver of strict adherence to that form and respectfully submits that the information contained in the Proposed Sale Notice, coupled with the remaining notices to be issued pursuant to this Motion, is substantially equivalent.

counterparties can reconcile cure obligations, if any, in accordance with section 365 of the Bankruptcy Code; and (b) such counterparties can object to the assumption and assignment of contracts and/or related cure amounts.

52. As set forth in the Bidding Procedures Order, the Debtor also requests that any party that fails to object to the proposed assumption and assignment of any contract be deemed to consent to the assumption and assignment of the applicable contract pursuant to section 365 of the Bankruptcy Code on the terms set forth in the Sale Order, along with the cure amounts identified in the Contract Assumption Notice. *See, e.g., In re Tabone, Inc.*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to sale motion, creditor deemed to consent); *Pelican Homestead v. Wooten (In re Gabel)*, 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same).

53. The Debtor believes the Assignment Procedures are fair and reasonable, provide sufficient notice to parties to the executory contracts and leases, and provide certainty to all parties in interest regarding their obligations and rights in respect thereof. Accordingly, the Debtor requests that the Court approve the Assignment Procedures set forth in the Bidding Procedures Order.

II. Approval of the Sale Is Appropriate and in the Best Interests of the Debtor, its Estate and Creditors.

A. Sufficient Business Justifications Exist for Consummation of the Sale under Sections 105(a) and 363(b) of the Bankruptcy Code.

54. Section 363(b) of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A sale of the debtor’s assets should be authorized pursuant to section 363 of the Bankruptcy Code if a sound business purpose exists for the proposed transaction. *See, e.g., In re B.D.K. Health Mgmt., Inc.*, 1998 WL 34188241, at *5 (Bankr. M.D.

Fla. Nov. 16, 1998) (approving sale of substantially all of debtor's assets where it "serves a sound business purpose insofar as it generates significant value for the benefit of all creditors"); *In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) ("Under Section 363, the debtor in possession can sell property of the estate . . . if he has an 'articulated business justification'"); *Stephens Indus. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986) ("[A] bankruptcy court can authorize a sale of all a Chapter 11 debtor's assets under [section] 363(b)(1) when a sound business purpose dictates such action."); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983) (same). "If a valid business justification exists, then a strong presumption follows that the agreement at issue was negotiated in good faith and is in the best interests of the estate." *In re Filene's Basement, LLC*, 2014 WL 1713416, at *12 (Bankr. D. Del. Apr. 29, 2014) (citations omitted); *see also In re S.N.A. Nut Co.*, 186 B.R. 98, 102 (Bankr. N.D. Ill. 1995) ("The business judgment rule 'is a presumption that in making the business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action was in the best interests of the company.')" (citations omitted).

55. In addition to a sound business purpose, certain courts also require a showing that "(i) the debtor has provided all interested parties with adequate and reasonable notice, (ii) the sale price is fair and reasonable, and (iii) the purchaser is proceeding in good faith." *In re 160 Royal Palm, LLC*, 600 B.R. 119, 129 (S.D. Fla.), *aff'd*, 785 F. App'x 829 (11th Cir. 2019) (citing *In re MF Glob. Inc.*, 467 B.R. 726, 730 (Bankr. S.D.N.Y. 2012)); *see also In re Weatherly Frozen Food Grp., Inc.*, 149 B.R. 480, 483 (Bankr. N.D. Ohio 1992) (same). Each of these requirements is met here.

1. The Sale Is Supported by a Sound Business Purpose.

56. As set forth above, the Debtor has a sound business justification for selling its assets. *First*, any sale of the Debtor's assets will be subject to competing bids, enhancing the Debtor's ability to receive the highest or otherwise best value for the assets. As a result, the ultimately successful bid, after being subjected to a "market check" in the form of the Auction, will constitute, in the Debtor's reasonable business judgment, the highest or otherwise best offer for its assets and will provide a greater recovery for their estates than any known or practicably available alternative. *See, e.g., In re Trans World Airlines, Inc.*, 2001 WL 1820326, at *4 (Bankr. D. Del. 2001) ("[T]he auction procedure has developed over the years as an effective means for producing an arm's length fair value transaction."). Thus, the Debtor submits that the Successful Bidder's Definitive Purchase Agreement will constitute the highest or otherwise best offer for the Debtor's assets and will provide a greater recovery for the Debtor's estate than would be provided by any other available alternative. As such, the Debtor's determination to sell its assets through an Auction process and enter into the Successful Bidder's Definitive Purchase Agreement will be a valid and sound exercise of the Debtor's business judgment and should be approved.

2. Adequate and Reasonable Notice of the Sale Will Be Provided.

57. Pursuant to Bankruptcy Rules 2002(a) and (c), the Debtor is required to notify creditors of the Sale, including a disclosure of the time and place of any auction, the terms and conditions of the sale, and the deadline for filing any objections. The Debtor submits that the notice procedures set forth in the proposed Bidding Procedures Order and described above fully comply with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the Sale, Bidding Procedures, Auction, and Sale Hearing to the Debtor's

creditors and all other parties in interest that are entitled to notice. Specifically, the Notice of Auction and Sale Hearing: (a) will be served in a manner that provides parties in interest notice of the date, time, and location of the Sale Hearing; (b) informs parties in interest of the deadlines for objecting to the Sale or the assumption and assignment of contracts; and (c) otherwise includes all information relevant to parties interested in or affected by the Sale. The proposed Notice of Auction and Sale Hearing also substantially complies with the requirements of Local Bankruptcy Rule 6004-1(C) and will have been approved by this Court pursuant to the Bidding Procedures Order after notice and a hearing before it is served on parties in interest in accordance with Bankruptcy Rule 2002. Accordingly, the Debtor's proposed notice of the Sale is sufficient.

3. The Sale and Purchase Price Will Reflect a Fair Value Transaction.

58. It is well-settled that, where there is a court-approved auction process and market check, a full and fair price is presumed to have been obtained for the assets sold. *See Bank of Am. Nat'l Trust & Sav. Ass'n. v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 457 (1999); *see also Trans World Airlines*, 2001 WL 1820326, *4. The Debtor submits that the purchase price that will be set forth in the Successful Bidder's Definitive Purchase Agreement will be fair and reasonable under the circumstances. The Debtor, with the assistance of Ankura and the Debtor's other advisors, intends to market the Debtor's assets and solicit offers consistent with the Bidding Procedures, including, for example, by contacting previously solicited parties, continuing to provide acceptable bidders with Data Room access and diligence information, considering a variety of alternative transaction structures, and otherwise endeavoring to increase transaction value. The Bidding Procedures also authorize the Debtor to potentially designate a Stalking Horse Bidder to set a floor a potential Auction, and other Qualified Bidders will then

have an opportunity to submit higher or better offers. This competitive bidding process will necessarily maximize the number of participants and ensure that the Definitive Purchase Agreement's purchase price will necessarily constitute fair value.

B. The Sale of the Assets Free and Clear of all Encumbrances is Authorized, and Should Be Approved, under Section 363(f) of the Bankruptcy Code.

59. Pursuant to Section 363(f) of the Bankruptcy Code, a debtor may sell property free and clear of another party's interest in the property if: (a) applicable nonbankruptcy law permits such a free and clear sale; (b) the holder of the interest consents; (c) the interest is a lien and the sale price of the property exceeds the value of all liens on the property; (d) the interest is the subject of a bona fide dispute; or (e) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. 11 U.S.C. § 363(f). Because the statute is drafted in the disjunctive, satisfaction of any of the individual subsections is sufficient to warrant approval of the Debtor's sale of its assets free and clear of all interests (*i.e.*, all liens, claims, rights, interests, charges, or encumbrances), except with respect to any interests that may be assumed liabilities under the Definitive Purchase Agreement. *See, e.g., Mich. Emp't Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that section 363(f) of the Bankruptcy Code is written in the disjunctive; holding that the court may approve the sale "free and clear" provided at least one of the subsections of section 363(f) of the Bankruptcy Code is met); *In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) ("[I]f any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens."); *In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988) (explaining section 363(f) is written in disjunctive, such that court may approve a sale "free and clear" provided at least one of the subsections is met); *In re Dundee Equity*

Corp., No. 89-B-10233, 1992 WL 53743, at *3 (Bankr. S.D.N.Y. Mar. 6, 1992) (“Section 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met”).

60. To facilitate the Sale of the Debtor’s assets, the Debtor requests that the Court authorize the sale of the Debtor’s assets free and clear of certain liens, claims, encumbrances, and other interests (collectively, “Liens”). In addition, the Debtors submit that the assets may be sold free and clear of all successor liability and similar claims (collectively, with the Liens, the “Liens and Claims”). Notwithstanding reference to the conveyance free and clear of “any interest” in Section 363(f) of the Bankruptcy Code, that section has been interpreted to allow the sale of a debtor’s assets free and clear of successor liability claims as well. *See, e.g., In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-90 (3d Cir. 2003) (sale of assets pursuant to section 363(f) of the Bankruptcy Code barred successor liability claims for employment discrimination and rights under travel voucher program); *Am. Living Systems v. Bonapfel (In re All Am. of Ashburn, Inc.)*, 56 B.R. 186, 189-90 (Bankr. N.D. Ga. 1986), *aff’d*, 805 F.2d 1515 (11th Cir. 1986) (sale pursuant to section 363(1) barred successor liability for products defect claim).

61. The Debtor believes that one or more of the tests of section 363(f) of the Bankruptcy Code will be satisfied with respect to the sale and transfer of the Acquired Assets. In particular, the Debtor believes that at least section 363(f)(2) of the Bankruptcy Code will be met because each of the parties holding liens on the Acquired Assets, if any, will consent, are contractually bound to consent, or absent any objection to this Motion, will be deemed to have consented, to the sale and transfer of the Acquired Assets.

62. Notably, the Prepetition Lender and now the DIP Lender are the only two parties presently known by the Debtor to have valid, perfected and enforceable Liens on any material

portion of the Debtor's assets. Both the Prepetition Lender and the DIP Lender are supportive of the Sale Process and, the Debtor, expects will ultimately consent to any Sale that achieves the goal of maximizing the value of their collateral. Accordingly, section 363(f) of the Bankruptcy Code authorizes the sale and transfer of the Acquired Assets free and clear any such Liens and Claims.

63. The Debtor also asserts that a sale can be approved by this Court over objections free and clear of all Liens and Claims pursuant to Sections 363(f)(3), (4) and/or (5). Pursuant to Section 363(f)(3), if the sale price for the Acquired Assets is greater than the aggregate value of the liens on the Assets, then the Assets can be sold free and clear of all such liens and claims.

64. In addition, pursuant to Section 363(f)(4), if a "bona fide" dispute exists with respect to any such lien, claim, encumbrance or interest, then the Bankruptcy Court has the power to approve the sale of the Acquired Assets free and clear of such lien, claim, encumbrance or interest. See, *e.g.*, *In re Robotics Vision System, Inc.*, 322 B.R. 502, 506 (Bankr. D.N.H. 2005) (pursuant to section 363(f)(4), "a bona fide dispute exists when there is an objective basis for either factual or legal dispute as to the validity of an interest in property"). See also *In re Clark*, 266 B.R. 163 (9th Cir. BAP 2001)(sale of property free and clear need not be delayed pending the resolution of bona fide dispute); *In re Oneida Lake Development, Inc.*, 114 B.R. 352 (Bankr. N.D.N.Y 1990)(allegations are sufficient to raise a bona fide dispute when a sale needs to occur before the dispute can be resolved by evidentiary hearing).

65. Finally, pursuant to Section 363(f)(5), if the holder of a lien or interest can be compelled to accept a money satisfaction, then the Assets can be sold free and clear of such lien, claim, encumbrance or interest. Courts have held that "money satisfaction" does not mean "fully money satisfaction." See *In re Levitt and Sons, LLC*, 384 B.R. 630 (Bankr. S.D. Fla.

2008). Moreover, there is no requirement in Section 363(f)(5) that an actual “legal or equitable proceeding” actually occur prior the sale of property free and clear under Section 363(f)(5). *Id.* at 648. Lastly, if the holder of a lien could be compelled to accept a money satisfaction through a cramdown in a chapter 11 plan or through the “judicial or non-judicial foreclosure of the senior liens,” then the property could be sold free and clear of such liens or interests under Section 363(f)(5). *See In re Gulf States Steel, Inc. of Alabama*, 285 B.R. 497, 508-509 (Bankr. N.D. Ala. 2002).

C. The Sale Should be Subject to the Protections of Section 363(m) of the Bankruptcy Code.

66. The Debtor requests that the Court find that any Successful Bidder arising from the Sale Process conducted pursuant to the Bidding Procedures is entitled to the benefits and protections of section 363(m) of the Bankruptcy Code in connection with the Sale. Section 363(m) provides that:

reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). This provision protects asset purchasers from the risk of losing their interest in the purchased assets if the order approving the sale is reversed on appeal, as long as that purchaser acquired the assets in “good faith.” While the Bankruptcy Code does not define “good faith,” courts have generally held that the good faith requirement “speaks to the integrity of [the purchaser’s] conduct in the course of the sale proceedings.” *In re Andy Frain Servs., Inc.*, 798 F.2d 1113, 1125 (7th Cir. 1986); *see also In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986) (“Typically, the misconduct that would destroy a purchaser’s good faith

status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.”).

67. The Debtor submits that any Successful Bidder determined in accordance with the Bidding Procedures be a “good faith purchaser” within the meaning of section 363(m) of the Bankruptcy Code. *First*, as set forth in more detail above, any such Successful Bidder will have had to present a proposal in accordance with the Bidding Procedures, which are designed to maximize value and will have been approved by this Court. Under the terms of the Bidding Procedures, the Debtor will not choose as the Successful Bidder or Backup Bidder (as defined in the Bidding Procedures) any entity whose good faith under section 363(m) of the Bankruptcy Code can reasonably be doubted and, thus, will be prepared to present evidence to demonstrate that the “good faith” standard has been met with respect to any such purchaser. *Second*, any Definitive Purchase Agreement with a Successful Bidder will be the culmination of a competitive Sale Process in which all parties will presumably be represented by counsel and all negotiations will be conducted on an arm’s-length, good-faith basis. *Third*, there is (and will be) no indication of any “fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders” or similar conduct that would cause or permit the Sale or Definitive Purchase Agreement to be avoided under section 363(n) of the Bankruptcy Code. And the Bidding Procedures are designed to ensure that no party is able to exert undue influence over the process. *Finally*, the offers received by the Debtor from any Successful Bidder will be evaluated and approved by the Debtor in consultation with its advisors, including Ankura. Accordingly, the Debtor believes, and the record at the Sale Hearing will support, that the Successful Bidder and the Definitive Purchase Agreement should be entitled to the full protections of section 363(m) of the Bankruptcy Code.

III. The Assumption and Assignment of the Designated Contracts in Connection with the Sale Will Satisfy Section 365 of the Bankruptcy Code and Should Be Approved.

A. Debtor's Sound Business Judgment Supports the Assumption and Assignment of the Designated Contracts.

68. To facilitate and effectuate the sale of its assets, the Debtor requests authority to assign executory contracts to the Stalking Horse Bidder or other Successful Bidder to the extent required by such bidders. Section 365 of the Bankruptcy Code authorizes a debtor to assume and/or assign their executory contracts and unexpired leases, subject to court approval, provided any defaults under such contracts and leases are cured and adequate assurance of future performance is provided. Congress intended to allow a debtor to assume those leases/contracts that benefit the estate, and to reject those that are of no value or are burdensome to the estate. *See Cinicloa v. Scharffenberger*, 248 F.3d 110, 119 (3d Cir. 2001); *Leland v. Gardinier, Inc. (In re Gardinier, Inc.)*, 831 F.2d 974, 976 n.2 (11th Cir. 1987); *In re Whitcomb & Keller Mortgage Co., Inc.*, 715 F.2d 375, 379 (7th Cir. 1983); *Chira v. Saal (In re Chira)*, 367 B.R. 888, 898 (S.D. Fla. 2007); *In re Sandman Assocs., LLC*, 251 B.R. 473, 481 (W.D. Va. 2000) (noting that “[t]he authority granted by section 365 allows the trustee or debtor in possession to pick and choose among contracts, assuming those that are favorable and rejecting those that are not”).

69. “[S]ince courts review a trustee's decision to assume or reject a contract under a traditional ‘business judgment’ standard, the scope of review in this area is narrow.” *In re Gardinier, Inc.*, 831 F.2d 974, 975 n.2 (11th Cir. 1987); *see also Grp. of Inst'l Invrs. v. Chicago, Milwaukee, St. Paul & Pacific Ry. Co.*, 318 U.S. 523 (1943) (applying predecessor to section 365 of the Bankruptcy Code and rejecting test of whether executory contract was burdensome in favor of whether rejection is within debtor's business judgment); *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989) (describing deference to

a debtor's business judgment as "breathing space afforded [to] the debtor to consider whether to reject or assume executory contracts under the Code.").

70. The Court should approve the assumption and assignment of the Designated Contracts in connection with the Sale as a sound exercise of the Debtor's business judgment. *First*, any Designated Contracts will presumably be necessary to operate the purchased assets and, as such, will be essential to inducing the highest and best offer for the assets. *Second*, it is unlikely that any purchaser would have interest in the Debtor's assets unless a significant number of the contracts needed to manage the day-to-day operations are included; indeed, several potentially interested parties have already directly told the Debtor that this is the case. *Finally*, the Designated Contracts will be assumed and assigned through a process approved by the Court pursuant to the Bidding Procedures Order and, thus, will be reviewed by key constituents in this Chapter 11 Case. Accordingly, the Debtor submits that assumption and assignment of the Designated Contracts by way of the Assignment Procedures should be approved as an exercise of their business judgment.

B. To the Extent Required by Section 365 of the Bankruptcy Code, Defaults Under the Designated Contracts Will Be Cured in Connection with the Sale.

71. After finding that a debtor has exercised its business judgment in determining to assume and assign an executory contract, courts then evaluate whether assumption meets the requirements of section 365(b) of the Bankruptcy Code, including that the debtor (a) cures, or provides adequate assurance of promptly curing, prepetition defaults; (b) compensates parties for pecuniary losses arising therefrom; and (c) provides adequate assurance of future performance thereunder. 11 U.S.C. § 365(b). This section "attempts to strike a balance between two sometimes competing interests, the right of the contracting non-debtor to get the

performance it bargained for and the right of the debtor's creditors to get the benefit of the debtor's bargain." *In re Luce Indus., Inc.*, 8 B.R. 100, 107 (Bankr. S.D.N.Y. 1980).

72. Because the Assignment Procedures (once approved) provide a clear process to resolve disputes over cure amounts or other defaults, the Debtor is confident that if defaults exist that must be cured, any such cure will be achieved fairly, efficiently, and in a manner consistent with the Bankruptcy Code and with due respect to the rights of non-debtor parties. Any such cure amounts or other defaults that are required to be cured in connection with the Debtor's assumption or assignment of any Designated Contract either will be cured in connection with the consummation of a Sale or legally sufficient adequate assurance of such future cure will be provided to the Non-Debtor Counterparties to such Designated Contracts, as applicable.

C. Adequate Assurance of Future Performance Will Be Demonstrated with Respect to the Designated Contracts.

73. Similarly, the Debtor submits that any non-debtor contract counterparties will also be adequately assured of future performance. "The phrase 'adequate assurance of future performance' adopted from section 2-609(1) of the Uniform Commercial Code, is to be given a practical, pragmatic construction based upon the facts and circumstances of each case." *In re U.L. Radio Corp.*, 19 B.R. 537, 542 (Bankr. S.D.N.Y. 1982). Although no single solution will satisfy every case, "the required assurance will fall considerably short of an absolute guarantee of performance." *In re Prime Motor Inns, Inc.*, 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994). Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future

performance present where prospective assignee has financial resources and expressed willingness to devote sufficient funding to a business).

74. The Debtor believes it can and will demonstrate that the requirements for assumption and assignment of the Designated Contracts to the Stalking Horse Bidder or other Successful Bidder will be satisfied. As required by the Bidding Procedures, the Debtor will evaluate the financial wherewithal of potential bidders before designating such party a Qualified Bidder (including the willingness and ability of the interested party to perform under the Designated Contracts) and, accordingly, will be able to demonstrate such financial wherewithal, willingness, and ability to perform with respect to the Stalking Horse Bidder or other Successful Bidder. Further, the Assignment Procedures provide the Court and other interested parties ample opportunity to evaluate and, if necessary, challenge the ability of the Stalking Horse Bidder or other Successful Bidder to provide adequate assurance and object to the assumption of the Designated Contracts or proposed cure amounts. The Court therefore has a sufficient basis to authorize the Debtor to reject or assume and assign the Designated Contracts.

IV. Relief Under Bankruptcy Rules 6004(h) and 6006(d) is Necessary and Appropriate.

75. The Debtor requests that both the Bidding Procedures Order and the Sale Order be effective immediately upon its entry by providing that the fourteen-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of fourteen days after the entry of the order, unless the court orders otherwise.” Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the expiration of fourteen days after the entry of the order, unless the court orders otherwise.”

76. The purpose of these rules is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) are silent as to when a court should “order otherwise” and eliminate or reduce the fourteen-day stay period, the leading treatise suggests that the fourteen-day stay should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to procedure.” 10 COLLIER ON BANKRUPTCY ¶ 6004.11 (16th ed. 2022). Furthermore, if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. *Id.* To maximize the value received for its assets, the Debtor seeks to close any Sale as soon as possible after the Sale Hearing. Accordingly, the Debtor hereby requests that the Court waive the fourteen-day stay under Bankruptcy Rules 6004(h) and 6006(d).

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WHEREFORE, the Debtor respectfully requests that the Court enter: (a) the Bidding Procedures Order (i) authorizing and approving the proposed bidding procedures to be used in connection with the Restructuring Transaction, including a Sale of the Acquired Assets or a Plan, (ii) establishing dates and deadlines in connection with the Sale Process, including the Bid Deadline, the Auction, and the Sale Hearing, (iii) approving the Notice Procedures, (iv) authorizing the Assignment Procedures for Designated Contracts, (v) authorizing the Debtor to designate a Stalking Horse Bidder and to provide the Stalking Horse Inducements, and (vi) granting related relief; and (b) the Sale Order, (i) authorizing the Sale free and clear of all liens, claims, interests, and encumbrances (except for any permitted liens and encumbrances), (ii) authorizing the assumption and assignment of the Designated Contracts, and (iii) granting related relief and such other and further relief as the Court may deem just and proper.

Dated: April 26, 2022

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Proposed Counsel for the Debtor

Exhibit A

Bidding Procedures Order

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

In re:

BLACK NEWS CHANNEL, LLC,¹

Debtor.

Case No. 4:22-bk-40087-KKS

Chapter 11

ORDER GRANTING, IN PART, DEBTOR'S EMERGENCY MOTION FOR (A) APPROVAL OF BIDDING PROCEDURES, (B) AUTHORIZATION FOR DEBTOR TO DESIGNATE STALKING HORSE BIDDER AND GRANT CERTAIN STALKING HORSE INDUCEMENTS, (C) SCHEDULING AUCTION, SALE HEARING AND RELATED DATES, (D) APPROVAL OF THE FORM AND MANNER OF NOTICE THEREOF, (E) ESTABLISHMENT OF NOTICE AND PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (F) RELATED RELIEF [Dkt. No. ____]

Upon the motion (Dkt. No. ____) (the "Motion") of Black News Channel, LLC (the "Debtor"), the debtor and debtor in possession in this case, for, *inter alia*, an order (this "Order" or "Bidding Procedures Order") (a) authorizing and approving the bidding procedures attached hereto as **Exhibit 1** (the "Bidding Procedures") in connection with the sale or disposition (the "Sale") of some or all of the Debtor's assets (the "Acquired Assets") or a plan of reorganization (a "Plan", and together with the Sale, the

¹ The Debtor's address is 2320 Killearn Center Blvd., Building D, Tallahassee, Florida 32309. The last four digits of the Debtor's federal tax identification number are 5082.

“Restructuring Transaction”), (b) authorizing the Debtor to designate a Stalking Horse Bidder and to grant certain Stalking Horse Inducements (each as defined herein), (c) scheduling an Auction (as defined herein), if necessary, and the Sale Hearing (as defined herein) and establishing related dates, (d) approving the form and manner of the notice of the Auction, the Sale Hearing and related matters, including the notice of the Auction and Sale and hearing thereon (in the form attached as **Exhibit 2**, the “Notice of Auction and Sale Hearing”), (e) approving the procedures (the “Assignment Procedures”), as set forth below, for the assumption and assignment of certain of the Debtor’s executory contracts or unexpired leases, as applicable (the “Designated Contracts”), and notice thereof, including the notice of the potential assumption and assignment of the Designated Contracts (in the form attached as **Exhibit 3**, the “Notice of Assumption and Assignment”), and (f) related relief;² and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157; and this Court having found that venue of the Chapter 11 Case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent

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

with Article III of the United States Constitution; and this Court having found that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given except as set forth herein with respect to the Auction, the Sale Hearing, and the potential assumption and assignment of the Designated Contracts; and a reasonable opportunity to object to or be heard regarding the relief provided herein has been afforded to parties-in-interest pursuant to Rule 6004(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and this Court having considered the First Day Declaration and any other declaration submitted in support of the Motion; and this Court having found that the relief sought in the Motion is in the best interests of the Debtor, its estate, its creditors and all other parties in interest; and this Court having found that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

THE COURT HEREBY FINDS THAT:

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

conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. The bases for the relief requested in the Motion include sections 105, 363, 365, 503, and 507 of title 11 of the United States Code (the “Bankruptcy Code”) and Bankruptcy Rules 2002, 6004, 6006, and 9014.

C. The Debtor has begun a marketing and sale process during this Chapter 11 Case to solicit and develop the highest or best offer for a Restructuring Transaction (the “Sale Process”).

D. The Bidding Procedures attached as **Exhibit 1** are fair, reasonable, and appropriate under the circumstances, and are designed to maximize the value to be achieved from the Sale, as determined by the Debtor’s sound business judgment. The Bidding Procedures were negotiated in good faith and at arms-length and are reasonably designed to promote a competitive and robust bidding process to generate the greatest level of interest in the Debtor’s business resulting in the highest or otherwise best offer.

E. The Assignment Procedures provided for herein are fair, reasonable, and appropriate, and are consistent with the provisions of section 365 of the Bankruptcy Code.

F. The Debtor has articulated good and sufficient business reasons for this Court to approve (i) the Bidding Procedures, including the scheduling of bid deadlines, an auction and a sale hearing with respect to the proposed Sale; and (ii) the establishment of procedures to assume and assign the Designated Contracts and fix the Cure Costs (as defined below) to be paid pursuant to section 365 of the Bankruptcy Code.

G. In the Motion and at the hearing on the Motion as it pertains to the Bidding and Auction Process (the “Bidding Procedures Hearing”), the Debtor demonstrated that good and sufficient notice of the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and all other interested parties.

H. The Notice of Auction and Sale Hearing, and the Debtor’s proposed publication thereof, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale, the Bidding Procedures, and the Assignment Procedures to be employed in connection therewith, including, without limitation: (i) the date, time and place of the Auction (if one is held); (ii) the Bidding Procedures and the dates and deadlines related thereto; (iii) the objection deadline for

the Sale and the date, time, and place of the Sale Hearing; (iv) reasonably specific identification of the Acquired Assets; and (v) representations describing the Sale as being free and clear of liens, claims, interests, and other encumbrances, with all such liens, claims, interests, and other encumbrances attaching with the same validity and priority to the proceeds of the Sale; and no other or further notice of the Sale shall be required.

I. The Notice of Assumption and Assignment is appropriate and reasonably calculated to provide each Non-Debtor Counterparty (as defined herein) to any Designated Contracts with proper notice of the Assignment Procedures. The inclusion of any Designated Contract on a Notice of Assumption and Assignment does not constitute an admission that a particular Designated Contract is an executory contract or unexpired lease of property or require, or guarantee, that such Designated Contracts will be assumed and assigned, and all rights of the Debtor with respect thereto are reserved.

J. No further notice beyond that described in the foregoing paragraphs is required in connection with the Sale.

K. The entry of this Order is in the best interests of the Debtor, its estate, its creditors, and other parties in interest.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled as announced to the Court at the Bidding Procedures Hearing or by stipulation filed with the Court, are hereby overruled.
3. The Bidding Procedures attached as **Exhibit 1** are incorporated herein and approved, and shall apply with respect to the Sale Process and any resulting Restructuring Transaction. The Debtor and its advisors are authorized to conduct the Sale Process and solicit bids for all manner of transactions that the Debtor, after consultation with the Consultation Parties (as defined in the Bidding Procedures), believes will maximize value in this case, including, without limitation, one or more transactions for the sale of substantially all of the Debtor's assets or any portion thereof (a "Sale Bid") and one or more transactions involving the sponsoring of a plan of reorganization (a "Plan Bid"). The Bidding Procedures shall govern the solicitation, submission, receipt, consideration and analysis of all such Sale Bids and Plan Bids (collectively, the "Bids"). Any party desiring to submit a Bid shall comply with the Bidding Procedures and this order in all respects.

The Debtor is authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

Sale Process Dates and Deadlines³

4. The following dates and deadlines are approved and shall govern the Sale Process:

Event	Date
Deadline to serve Notice of Auction and Sale Hearing	Within three (3) business days following entry of the Bidding Procedures Order
Deadline to serve Notice of Assumption and Assignment	Within five (5) business days following entry of the Bidding procedures Order
Cure Cost/Assignment Objection Deadline⁴	May 25, 2022, at 5:00 p.m. (prevailing Eastern Time)
Deadline for Debtor to Designate any Stalking Horse Bidders	May 27, 2022
Sale Objection Deadline	June 10, 2022, at 5:00 p.m. (prevailing Eastern Time)
Bid Deadline	June 14, 2022, at 5:00 p.m. (prevailing Eastern Time)
Deadline for Debtor to Designate Qualified Bids and Baseline Bid	Not later than 24 hours prior to the scheduled start of the Auction
Auction (If Necessary)	June 20, 2022, at 10:00 a.m. (prevailing Eastern Time)
Deadline to File and Serve Notice of Successful Bidder	As soon as reasonably practicable after conclusion of the Auction

³ Dates contained in this proposed Bidding Procedures Order assume that the Bidding Procedures Order will be entered on or about May 2, 2022. In the event that the Bidding Procedures Order is entered on a later date, such dates are subject to revision.

⁴ The Cure Cost/Assignment Objection Deadline applies to all objections to the sale of the Assets and the assumption and assignment of the Designated Contracts (including a adequate assurance of future performance by a Stalking Horse Bidder), with the exception of objections related to a adequate assurance of future performance by a Successful Bidder other than the Stalking Horse Bidder, which are due by the Post-Auction Objection Deadline.

Event	Date
Post-Auction Objection Deadline	June 22, 2022, at 5:00 p.m. (prevailing Eastern Time)
Sale Hearing (subject to the Court's availability)	June 24, 2022, at [__:0_.m.] (prevailing Eastern Time)
Sale Closing	July 15, 2022

5. **Bid Deadline.** The The deadline for submitting Bids (the “Bid Deadline”) shall be **June 14, 2022 at 5:00 p.m. (prevailing Eastern Time)**. Except as set forth herein, no Bid shall be deemed to be a Qualified Bid unless such bid meets the requirements set forth in the Bidding Procedures or is otherwise accepted by the Debtor, after consultation with the Consultation Parties.

6. **Auction.** If more than one Qualified Bid is timely received, the Debtor will conduct an Auction in accordance with the Bidding Procedures, which Auction shall take place on **June 20, 2022 at 10:00 a.m. (prevailing Eastern Time)**, or such later date and time as the Debtor may designate in consultation with the Consultation Parties. The Auction will be held telephonically, by videoconference, or in person as determined by the Debtor in consultation with the Consultation Parties. If the Debtor, after consultation with the Consultation Parties, determines that the Auction should be conducted in person, (a) the Debtor, after consultation with the Consultation Parties, shall select a suitable venue for the Auction located

within 200 miles of the Bankruptcy Court's Tallahassee Division courthouse, (b) not later than one (1) business day following the Bid Deadline, (i) file a notice on the docket in the Chapter 11 Case stating that the Auction will be held in person and identifying the street address of the location chosen for the Auction (the "In Person Auction Notice"), (ii) cause a copy of the In Person Auction Notice to be posted conspicuously on the case website maintained for the Chapter 11 Case by the Stretto in its role as the claims and noting agent appointed by the Bankruptcy Court (<https://cases.stretto.com/BlackNewsChannel/>), and (iii) serve the In Person Auction Notice by email or similarly expeditious electronic means on all persons that have submitted Bids by the Bid Deadline, the Consultation Parties, and the U.S. Trustee.

7. Each Qualified Bidder participating in the Auction will be required to confirm, in writing or on the record at the Auction, that (a) it has not engaged in any collusion with respect to the bidding process, (b) its Qualified Bid is a good faith bona fide offer that it intends to consummate if selected as the Successful Bidder, and (c) such Qualified Bidder irrevocably agrees to serve as a Backup Bidder if the Qualified Bidder's Qualified Bid is the next highest or best bid after the Successful Bid with respect to the Restructuring Transaction.

8. The Debtor may, after consultation with the Consultation Parties, announce at the Auction additional procedural rules (by way of example only, and not by way of limitation, the amount of time to make Overbids, the amount of the bid increment for an Overbid, or the requirement that parties submit “best and final” bids) for conducting the Auction or otherwise modify these Bidding Procedures; provided that such rules or modifications (1) are not materially inconsistent with these Bidding Procedures as of the date of this Bidding Procedures Order, the Bankruptcy Code, or any order of the Bankruptcy Court, (2) do not purport to abrogate or modify the Stalking Horse Agreement, if any, without the prior written consent of the Stalking Horse Bidder, if any, (3) do not in any way impair or modify the rights of the Stalking Horse Bidder, if any, under the Bidding Procedures or the Stalking Horse Agreement, if any, without the prior written consent of the Stalking Horse Bidder, (4) do not reduce or otherwise modify the Debtor’s obligations to consult with any Consultation Party without the consent of such Consultation Party or further order of the Court, and (5) are disclosed to each Qualified Bidder during the Auction. The bidding at the Auction shall be transcribed, audio recorded, and/or videotaped, and the Debtor shall maintain a transcript of all bids made at the Auction.

9. **Notice of Successful Bidder.** Within one (1) business day following conclusion of the Auction, the Debtor shall file a notice (“Notice of Successful Bidder”) on the Bankruptcy Court’s docket identifying the Successful Bidder(s) and Successful Bid(s) for any Restructuring Transactions and any applicable Backup Bidder(s) and Backup Bid(s). Notwithstanding the selections of the Successful Bidder(s) and the Backup Bidder(s), all Bids are binding and irrevocable at least until entry of the Sale Order.

10. **Sale Hearing.** If the Successful Bid is a Sale Bid, a hearing to consider the approval of the Sale or Sales of the Acquired Assets (the “Sale Hearing”) shall be held before this Court on **June 24, 2022 at __: __ a/p.m. (prevailing Eastern Time)**, before the Honorable Karen K. Specie, at the U.S. Bankruptcy Courthouse, 110 East Park Avenue, Second Floor Courtroom, Tallahassee, Florida 32301. At least seven (7) days prior to the Sale Objection Deadline (as defined herein), the Debtor shall file an initial version of a proposed form of order (i) approving the terms of a Sale of some or all of the Acquired Assets, (ii) authorizing the Sale free and clear of all liens, claims, interests, and encumbrances (except for any permitted liens and encumbrances), (iii) authorizing the assumption and assignment of Designated Contracts, and (iv) granting related relief (as amended from time

to time, the “Proposed Sale Order”). At the Sale Hearing, the Debtor will seek the entry of any Proposed Sale Order(s) (as entered by the Court, the “Sale Order(s)”), which shall, among other things, approve and authorize the Sale(s) to the Successful Bidder(s) and, if applicable, the Backup Bidder(s) as determined in accordance with the Bidding Procedures. The Sale Hearing (or any portion thereof) may be adjourned by this Court or the Debtor (after consultation with the Consultation Parties and the Successful Bidder) from time to time without further notice other than by announcement in open court, on this Court’s calendar, or through the filing of a notice or other document on this Court’s docket.

11. **Sale Objection Deadline.** The deadline to object to the relief requested in the Motion (a “Sale Objection”) is **June 10, 2022 at 5:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”). Sale Objections must: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules for the United States Bankruptcy Court for the Northern District of Florida (the “Local Bankruptcy Rules”); (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Court and served on the following parties so as to be actually received no later than the Sale Objection Deadline: (i) counsel to the Debtor; (ii) counsel

to any Stalking Horse Bidder that may be designated in accordance with the Bidding Procedures and this Bidding Procedures Order; (iii) counsel to Busey Bank for so long as Busey Bank is the holder of the Prepetition Obligations⁵ or Stache Investment Corporation or any affiliate thereof as the assignee from Busey Bank of the Prepetition Obligations (either, the “Prepetition Lender”); (iv) counsel to Stache Investment Corporation, as the DIP Lender (as defined in the Interim DIP Order) (the “DIP Lender”); (v) counsel to the Official Committee of Unsecured Creditors (the “Committee”); and (vi) the United States Trustee (collectively, the “Notice Parties”). Failure to file a timely Sale Objection shall forever bar the assertion of any objection to the Motion, the entry of the Proposed Sale Order, and/or consummation of the Sale, including the assumption and assignment of any contracts or leases as part of the Sale. All parties who fail to file a timely Sale Objection shall also be deemed to consent to the entry of the Proposed Sale Order and consummation of the Sale and all transactions related thereto free and clear of all liens, claims, and interests.

12. **Plan Process.** If the Successful Bid is a Plan Bid, then the Sale Hearing will be adjourned subject to potential rescheduling of the Sale

⁵ As defined in the *Interim Order Granting, in Part, Debtor’s Emergency Motion Seeking Entry of Interim and Final Orders (i) Authorizing the Debtor to (a) Obtain Postpetition Financing and (b) Utilize Cash Collateral, (ii) Granting Liens and Superpriority Administrative Expense Claims, (iii) Granting Adequate Protection, (iv) Modifying the Automatic Stay, (v) Scheduling a Final Hearing for [May __, 2022, at [__: __.M], Eastern Standard Time, and (vi) Granting Related Relief entered on April [], 2022 (ECF No. __)* (the “Interim DIP Order”).

Hearing for a later date to be determined in the event that the Successful Bid is not consummated and the Debtor, after consultation with the Consultation Parties, decides to proceed with a Backup Bid that is a Sale Bid. In lieu of conducting the Sale Hearing on the date identified in the Bidding Procedures Order for the Sale Hearing, a hearing (the “Successful Plan Bid Hearing”) will be convened for the Court to consider entry of an order, in form and substance reasonably acceptable to the Debtor, the Consultation Parties, and the Successful Bidder, confirming the designation of such Successful Bidder’s Plan Bid as the Successful Bid, establishing a schedule for the plan filing, solicitation and confirmation process in connection with such Plan Bid, and granting related relief (the “Successful Plan Bid Order”). The Debtor shall file the proposed form of the Successful Plan Bid Order not less than two (2) business days prior to the date scheduled for the Successful Plan Bid Hearing. Objections to the selection of such Plan Bid as the Successful Bid or to the proposed form of the Successful Plan Bid Order may be filed at any time prior to the commencement of the Successful Plan Bid Hearing or presented at such hearing.

13. **Debtor Discretion/Business Judgment.** The Sale Process and the Auction are subject in all respects to the Debtor’s reasonable discretion and its business judgment regarding maximizing value in this Chapter 11

Case. The Debtor may, after consultation with the Consultation Parties, (a) determine which Qualified Bid is the highest or otherwise best offer; (b) reject, at any time before entry of a Sale Order, any Bid that, in the discretion of the Debtor, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Sale, or (iii) contrary to the best interests of the Debtor, its estate, its creditors, and other stakeholders; and (c) at or before the conclusion of the Auction, may impose additional terms and conditions upon Qualified Bidders as the Debtor determines to be in the best interests of the Debtor's estate in this case. Further, without limiting the foregoing, the Debtor may accept a single Qualified Bid or multiple Bids for multiple Restructuring Transactions that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid. The Debtor may also permit otherwise Qualified Bidders who submitted Bids by the Bid Deadline for a material portion of the Debtor's assets but who are not identified as a component of a single Qualified Bid consisting of multiple Bids, to participate in the Auction and to submit higher and/or otherwise better Bids that in subsequent rounds of bidding may be considered, together with other Bids for non-overlapping portions of the Debtor's assets, as part of such a single Qualified Bid.

14. Subject to the provisions below regarding the possible designation of a Stalking Horse Bidder, no person or entity shall be entitled to any expense reimbursement, break-up fees, “topping,” termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or to file with this Court any request for expense reimbursement or any fee of any nature, whether by virtue of section 503(b) of the Bankruptcy Code or otherwise.

Assignment Procedures

15. The following Assignment Procedures are hereby approved in connection with the potential assumption and assignment of Designated Contracts pursuant to section 365 of the Bankruptcy Code:

- a. On or before the fifth (5th) business day after entry of this Bidding Procedures Order, the Debtor shall file with the Court and serve on each known Non-Debtor counterparty to each known existing contract or lease with the Debtor (each, a “Non-Debtor Counterparty”), the Notice of Assumption and Assignment, regardless of whether any such contract or lease has been listed as a Designated Contract. In the event that the Debtor identifies any Non-Debtor Counterparties which were not served with the Notice of Assumption and Assignment, the Debtor may subsequently serve (by overnight mail) such Non-Debtor Counterparty with a Notice of Assumption and Assignment, and the following procedures will nevertheless apply to such Non-Debtor Counterparty; *provided, however*, that the Cure Cost/Assignment Objection Deadline with respect to such Non-Debtor Counterparty shall be the later of (i) **May 25, 2022 at 5:00 p.m. (prevailing Eastern Time)**

and (ii) the date that is 14 calendar days after the Notice of Assumption and Assignment is mailed to the affected Non-Debtor Counterparty.

- b. The Notice of Assumption and Assignment served on each Non-Debtor Counterparty shall: (i) identify each Designated Contract; (ii) list the proposed calculation of the cure amounts that the Debtor believes must be paid to cure all defaults outstanding under the Designated Contract as of such date (the “Cure Costs”); (iii) include a statement that assumption and assignment of such Designated Contract is not required or guaranteed; and (iv) inform such Non-Debtor Counterparty of the requirement to file any Cure Cost/Assignment Objections by the Cure Cost/Assignment Objection Deadline. Service of a Notice of Assumption and Assignment does not constitute an admission that a particular Designated Contract is an executory contract or unexpired lease of property, or confirm that the Debtor is required to or will assume and/or assign such Designated Contract as a part of any transaction.
- c. Except as otherwise provided in Paragraph 12. a of this Order, objections (a “Cure Cost/Assignment Objection”), if any, to (i) the scheduled Cure Costs, and/or (ii) the potential assumption, assignment, and/or transfer of such Designated Contract (including the transfer of any related rights or benefits thereunder), other than objections that relate specifically to the identity of the Successful Bidder, must (x) be in writing, (y) state with specificity the nature of such objection, including the amount of Cure Costs in dispute, and (z) be filed with the Court and properly served on the Notice Parties so as to be received no later than **May 25, 2022 at 5:00 p.m. (prevailing Eastern Time)** (the “Cure Cost/Assignment Objection Deadline”).
- d. Objections (a “Post-Auction Objection”) of any Non-Debtor Counterparty related solely to the identity of an adequate assurance of future performance provided by the Successful Bidder must (x) be in writing, (y) state

with specificity the nature of such objection, and (z) be filed with the Court and properly served on the Notice Parties so as to be received no later than **June 22, 2022 at 5:00 p.m. (prevailing Eastern Time)** (prevailing Eastern Time) which is intended to be two Business Days after the Auction (as such deadline may be extended from time to time, the “Post-Auction Objection Deadline”).

- e. Any Non-Debtor Counterparty to a Designated Contract who fails to timely file and properly serve a Cure Cost/Assignment Objection or Post-Auction Objection as provided herein will (i) be forever barred from objecting to the Cure Costs and from asserting any additional cure or other amounts with respect to such Designated Contract in the event it is assumed and/or assigned by the Debtor, and the Debtor and any successor to the Debtor on any such Designated Contract shall be entitled to rely solely upon the Cure Costs, and (ii) be deemed to have consented to the assumption, assignment and/or transfer of such Designated Contract (including the transfer of any related rights and benefits thereunder) to the relevant Successful Bidder and shall be forever barred and estopped from asserting or claiming against the Debtor or such Successful Bidder that any additional amounts are due or defaults exist, or conditions to assumption, assignment, and/or transfer must be satisfied under such Designated Contract, or that any related right or benefit under such Designated Contract cannot or will not be available to the Successful Bidder.
- f. Consideration of unresolved Cure Cost/Assignment Objections and Post-Auction Objections relating to all Designated Contracts, if any, will be held at the Sale Hearing; *provided, however*, that (i) any Designated Contract that is the subject of a Cure Cost/Assignment Objection with respect solely to the amount of the Cure Cost may be assumed and assigned prior to resolution of such objection and (ii) the Debtor may adjourn a Cure Cost/Assignment Objection in its discretion.

- g. A timely filed and properly served Cure Cost/Assignment Objection or Post-Auction Objection will reserve the filing Non-Debtor Counterparty's rights relating to the Designated Contract, but will not be deemed to constitute an objection to the relief generally requested in the Motion with respect to the approval of the Sale.
- h. The inclusion of a Designated Contract or Cure Costs with respect thereto on the Notice of Assumption and Assignment or the notice of Auction results shall not constitute or be deemed a determination or admission by the Debtor, the Stalking Horse Bidder, a Successful Bidder, or any other party in interest that such contract or lease is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code. The Debtor reserves all of its rights, claims, and causes of action with respect to each Designated Contract. The Debtor's inclusion of any Designated Contract on the Notice of Assumption and Assignment or the notice of Auction results shall not be a guarantee that such contract ultimately will be assumed or assumed and assigned. The initial Notice of Assumption and Assignment and any subsequent notice shall be without prejudice to a Stalking Horse Bidder's or Successful Bidder's rights under the applicable purchase agreement to subsequently (1) exclude a contract from the schedule of Designated Contracts previously included on such notice or (2) include additional contracts for assumption and assignment in accordance with the applicable Stalking Horse Bidder's or Successful Bidder's purchase agreement.
- i. The Debtor's decision to assume and assign the Designated Contracts to the relevant Successful Bidder is subject to the Court's approval and the closing of the Sale. Accordingly, absent the Court's approval and the closing of the Sale, the Designated Contracts shall not be deemed assumed or assumed and assigned, and shall in all respects be subject to further administration by the

Debtor and its estate under the Bankruptcy Code in connection with the Chapter 11 Case.

16. The foregoing Assignment Procedures are appropriate and fair to all Non-Debtor Counterparties and comply in all respects with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules of this Court. The Notice of Assumption and Assignment is: (a) reasonably calculated to (i) provide sufficient, effective notice to all counterparties and any other affected parties of the Debtor's intent to assume and assign to any Successful Bidder some or all of the Designated Contracts and (ii) afford the counterparties the opportunity to exercise any rights affected by the Motion and the relief granted by this Order pursuant to Bankruptcy Rules 2002(a)(2), 6004, and 6006; and (b) hereby approved.

Notice of Auction and Sale Hearing

17. The Notice of Auction and Sale Hearing, substantially in the form attached hereto as **Exhibit 2**, is hereby approved. Within three (3) business days following entry of this Bidding Procedures Order, or as soon as reasonably practicable thereafter, the Debtor shall cause the Notice of Auction and Sale Hearing to be served by first class U.S. mail, postage prepaid, on the following entities: (a) the Office of the United States Trustee; (b) counsel for the Prepetition Lender; (c) counsel for the DIP Lender; (d) counsel for the Committee; (e) those entities who have formally appeared

and requested notice and service in these proceedings pursuant to Bankruptcy Rule 2002; (f) all persons known to the Debtor to have expressed written interest within one year prior to the Petition Date in acquiring the Debtor's Business or some or all of the Acquired Assets; (g) all known Non-Debtor Counterparties to contracts and leases with the Debtor; (h) all other known holders of liens, encumbrances, and other claims secured by any of the Acquired Assets; (i) the United States Internal Revenue Service; (j) the U.S. Attorney for the Northern District of Florida; (k) the Federal Communications Commission; (l) the Attorney General for the State of Florida; and (m) to the extent not already identified as a party to be served in clauses (a) through (l) above, all other known creditors of the Debtor.

Publication Notice

18. On or before five (5) business days after entry of the Bidding Procedures Order, the Debtor shall, subject to applicable submission deadlines, publish the Notice of Auction and Sale Hearing once in the national edition of the USA Today or another nationally circulated newspaper, with any modifications necessary for ease of publication, and post the Notice of Auction and Sale Hearing and the Bidding Procedures Order on the website of the Debtor's claims and noticing agent.

19. Service and publication of the Notice of Auction and Sale Hearing are sufficient to provide effective notice to all interested parties of, *inter alia*, the Bidding Procedures, the Auction, the Sale Hearing, the Sale, and the Assignment Procedures in accordance with Bankruptcy Rules 2002, 6004 and 6006, and any applicable Local Bankruptcy Rules of this Court, and are approved.

Designation of Stalking Horse Bidder; Stalking Horse Inducements

20. Pursuant to the Bidding Procedures and this Bidding Procedures Order, the Debtor is authorized, but not directed, to select one or more bidders to act as a Stalking Horse Bidder and enter into Stalking Horse Agreement(s) with such Stalking Horse Bidder(s).

21. After consultation with the Consultation Parties, the Debtor is authorized, but not directed, to provide a Stalking Horse Bidder (other than the DIP Lender, the Prepetition Lender or any Stalking Horse Bidder that is an insider of the Debtor as defined in section 101(31) of the Bankruptcy Code) with any or all of the following stalking horse protections as an inducement for the Stalking Horse Bidder to execute a Stalking Horse Agreement: (i) a breakup fee of up to three percent (3%) of the cash portion of the purchase price set forth in a Stalking Horse Bidder's executed Stalking Horse Agreement; and (ii) expense reimbursement of such Stalking

Horse Bidder's reasonable and documented out of pocket expenses incurred by the Stalking Horse Bidder up to a maximum of two percent (2%) of the cash purchase price set forth in a Stalking Horse Bidder's Stalking Horse Agreement (collectively, the "Pre-Approved Stalking Horse Inducements"). The granting of any such Pre-Approved Stalking Horse Inducements shall be subject to the Debtor's discretion, after consultation with the Consultation Parties, and shall not require further Court approval. Any further protections or inducements for a Stalking Horse Bidder beyond Pre-Approved Stalking Horse Inducements, are subject to Court approval in accordance with the procedures described in Paragraph 23 of this Bidding Procedures Order.

22. To the extent the Debtor, after consultation with the Consultation Parties, determines to designate one or more Stalking Horse Bidders and to offer Pre-Approved Stalking Horse Inducements to any such Stalking Horse Bidders, the Debtor shall (a) file a notice (the "Stalking Horse Bidder Notice") on or before **May 27, 2022** and (b) cause such Stalking Horse Bidder Notice to be served by email or similarly expeditious electronic means upon (i) the U.S. Trustee, (ii) counsel for the Prepetition Lender, (iii) counsel for the DIP Lender, and (iv) counsel for the Committee. The Stalking Horse Bidder Notice shall include the following: (x) the name of any Stalking Horse Bidder(s) designated by the Debtor; (y) a description

of any Pre-Approved Stalking Horse Inducements that the Debtor has agreed to provide to such Stalking Horse Bidder(s); and (z) a copy of any such Stalking Horse Bidder's(s') Stalking Horse Agreement(s).

23. In the event that the Debtor, after consultation with the Consultation Parties, seeks to provide any Stalking Horse Bidder with a break-up fee, expense reimbursement or other bid protections beyond the Pre-Approved Stalking Horse Inducements (the "Additional Stalking Horse Inducements," together with Pre-Approved Stalking Horse Inducements, the "Stalking Horse Inducements"), then the following additional procedures shall apply:

- a. In addition to the disclosures described in Paragraph [23] above, the Stalking Horse Bidder Notice shall include the following as additional exhibits: (a) a declaration in support of the proposed Additional Stalking Horse Inducements (the "Bid Protections Declaration"); and (b) a proposed form of order approving of the Additional Stalking Horse Inducements (the "Bid Protections Order").
- b. The Stalking Horse Bidder Notice and Bid Protections Declaration shall set forth the reasons the Debtor believes the Additional Stalking Horse Inducements satisfy the applicable standard for the approval of such relief under the Bankruptcy Code. For the avoidance of doubt, nothing in this Order is shifting the Debtor's burden of proof with respect to such Additional Stalking Horse Inducements.
- c. Any objection to (i) the Additional Stalking Horse Inducements set forth in the Stalking Horse Bidder

Notice and Bid Protections Declaration or (ii) the form of the Bid Protections Order (a “Bid Protections Objection”), shall be filed no later than **5:00 p.m. (prevailing Eastern Time) on the date that is three (3) business days after the Stalking Horse Bidder Notice is filed.**

- d. If a timely Bid Protections Objection is filed, the Debtor will schedule a hearing, in consultation with any objecting parties and the Consultation Parties, with such hearing to be held, subject to the Court’s availability, within five (5) business days following the filing of any such Bid Protections Objection.
- e. Absent any timely Bid Protections Objection, the Court may enter the Bid Protections Order without further hearing.

24. Any Stalking Horse Bidder designated by the Debtor in accordance with this Bidding Procedures Order shall be a Qualified Bidder and the bid reflected in any such Stalking Horse Bid (including as may be increased at the Auction, if any) is a Qualified Bid, as set forth in the Bidding Procedures.

Credit Bidding

25. Any Qualified Bidder that has a valid and perfected lien on any assets of the Debtor’s estate (a “Secured Creditor”), unless the Court for cause orders otherwise, shall have the right to credit bid all or a portion of the value of such Secured Creditor’s claims within the meaning of section 363(k) of the Bankruptcy Code; *provided* that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral over which

such Secured Creditor has a valid lien; and *provided further* that any credit bid by a Secured Creditor shall contain a cash component sufficient to repay in full in cash secured claims of a senior Secured Creditor (including the DIP Lender), if any (unless such senior Secured Creditor agrees to a different treatment).

General

26. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

27. The Debtor is excused from compliance with Local Bankruptcy Rule 6004-1(C), including the requirement to file a *Report and Notice of Intent to Sell Property of the Estate* promulgated thereunder.

28. This Bidding Procedures Order shall be binding on and inure to the benefit of the Debtor, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estate of the Debtor.

29. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

30. Absent an order of this Court to the contrary, this Order shall be binding in all respects upon any trustees, examiners, “responsible persons”

or other fiduciaries appointed in the Debtor's bankruptcy case or upon a conversion to chapter 7 under the Bankruptcy Code.

31. Nothing herein shall be deemed to or constitute the assumption, assignment, or rejection of any executory contract or unexpired lease.

32. In the event of any conflict between this Order and the Bidding Procedures, the Bidding Procedures shall govern with respect to the conduct of the Auction (if any), and otherwise this Order shall govern.

33. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order.

DONE AND ORDERED on _____, 2022

KAREN K. SPECIE
Chief U.S. Bankruptcy Judge

Gregory W. Werkheiser, Esq. is directed to cause a copy of this Order to be served on interested parties who are non-CM/ECF users and file a proof of service within three days of entry of the Order.

PREPARED BY: Gregory W. Werkheiser, Esq.

Exhibit 1

Bidding Procedures

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

In re:

BLACK NEWS CHANNEL, LLC,¹

Debtor.

Case No. 4:22-bk-40087

Chapter 11

BIDDING PROCEDURES

I. INTRODUCTION.

On March 28, 2022, Black News Channel, LLC (the “Debtor”) commenced the above-captioned voluntary chapter 11 case (the “Chapter 11 Case”) in the United States Bankruptcy Court for the Northern District of Florida (the “Court”). On May [●], 2022, the Court entered that certain *Order Granting, in Part, Debtor’s Emergency Motion for (A) Approval of Bidding Procedures, (B) Authorization for Debtor to Designate Stalking Horse Bidder and Grant Certain Stalking Horse Inducements, (C) Scheduling Auction, Sale Hearing and Related Dates, (D) Approval of the Form and Manner of Notice Thereof, (E) Establishment of Notice and Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (F) Related Relief [Dkt. No. [●]]* (Docket No. [●]) (the “Bidding Procedures Order”).²

Pursuant to the Bidding Procedures Order, the Debtor and its advisors are authorized to conduct the Sale Process and solicit bids for all manner of transactions that the Debtor, after consultation with the Consultation Parties (as defined herein), believes will maximize value in this Chapter 11 Case, including, without limitation, one or more transactions for the sale of substantially all of the Debtor’s assets or any portion thereof (such assets to be acquired, the “Acquired Assets” and such a bid, a “Sale Bid”) and one or more transactions involving the sponsoring of a plan of reorganization (a “Plan Bid”). The Bidding Procedures Order and these bidding procedures (the “Bidding Procedures”) shall govern the solicitation, submission, receipt, consideration and analysis of all such Sale Bids and Plan Bids (collectively, the “Bids”). Any party desiring to submit a Bid shall comply with the Bidding Procedures and the terms of the Bidding Procedures Order in all respects.

¹ The Debtor’s address is 2320 Killearn Center Blvd., Building D, Tallahassee, Florida 32309. The last four digits of the Debtor’s federal tax identification number are 5082.

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

ANY PARTY INTERESTED IN SUBMITTING A SALE BID OR A PLAN BID SHOULD CONTACT THE DEBTOR’S ADVISORS:

<p>Ankura Capital Advisors</p> <p>485 Lexington Avenue 10th Floor New York, NY 10017 Attn: Michael Mortell & Karl D’Cunha Email: MMortell.ACA@ankura.com kdcunha.ACA@ankura.com</p> <p><i>Debtor’s Financial Advisor</i></p>	<p>Benesch, Friedlander, Coplan & Aronoff LLP</p> <p>1313 N. Market St. Suite 1201 Wilmington, DE 19801 Attn: Gregory W. Werkheiser & Steven L. Walsh Email: gwerkheiser@beneschlaw.com swalsh@beneschlaw.com</p> <p>-and-</p> <p>71 S. Wacker Dr., Suite 1600 Chicago, IL 60606 Attn: Scott A. McMillin & Matthew E. Nirider smcmillin@beneschlaw.com mnrider@beneschlaw.com</p> <p><i>Debtor’s Counsel</i></p>	<p>Thames Markey, P.A.</p> <p>50 North Laura St. Suite 1600 Jacksonville, FL 32202 Attn: Richard R. Thames & Bradley R. Markey Email: rtt@thamesmarkey.law brm@thamesmarkey.law</p> <p><i>Debtor’s Local Counsel</i></p>
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II. SALE PROCESS TIMELINE.

Event	Date
Deadline to serve Notice of Auction and Sale Hearing	Within three (3) business days following entry of the Bidding Procedures Order
Deadline to serve Notice of Assumption and Assignment	Within five (5) business days following entry of the Bidding procedures Order
Cure Cost/Assignment Objection Deadline³	May 25, 2022, at 5:00 p.m. (prevailing Eastern Time)
Deadline for Debtor to Designate any Stalking Horse Bidders	May 27, 2022

³ The Cure Cost/Assignment Objection Deadline applies to all objections to the sale of the Assets and the assumption and assignment of the Designated Contracts (including adequate assurance of future performance by a Stalking Horse Bidder), with the exception of objections related to a adequate assurance of future performance by a Successful Bidder other than the Stalking Horse Bidder, which are due by the Post-Auction Objection Deadline.

Event	Date
Sale Objection Deadline	June 10, 2022, at 5:00 p.m. (prevailing Eastern Time)
Bid Deadline	June 14, 2022, at 5:00 p.m. (prevailing Eastern Time)
Deadline for Debtor to Designate Qualified Bids and Baseline Bid	Not later than 24 hours prior to the scheduled start of the Auction
Auction (If Necessary)	June 20, 2022, at 10:00 a.m. (prevailing Eastern Time)
Deadline to File and Serve Notice of Successful Bidder	As soon as reasonably practicable after conclusion of the Auction
Post-Auction Objection Deadline	June 22, 2022, at 5:00 p.m. (prevailing Eastern Time)
Sale Hearing (subject to the Court's availability)	June 24, 2022, at [__:0_.m.] (prevailing Eastern Time)
Sale Closing	July 15, 2022

III. FORM APA.

The Debtor has drafted a form of Asset Purchase Agreement (together with all ancillary documents and agreements, the "Form APA"), after consultation with the Consultation Parties, for parties interested in acquiring the Acquired Assets. The Debtor intends to provide copies of the Form APA to all parties who express interest in submitting a Sale Bid and will also make such Form APA available in the electronic data room established by the Debtor in connection with its Sale Process. Pursuant to the Form APA, the Successful Bidder shall acquire the Acquired Assets free and clear of any and all interests to the maximum extent permitted by section 363 of the Bankruptcy Code subject to certain other conditions, with such interests to attach to the net proceeds of the sale of the Acquired Assets with the same validity and priority as such interests applied against the Acquired Assets.

For the avoidance of doubt, a Qualified Bid and/or a Successful Bid (each as defined below) may take the form of a Restructuring Transaction (as defined below) to be consummated either through a Sale Bid as described above or through a Plan Bid based upon a Bidder's proposed plan of reorganization (a "Plan"). Nothing herein shall preclude a Bidder from submitting a Bid in the form of a Plan, it being understood that the Debtor, after consultation with the Consultation Parties, reserves the right to modify these procedures, including, without limitation, Qualified Bid requirements, as necessary or appropriate to reflect the submission and the Debtor's consideration of one or more Bids in the form of a Plan; *provided* that in order for a Plan Bid to constitute a Qualified Bid, the Debtor, after consultation with the Consultation

Parties, must determine in good faith that such Plan Bid is capable of satisfying the requirements of section 1129 of the Bankruptcy Code and being consummated. In assessing whether a Plan Bid is capable of satisfying the foregoing requirements, the factors to be considered by the Debtor and the Consultation Parties may include, without limitation, the Bidder's financial capacity and willingness to provide the Debtor with bridge financing or other financial support in its Chapter 11 Case pending the consummation of the Bidder's contemplated Plan on terms and conditions that the Debtor determines in its reasonable discretion, after consultation with the Consultation Parties, are likely to be both sufficient to permit the Debtor to consummate such a Plan and otherwise reasonably acceptable to the Debtor. Any Plan Bid satisfying the requirements of this paragraph may be determined by the Debtor, after consultation with the Consultation Parties, to be a Qualified Bid, Successful Bid, Stalking Horse Bid, or Backup Bid (each as defined below).

IV. PARTICIPATION REQUIREMENTS.

A. Potential Bidders.

To participate in the bidding process or otherwise be considered for any purpose hereunder, a person or entity interested in the Acquired Assets or part of the Acquired Assets (a "Potential Bidder") must deliver to each of the Debtor's advisors the following documents and information (collectively, the "Preliminary Bid Documents"):

1. an executed confidentiality agreement on terms reasonably acceptable to the Debtor (a "Confidentiality Agreement");
2. proof by the Potential Bidder of its financial capacity to close a proposed transaction for the sale or disposition (the "Sale") of some or all of the Debtor's assets (the "Acquired Assets") or a Plan (together with a Sale, a "Restructuring Transaction"), which may include audited financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of the contemplated Restructuring Transaction, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtor and its advisors (in consultation with the Consultation Parties);
3. if the Potential Bidder's contemplated Restructuring Transaction involves a Plan Bid, such additional information concerning the Potential Bidder's financial capacity and willingness to provide the Debtor with bridge financing or other financial support in its Chapter 11 Case pending the consummation of the Potential Bidder's contemplated Plan that the Debtor determines in its reasonable discretion, after consultation with the Consultation Parties, is likely to be both sufficient to permit the Debtor to consummate such a Plan and otherwise reasonably acceptable to the Debtor; and
4. a non-binding preliminary indication of the amount of the cash purchase price in U.S. Dollars or other consideration that the Potential Bidder is

prepared to pay or deliver in exchange for the acquisition of some or all of the Acquired Assets.

Any Preliminary Bid Documents provided to the Debtor shall be made available by the Debtor to the Consultation Parties within 24 hours of receipt thereof.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtor and its advisors regarding the ability of such Potential Bidder, as applicable, to consummate its contemplated Restructuring Transaction; provided that the Consultation Parties and their respective advisors shall be permitted to submit reasonable requests for information from Potential Bidders only through the Debtor and its advisors and, for the avoidance of doubt, shall not be permitted to directly contact any Potential Bidder and/or its respective advisor(s).

B. Obtaining Due Diligence.

The Debtor and its advisors (after consultation with the Consultation Parties) will determine and notify each Potential Bidder whether such Potential Bidder has submitted adequate Preliminary Bid Documents so that such Potential Bidder may submit a Bid (each, an “Acceptable Bidder”, and each such bid, an “Acceptable Bid”). Notwithstanding anything herein to the contrary, the Debtor reserves the right to work with Potential Bidders (in consultation with the Consultation Parties) to aggregate bids into a consolidated Acceptable Bid, or otherwise improve bids to be Acceptable Bids, prior to the Bid Deadline (defined herein). Any Stalking Horse Bidder designated in accordance with the Bidding Procedures Order and these Bidding Procedures shall be deemed an Acceptable Bidder, and the bid as set forth in the Stalking Horse Agreement (the “Stalking Horse Bid”) an Acceptable Bid.

Only Acceptable Bidders shall be eligible to receive due diligence information and access to the Debtor’s electronic data room and to additional non-public information regarding the Debtor, the Debtor’s business, and the Acquired Assets.

The Debtor and its advisors shall coordinate all reasonable requests from Acceptable Bidders for additional information and due diligence access; provided that (i) the Debtor shall have the right (after consultation with the Consultation Parties) to limit the information and due diligence provided to competitors and (ii) the Debtor may (in consultation with the Consultation Parties) decline to provide such information, after prior notice to Acceptable Bidders who, at such time and in the Debtor’s reasonable business judgment, have not established, or who have raised doubt, that such Acceptable Bidders intend in good faith to, or have the capacity to, consummate a proposed transaction. The due diligence period will end on the Bid Deadline and, subsequent to the Bid Deadline, the Debtor shall have no obligation to furnish any due diligence information. Additional due diligence will not be provided after the Bid Deadline, unless otherwise deemed reasonably appropriate by the Debtor (in consultation with the Consultation Parties). The Debtor and the Consultation Parties, and each of their representatives and advisors, are not responsible for, and will bear no liability with respect to, any information obtained by any Acceptable Bidder in connection with any Restructuring Transaction.

V. REQUIREMENTS FOR QUALIFIED BIDS.

Any binding proposal, solicitation, or offer will be considered a qualified bid only if the Bid is submitted in writing by an Acceptable Bidder, by the Bid Deadline, and is deemed to comply with all of the following in the Debtor's business judgment (in consultation with the Consultation Parties) (a "Qualified Bid," and such bidder a "Qualified Bidder"), provided that any Stalking Horse Bidder designated in accordance with the Bidding Procedures Order shall be deemed a Qualified Bidder (and any bid submitted by them, a Qualified Bid):

1. **Purpose.** Each Qualified Bidder submitting a Sale Bid must state that the Sale Bid includes an irrevocable and binding offer by the Qualified Bidder to purchase some or all of the Acquired Assets (identified with specificity) and specify the Debtor's liabilities that the Qualified Bidder seeks to assume. It must also specify whether the proposed transaction must be consummated pursuant to a confirmed plan of reorganization or liquidation, or if it is sufficient for the proposed transaction to be approved promptly at the Sale Hearing without undertaking a plan confirmation process.
2. **Assets and Liabilities.** The Bid must clearly identify the following: (a) the Acquired Assets, or the portion thereof, to be purchased; and (b) the liabilities and obligations to be assumed, including any indebtedness to be assumed; if any.
3. **Purchase Price.** The Bid must clearly set forth the cash purchase price, and any other non-cash consideration (with the form of such consideration specified), to be paid. If the Bid proposes an acquisition of only certain of the Acquired Assets, the purchase price must be applied to each Acquired Asset or package of Acquired Assets in that Bid.
4. **Deposit.** Each Bid must be accompanied by a good faith deposit in the form of cash (or other form acceptable to the Debtor in its reasonable discretion, subject to consultation with the Consultation Parties) in an amount equal to not less than ten percent (10%) of the aggregate purchase price of the Bid to be held in an escrow account to be identified and established by the Debtor (the "Deposit").
5. **Marked Agreement.** Each Bid must include duly executed, non-contingent transaction documents necessary to effectuate the transactions contemplated in the Bid (the "Bid Documents"). The Bid Documents shall include a schedule of all Designated Contracts (as defined in the Bidding Procedures Order) to be assumed/assigned, if any, and a clearly marked/redlined version of the Form APA showing all changes requested by the Acceptable Bidder, as well as all other material documents integral to such Bid.
6. **Committed Financing.** To the extent that a Bid is not accompanied by

evidence of the Acceptable Bidder's capacity to consummate the proposed transactions set forth in its Bid with cash on hand, each Bid must include committed financing documented to the reasonable satisfaction of the Debtor (after consultation with the Consultation Parties) that demonstrates that the Acceptable Bidder has received sufficient unconditional debt and/or equity funding commitments to satisfy the Acceptable Bidder's purchase price and other obligations under its Bid, including providing adequate assurance of future performance under all contracts proposed to be Designated Contracts by such Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions reasonably acceptable to the Debtor (in consultation with the Consultation Parties).

7. **Bridge Funding/Financing for Plan Bid.** If the Acceptable Bidder's contemplated Restructuring Transaction involves a Plan Bid, evidence satisfactory to the Debtor, after consultation with the Consultation Parties, that the Plan Bid includes committed, unconditional financing or other funding commitments to provide the Debtor with bridge financing or other financial support in its Chapter 11 Case pending the consummation of the Acceptable Bidder's contemplated Plan ("Acceptable Bridge Funding/Financing").
8. **Contingencies; No Financing or Diligence Outs.** A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence.
9. **Identity.** The Bid must fully disclose the identity of each person or entity that (a) will directly or indirectly own and/or control five percent or more (individually or collectively) of the equity and/or voting securities of the Qualified Bidder, including its full legal name, jurisdiction of incorporation or formation and its location in the Qualified Bidder's corporate structure, that will be bidding for some or all of the Acquired Assets or otherwise participating in connection with such Bid, (b) will directly or indirectly own and/or control any amount of equity and/or voting securities of the Potential Bidder, (c) for trusts and similar legal arrangements that meet the criteria for subparts (a) and (b) above, (i) each trust's settlor (the provider of funds), (ii) each trustee or person or entity exercising control over each trust, (iii) any person with the power to remove any trustee and (iv) the beneficiaries of such trust(s) or similar legal arrangement, (d) for foundations that meet the criteria for subparts (a) and (b) above, (i) the founders of such foundation, (ii) the key individuals who control such foundation and (iii) such foundation's source of funds, and (e) has a connection or agreement with the Debtor or with any other prospective bidder for some or all of the Acquired Assets or any officer, director or equity security holder of the Debtor.

10. **Irrevocable.** An Acceptable Bidder's Bid must be irrevocable and binding; provided that if the Bid is not selected as the Successful Bid or Backup Bid (defined below), the Bid may be revoked after consummation of the Successful Bid or Backup Bid.
11. **Backup Bidder.** Each Bid must contain an agreement for the Acceptable Bidder to be a Backup Bidder (as defined below) if such bidder's Qualified Bid is selected as the next highest or next best bid after the Successful Bid.
12. **As-Is, Where-Is.** The Bid must include the following representations and warranties: (a) expressly state that the Acceptable Bidder has had an opportunity to conduct any and all due diligence regarding the Debtor's businesses and the Acquired Assets prior to submitting its bid; and (b) a statement that the Acceptable Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the Acquired 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 Debtor's businesses or the Acquired Assets or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Acceptable Bidder's proposed asset sale agreement ultimately accepted and executed by the Debtor.
13. **Authorization.** The Bid must include evidence that the Acceptable Bidder has obtained authorization or approval from its board of directors (or comparable governing body) acceptable to the Debtor with respect to the submission, execution, and delivery of its Bid and Bid Documents, participation in the Auction, and closing of the proposed transaction(s) contemplated in such Bid. The Bid shall further state that any necessary filings under applicable regulatory, antitrust, and other laws will be made in a timely manner and that payment of the fees associated therewith shall be made by the Acceptable Bidder.
14. **Disclaimer of Fees.** Each Bid (other than any Stalking Horse Bidder granted protections in accordance with the Bidding Procedures Order) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, "topping" or termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (other than a Stalking Horse Bidder granted protections in accordance with the Bidding Procedures Order) will be permitted to request, nor be granted by the Debtor, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, and by submitting its Bid is agreeing to refrain from and waiving any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.

15. **Time Frame for Closing.** A Bid by an Acceptable Bidder must be reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations in the Debtor's business judgment) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame reasonably acceptable to the Debtor (in consultation with the Consultation Parties). The Acceptable Bidder must commit to closing the proposed Sale(s) contemplated by the Bid as soon as practicable and provide perspective on any potential regulatory issues that may arise in connection with such Acceptable Bidder's acquisition of the Acquired Assets including timing for resolution thereof. In no event, unless the Bid is a Plan Bid and includes Acceptable Bridge Funding/Financing, may the proposed transaction close later than **July 15, 2022** (the "Closing Deadline") and any Bid must specifically acknowledge and agree to the same.
16. **Adherence to Bid Procedures.** Each Bid must include (a) a statement that the Acceptable Bidder has acted in good faith consistent with section 363(m) of the Bankruptcy Code; and (b) that the Bid constitutes a bona fide offer to consummate the proposed transactions, and agrees to be bound by these Bidding Procedures.
17. **Postpetition Financing Order.** All Bids must be in accordance with the terms and conditions of any order authorizing the use of cash collateral and providing postpetition financing in this case.
18. **Joint Bids.** The Debtor will be authorized to approve joint Bids in its reasonable discretion (in consultation with the Consultation Parties) on a case-by-case basis.
19. **Cooperation.** The Acceptable Bidder must provide a covenant to cooperate with the Debtor to provide pertinent factual information regarding such Bidder's operations reasonably required to analyze issues arising with respect to any applicable laws or regulatory requirements.
20. **No Collusion.** The Acceptable Bidder must acknowledge in writing that (a) in connection with submitting its Bid, it has not engaged in any collusion that would be subject to section 363(n) of the Bankruptcy Code with respect to any Bids or the Sale, specifying that it did not agree with any Potential Bidders, Acceptable Bidders or Qualified Bidders to control price; and (b) it agrees not to engage in any collusion that would be subject to section 363(n) of the Bankruptcy Code with respect to any Bids, the Auction, or the Sale.
21. **Other Information.** The Bid contains such other information as may be reasonably requested by the Debtor and the Consultation Parties with such requests made through the Debtor.

VI. BID DEADLINE.

An Acceptable Bidder that desires to make a Bid must transmit via email (in .pdf or similar format) or deliver written copies of its Bid to the following parties so as to be received not later than **5:00 p.m. (prevailing Eastern Time) on June 14, 2022** (the “Bid Deadline”): (i) counsel to the Debtor, Benesch, Friedlander, Coplan & Aronoff LLP, 1313 N. Market Street, Suite 1201, Wilmington, Delaware 19801, Attn: Gregory W. Werkheiser, email: gwerkheiser@beneschlaw.com, and Steven L. Walsh, email: swalsh@beneschlaw.com, and 71 S. Wacker Dr., Suite 1600, Chicago, Illinois 60606, Attn: Scott A. McMillin, email smcmillin@beneschlaw.com, and Matthew E. Nirider, email: mnirider@beneschlaw.com; and Thames Markey, P.A., 50 North Laura Street, Suite 1600, Jacksonville, FL 32202, Attn: Richard R. Thames, email: rrt@thamesmarkey.law, and Bradley R. Markey, email: brm@thamesmarkey.law; and (ii) the Debtor’s investment banker, Ankura Capital Advisors, 485 Lexington Avenue, 10th Floor, New York, New York 10017, Attn: Michael Mortell, email: Mmortell.aca@ankura.com, and Karl D’Cunha, email: kdcunha.aca@ankura.com.

The Debtor will provide copies of all Bids via electronic mail within 24 hours of receiving any Bid to the Consultation Parties.

VII. QUALIFIED BIDDERS.

No later than 24 hours prior to the commencement of the Auction, the Debtor (in consultation with the Consultation Parties) shall notify each Acceptable Bidder whether such party is a Qualified Bidder. Promptly upon designating the Qualified Bidders, the Debtor shall provide the adequate assurance information received from the applicable Qualified Bidder to the Consultation Parties pursuant to such Qualified Bidder’s proposed transaction.

If any Bid is determined by the Debtor (in consultation with the Consultation Parties) not to be a Qualified Bid, the Debtor will refund such Acceptable Bidder’s Deposit on or before the date that is five (5) Business Days after the Bid Deadline.

The Debtor may accept (in consultation with the Consultation Parties), as a single Qualified Bid, multiple bids for non-overlapping material portions of the Acquired Assets such that, when taken together in the aggregate, such bids would otherwise meet the standards for a single Qualified Bid. The Debtor may permit (in consultation with the Consultation Parties) otherwise Qualified Bidders who submitted bids by the Bid Deadline for less than a substantial (but nevertheless a material) portion of the Acquired Assets but who are not identified as a component of a single Qualified Bid consisting of such multiple bids, to participate in the Auction and to submit higher or otherwise better bids that in subsequent rounds of bidding may be considered, together with other bids for non-overlapping material portions of the Acquired Assets, as part of such a single Qualified Bid for overbid purposes. The Debtor (in consultation with the Consultation Parties) may conduct the Auction in any manner to facilitate a sale of all or different subgroupings of the Debtor’s assets, including conducting multiple Auctions for different subgroupings of the Debtor’s Acquired Assets (each, a “Sub-Auction”).

Between the date that the Debtor notifies an Acceptable Bidder that it is a Qualified Bidder and the Auction, the Debtor may discuss, negotiate, or seek clarification of any Qualified

Bid from a Qualified Bidder. Without the prior written consent of the Debtor (in consultation with the Consultation Parties), a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; provided that any Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures.

Each Qualified Bidder shall comply with all reasonable requests for additional information and due diligence access requested by the Debtor or their advisors (in consultation with the Consultation Parties) regarding the ability of such Qualified Bidder to consummate its contemplated transaction. Failure by a Qualified Bidder to comply with such reasonable requests for additional information and due diligence access may be a basis for the Debtor (in consultation with the Consultation Parties) to determine that such bidder is no longer a Qualified Bidder or that a bid made by such bidder is not a Qualified Bid.

VIII. RIGHT TO CREDIT BID.

The Prepetition Lender or its designee, the DIP Lender or its designee, and any other Acceptable Bidder that has a valid and perfected lien on any assets of the Debtor's estate (together with the Prepetition Lender and the DIP Lender, a "Secured Creditor"), unless the Court for cause orders otherwise and subject to any successful Challenge as permitted only by the Interim DIP Order (as defined herein),⁴ shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the Bankruptcy Code (a "Credit Bid"); *provided* that any Credit Bid by a Secured Creditor shall contain a cash component sufficient to repay in full in cash secured claims of a senior Secured Creditor (including the DIP Lender), if any (unless such senior Secured Creditor agrees to a different treatment).

IX. THE AUCTION.

If the Debtor receives more than one Qualified Bid, the Debtor shall conduct the Auction to determine the Successful Bidder with respect to the Acquired Assets or portion of the Acquired Assets. If one or more Qualified Bid(s) exist for acquiring specific sub-groups of the Debtor's Acquired Assets, then the Debtor may, in the exercise of its reasonable business judgment (in consultation with the Consultation Parties), first conduct a Sub-Auction for each of the businesses or Acquired Assets that has at least one Qualified Bid pursuant to the Bid Procedures. If the Debtor does not receive more than one Qualified Bid, the Debtor will not conduct the Auction and will designate such Qualified Bid as the Successful Bid.

⁴ "Interim DIP Order" means that certain *Interim Order Granting, in Part, Debtor's Emergency Motion Seeking Entry of Interim and Final Orders (i) Authorizing the Debtor to (a) Obtain Postpetition Financing and (b) Utilize Cash Collateral, (ii) Granting Liens and Superpriority Administrative Expense Claims, (iii) Granting Adequate Protection, (iv) Modifying the Automatic Stay, (v) Scheduling a Final Hearing for [May __, 2022, at [__: __.M], Eastern Standard Time, and (vi) Granting Related Relief entered on April [__], 2022 (ECF No. __)*.

No later than 24 hours prior to the commencement of the Auction or specific Sub-Auction, the Debtor will notify all Qualified Bidders of the highest or otherwise best Qualified Bid, as determined in the Debtor's reasonable business judgment (in consultation with the Consultation Parties) (the "Baseline Bid"), and provide copies of the Bid Documents supporting the Baseline Bid to all Qualified Bidders. The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitutes the Successful Bid shall take into account any factors the Debtor (in consultation with the Consultation Parties) reasonably deems relevant to the value of the Qualified Bid to the Debtor's estates, including, among other things: (a) the number, type, and nature of any changes to the Form APA requested by the Qualified Bidder, including the type and portion of the Acquired Assets sought and Assumed Liabilities to be assumed in the Qualified Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close the proposed Restructuring Transaction(s), the conditions thereto, and the timing thereof; (d) the net economic effect of any changes to the value to be received by the Debtor's estates from the transactions contemplated by the Bid Documents; and (e) the tax consequences of such Qualified Bid (collectively, the "Bid Assessment Criteria").

The Auction will be held telephonically, by videoconference, or in person as determined by the Debtor in consultation with the Consultation Parties. If the Debtor, after consultation with the Consultation Parties, determines that the Auction should be conducted in person, (a) the Debtor, after consultation with the Consultation Parties, shall select a suitable venue for the Auction located within 200 miles of the Bankruptcy Court's Tallahassee Division courthouse, (b) not later than one (1) business day following the Bid Deadline, (i) file a notice on the docket in the Chapter 11 Case stating that the Auction will be held in person and identifying the street address of the location chosen for the Auction (the "In Person Auction Notice"), (ii) cause a copy of the In Person Auction Notice to be posted conspicuously on the case website maintained for the Chapter 11 Case by Stretto, Inc. in its role as the claims and noting agent appointed by the Bankruptcy Court (<https://cases.stretto.com/BlackNewsChannel/>), and (iii) serve the In Person Auction Notice by email or similarly expeditious electronic means on all persons that have submitted Bids by the Bid Deadline, the Consultation Parties, and the U.S. Trustee.

The Debtor shall have the right to conduct any number of Auctions on that date, if the Debtor determines, in its reasonable business judgment (in consultation with the Consultation Parties), that conducting such Auctions would be in the best interests of the Debtor's estate.

A. Participants and Attendees.

The Debtor and its advisors shall direct and preside over the Auction. At the start of the Auction, the Debtor shall describe the terms of the Baseline Bid. All incremental Bids made thereafter shall be Overbids (as defined herein) and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders. The Debtor shall maintain a written transcript of the Auction and of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid (defined below).

Only Qualified Bidders that have submitted Qualified Bids by the Bid Deadline are eligible to participate in the Auction, subject to other limitations as may be reasonably imposed

by the Debtor (in consultation with the Consultation Parties) in accordance with these Bidding Procedures. Qualified Bidders participating in the Auction must appear in person (or through a duly authorized representative), telephonically, or through a video teleconference. The Debtor, in consultation with the Consultation Parties, may admit or deny admittance to any third party in its discretion; provided that advisors to any Consultation Party shall be entitled to attend and observe the Auction.

Each Qualified Bidder participating in the Auction will be required to confirm in writing and on the record at the Auction that (i) it has not engaged in any collusion with respect to the submission of any bid or the Auction and (ii) each Qualified Bid it submits at the Auction is a binding, good faith and bona fide offer to purchase the Acquired Assets identified in such bid.

B. Auction Procedures.

The Auction or Sub-Auction shall be governed by the following procedures, subject to the Debtor's right to modify such procedures in their reasonable business judgment (in consultation with the Consultation Parties):

1. **Baseline Bids.** Bidding shall commence at the amount of the Baseline Bid.
2. **Minimum Overbids.** Qualified Bidders may submit successive bids higher than the previous bid, based on and increased from the Baseline Bid for the relevant Acquired Assets (each such bid, an "Overbid"). In the event a Stalking Horse Bidder is selected, the initial minimum Overbid shall include (a) the amount provided for in the Stalking Horse Bid, *plus* (b) the aggregate amount set forth in the Stalking Horse Agreement of any (i) Pre-Approved Stalking Horse Inducements and (ii) Additional Stalking Horse Inducements approved by the Court in the Bid Protections Order, *plus* (c) \$200,000. Any subsequent Overbids by a Qualified Bidder shall be made in increments of at least \$100,000 in cash, cash equivalents, or such other consideration that the Debtor deems equivalent (in consultation with the Consultation Parties). The Debtor may, in its reasonable discretion (after consultation with the Consultation Parties), announce reductions to initial or subsequent Overbids at any time during the Auction or specific Sub-Auction.
3. **Highest or Best Offer.** After the first round of bidding and between each subsequent round of bidding, the Debtor (in consultation with the Consultation Parties) shall announce the bid that it believes in its reasonable business judgment to be the highest or otherwise best offer for the relevant Acquired Assets (the "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 Leading Bid. To the extent not previously provided, the Debtor may, after consultation with the Consultation Parties, require that a Qualified Bidder submitting a

subsequent bid submit, as part of its subsequent bid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtor in consultation with the Consultation Parties) demonstrating such Qualified Bidder's ability to close the transaction at the purchase price contemplated by such subsequent bid.

4. **Rejection of Bids.** The Debtor may, in its reasonable business judgment (in consultation with the Consultation Parties) reject, at any time before entry of an order of the Court approving a Qualified Bid, any bid that the Debtor determines is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Sale, or (c) contrary to the best interests of the Debtor, its estate, its creditors, and other stakeholders.
5. **No Round-Skipping.** Round-skipping, as described herein, is explicitly prohibited. To remain eligible to participate in the Auction or specific Sub-Auction for particular Acquired Assets, 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, as determined by the Debtor in its reasonable business judgment (in consultation with the Consultation Parties), such Qualified Bidder shall be disqualified from continuing to participate in the Auction for such Acquired Assets; provided that with the consent of the Consultation Parties, the Debtor may adopt and utilize the Auction procedures other than the foregoing procedure for any round of bidding.
6. **Additional Information.** The Debtor (in consultation with the Consultation Parties) shall have the right to request any additional financial information that will allow the Debtor to make a reasonable determination as to a Qualified Bidder's financial and other capabilities to consummate the transactions contemplated by their proposal and any further information that the Debtor believes is reasonably necessary to clarify and evaluate any bid made by a Qualified Bidder during the Auction or Sub-Auction.
7. **Modification of Procedures.** The Debtor may announce, at the Auction, modified or additional procedures for conducting the Auction or otherwise modify these Bidding Procedures. All such modifications and additional rules will be communicated in advance of any given round of bidding at the Auction to each of the Consultation Parties and Qualified Bidders; *provided*, that, to the extent such modifications occur at the Auction,

disclosure of such modifications shall be limited to those in attendance at the Auction.

The Auction or specific Sub-Auction shall include open bidding in the presence of all other Qualified Bidders. All Qualified Bidders shall have the right to submit additional bids and make modifications to any prior Qualified Bid or Overbid at the Auction to improve their bids; provided that any Overbid made by a Qualified Bidder (including with respect to any Backup Bid (defined below)) must remain open and binding on the Qualified Bidder until the earlier of (a) the closing of a sale transaction for the applicable Acquired Assets pursuant to the Successful Bid and (b) 45 days after the date of the Sale Hearing, unless otherwise decided (in consultation with the Consultation Parties). The Debtor may, in its reasonable business judgment (in consultation with the Consultation Parties), negotiate with any and all Qualified Bidders participating in the Auction or specific Sub-Auction.

C. Adjournment of the Auction.

The Debtor reserves the right, in its reasonable business judgment (in consultation with the Consultation Parties), to adjourn the Auction one or more times to, among other things, (i) facilitate discussions between the Debtor and Qualified Bidders, (ii) allow Qualified Bidders to consider how they wish to proceed, and (iii) provide Qualified Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor, in its reasonable business judgment, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt or equity funding commitments to consummate the proposed Restructuring Transaction(s) at the prevailing bid amount.

D. Successful Bidder.

Immediately prior to the conclusion of the Auction or specific Sub-Auction, the Debtor shall (i) determine (in consultation with the Consultation Parties) consistent with these Bidding Procedures, which bid constitutes the highest or otherwise best bid(s) for the applicable Acquired Assets (each such bid, a "Successful Bid"); and (ii) notify all Qualified Bidders at the Auction for the applicable Acquired Assets of the identity of the bidder that submitted the Successful Bid (each such bidder, the "Successful Bidder") and the amount of the purchase price and other material terms of the Successful Bid.

The Debtor shall file a notice identifying the Successful Bidder and Backup Bidder (if selected) by 5:00 p.m. (prevailing Eastern Time) as soon as reasonably practicable after closing the Auction, if any, and in any event not less than 48 hours following closing the Auction.

X. BACKUP BIDDER.

Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction or Sub-Auction is conducted, the Qualified Bidder with the next-highest or otherwise second-best Qualified Bid as compared to the Successful Bid at the Auction or Sub-Auction for the Acquired Assets or sub-group thereof, as determined by the Debtor in the exercise of its reasonable business judgment (in consultation with the Consultation Parties) (the "Backup Bid"), shall be required to serve as a backup bidder (the "Backup Bidder"), and each Qualified Bidder shall agree and be deemed to agree to be the Backup Bidder if so designated.

The identity of the Backup Bidder and the amount and material terms of the Qualified Bid of the Backup Bidder shall be announced by the Debtor at the conclusion of the Auction or relevant Sub-Auction at the same time the Debtor announces the identity of the Successful Bidder.

In the context of a Sale Bid, the Backup Bid shall remain binding on the Backup Bidder until the earlier of (a) the closing of a sale transaction for the applicable Acquired Assets pursuant to the Successful Bid and (b) 45 days after the date of the Sale Hearing, unless otherwise decided. If a Successful Bidder fails to consummate the approved transactions contemplated by its Successful Bid, the Debtor may select the Backup Bidder as the Successful Bidder, and such Backup Bidder shall be deemed a Successful Bidder for all purposes. In the context of a Plan Bid, the Backup Bid shall remain binding on the Backup Bidder until the earlier of (a) the effective date of a confirmed plan and (b) 45 days after confirmation of a plan.

The Debtor will be authorized, but not required, to consummate (in consultation with the Consultation Parties) all transactions contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party.

XI. ACCEPTANCE OF SUCCESSFUL BID

The Debtor's presentation of a particular Qualified Bid to the Court for approval does not constitute the Debtor's acceptance of such Qualified Bid. The Debtor will be deemed to have accepted a Bid only when the Bid has been approved by the Court at the Sale Hearing (in the context of a Sale Bid) or at a confirmation hearing (in the context of a Plan Bid). The Debtor shall seek approval by the Court to consummate the Backup Bid, solely in the event the Successful Bidder fails to close the transaction as provided in the Successful Bid and with all rights reserved against the Successful Bidder.

XII. FREE AND CLEAR OF ANY AND ALL ENCUMBRANCES

All rights, titles and interests in and to the Acquired Assets subject thereto shall be sold free and clear of all liens, claims, interests, and encumbrances (collectively, the "Encumbrances"), subject only to any expressly assumed liabilities and expressly permitted encumbrances (each as provided in the Successful Bidder's purchase agreement), if any, in accordance with section 363(f) of the Bankruptcy Code, with such Encumbrances to attach to the net proceeds (if any) received by the Debtor from the Sale of the Acquired Assets in accordance with the Bankruptcy Code, applicable non-bankruptcy law and any prior orders of the Court.

XIII. CONSULTATION BY THE DEBTOR

The Debtor shall consult with the Consultation Parties (as defined below) as explicitly provided for in these Bidding Procedures. Each reference in these Bidding Procedures to "consultation" (or similar phrase) with the Consultation Parties shall mean consultation in good faith. The following parties will constitute the "Consultation Parties": (a) the Prepetition Lender; (b) the DIP Lender; and (c) the Committee. Notwithstanding anything to the contrary herein, during any period in which a Consultation Party (i) has submitted a Qualified Bid and has become a Qualified Bidder hereunder, or (ii) submits (or indicates its intent to submit) a Credit Bid, such Consultation Party shall no longer be considered a Consultation Party for purposes of

these Bidding Procedures unless and until such party unequivocally revokes its bid and waives its right to continue in the Auction process.

XIV. RESERVATION OF RIGHTS.

The Debtor reserves the right to, in its reasonable business judgment (in consultation with the Consultation Parties) modify these Bidding Procedures in good faith, to further the goal of attaining the highest or otherwise best offer for the Acquired Assets, or impose, at or prior to selection of the Successful Bidder, additional customary terms and conditions on the Sale of the Acquired Assets, including, without limitation: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction (if held) without further notice; (c) adding or modifying procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction and/or adjourning the Sale Hearing (as defined below) in open court (if held); (d) canceling the Auction or electing not to hold an Auction; (e) rejecting any or all Bids or Qualified Bids; (f) adjusting the applicable minimum Overbid increment, including by requesting that Qualified Bidders submit last or final bids on a “blind basis”; and (g) selecting a draft purchase agreement agreed to by a Qualified Bidder in connection with a Qualified Bid to serve as the purchase agreement that will be executed by the Successful Bidder or Successful Bidders, as applicable and with any necessary adjustments for the assets and liabilities being purchased and assumed, upon conclusion of the Auction, if held. The Debtor shall provide reasonable notice of any such modification to any Qualified Bidder, including any Stalking Horse Bidders.

XV. CONSENT TO JURISDICTION.

All Potential Bidders, Acceptable Bidders and Qualified Bidders shall be deemed to have consented to the exclusive jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the construction and enforcement of these Bidding Procedures, and/or the Bid Documents, as applicable.

XVI. SALE HEARING.

A hearing to consider approval of the sale of the Debtor’s Acquired Assets to the Successful Bidder or Backup Bidder (if applicable) (the “Sale Hearing”), is currently scheduled to take place on **June 24, 2022, at [●], (Eastern Time)**, before the Honorable Karen K. Specie, at the U.S. Bankruptcy Courthouse, 110 East Park Avenue, 2nd Floor Courtroom, Tallahassee, Florida 32301.

The Sale Hearing may be continued to a later date by the Debtor (in consultation with the Consultation Parties) by sending notice prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party.

At the Sale Hearing, the Successful Bidder and the Backup Bidder must acknowledge on the record at the start of the hearing that in connection with submitting their Bids, they did not engage in any collusion that would be subject to section 363(n) of the Bankruptcy Code with respect to any Bids, the Auction or the Sale, specifying that they did not agree with any Potential Bidders, Acceptable Bidders or Qualified Bidders to control the price or any other terms of the Sale.

Objections to the sale of any Acquired Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code to the Successful Bidder(s) and/or a Backup Bidder, as applicable, any of the relief requested in the Motion, and entry of any order approving the Sale (the “Sale Order”) must (i) be in writing and specify the nature of such objection; (ii) comply with the Bankruptcy Code, Bankruptcy Rules, Local Bankruptcy Rules, and all orders of the Court; and (iii) be filed with the Court and served on the Notice Parties by **June 10, 2022, at 5:00 p.m. (prevailing Eastern Time)**.

XVII. FIDUCIARY OUT.

Nothing in these Bidding Procedures will require the Board of Managers of the Debtor (the “Board”) to take any action, or to refrain from taking any action, with respect to the Bidding Procedures, to the extent the Board reasonably determines in good faith that taking such action, or refraining from taking such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

XVIII. RETURN OF DEPOSIT.

The Deposit of the Successful Bidder shall be applied to the purchase price of such transaction at closing. The Deposits for each Qualified Bidder shall be held in one or more accounts on terms acceptable to the Debtor in its sole discretion and shall be returned (other than with respect to the Successful Bidder and the Backup Bidder) on or before the date that is five (5) business days after the Auction. The Backup Bidder’s Deposit shall be held in escrow until the closing of the Sale with the Successful Bidder. In the event the Successful Bidder fails to close and the Debtor opts to close on the Sale Transaction(s) set forth in the Backup Bid, the Backup Bidder’s Deposit shall be applied to the purchase price of such transaction(s) at closing. In the event of a breach or failure to consummate a Sale by the Successful Bidder or the Backup Bidder, as applicable, the defaulting Successful Bidder’s Deposit or Backup Bidder’s Deposit, as applicable, shall be forfeited to the Debtor, and the Debtor specifically reserves the right to seek all available remedies against the defaulting Successful Bidder or Backup Bidder, as applicable, subject to the terms of the Stalking Horse Agreement.

Exhibit 2

Notice of Auction and Sale Hearing

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

In re:

BLACK NEWS CHANNEL, LLC,¹

Debtor.

Case No. 4:22-bk-40087

Chapter 11

NOTICE OF SALE BY AUCTION AND SALE HEARING

PLEASE TAKE NOTICE that on [●], 2022, the above-captioned debtor (the “Debtor”) filed the *Debtor’s Emergency Motion for (A) Approval of Bidding Procedures, (B) Authorization for Debtor to Designate Stalking Horse Bidder and Grant Certain Stalking Horse Inducements, (C) Scheduling Auction, Sale Hearing and Related Dates, (D) Approval of the Form and Manner of Notice Thereof, (E) Establishment of Notice and Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (F) Approval of the Sale of Substantially All of the Debtor’s Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests and (G) Related Relief* (Dkt. No. [●]) (the “Sale Motion”)² with the United States Bankruptcy Court for the Northern District of Florida (the “Court”) seeking, among other things, entry of an order (the “Sale Order”) authorizing and approving: (a) the sale of substantially all of the Debtor’s assets or any portion thereof free and clear of liens, claims, encumbrances, and other interests to the entity selected by the Debtor as the highest and best bidder for such assets following a marketing process and, if necessary, an auction process (the “Sale”); and (b) the assumption and assignment of executory contracts and unexpired leases (collectively, the “Contracts”) in connection with the Sale.

PLEASE TAKE FURTHER NOTICE that the Debtor is soliciting offers for the purchase of the Acquired Assets consistent with the bidding procedures (the “Bidding Procedures”) approved by the Court by entry of an order dated [●], 2022 (Docket No. [●]) (the “Bidding Procedures Order”). All interested bidders should carefully read the Bidding Procedures and Bidding Procedures Order. To the extent that there are any inconsistencies between this notice and the Bidding Procedures or Bidding Procedures Order, the Bidding Procedures or Bidding Procedures Order, as applicable, shall govern in all respects.

PLEASE TAKE FURTHER NOTICE that, if the Debtor receives qualified competing bids within the requirements and time frame specified by the Bidding

¹ The Debtor’s address is 2320 Killearn Center Blvd., Building D, Tallahassee, Florida 32309. The last four digits of the Debtor’s federal tax identification number are 5082.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Sale Motion.

Procedures, the Debtor will conduct an auction (the “Auction”), on **June [20], 2022, at 10:00 a.m. (prevailing Eastern Time)**, either telephonically, by videoconference, or in person (as the Debtor may hereafter designate on proper notice in accordance with the Bidding Procedures and the Bidding Procedures Order).

PLEASE TAKE FURTHER NOTICE that the Debtor will seek approval of the Sale at a hearing scheduled to commence on or before **June [24], 2022, at [__:_0_.m. (prevailing Eastern Time)** (the “Sale Hearing”) before the Honorable Karen K. Specie, at the U.S. Bankruptcy Courthouse, 110 East Park Avenue, 2nd Floor Courtroom, Tallahassee, Florida 32301.

PLEASE TAKE FURTHER NOTICE that, except as otherwise set forth in the Bidding 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 Bankruptcy Rules; (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Court and served so as to be actually received on or before **June [10], 2022, at 5:00 p.m. (prevailing Eastern Time)** by the following Notice Parties: (i) counsel to the Debtor; (ii) counsel to any Stalking Horse Bidder that may be designated in accordance with the Bidding Procedures and the Bidding Procedures Order; (iii) counsel to the Prepetition Lender; (iv) counsel the DIP Lender; (v) counsel to the Committee; and (vi) the United States Trustee.

CONSEQUENCES OF FAILING TO TIMELY MAKE AN OBJECTION

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 DEBTOR’S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, EXCEPT AS SET FORTH IN THE APPLICABLE PURCHASE AGREEMENT.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion, Bidding Procedures, and Bidding Procedures Order, as well as all related exhibits, are available (a) free of charge on the website maintained for the Chapter 11 Case by Stretto, Inc. in its role as the claims and noting agent appointed by the Court (<https://cases.stretto.com/BlackNewsChannel/>) or (b) for a fee via PACER by visiting <https://ecf.flnb.uscourts.gov>.

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Dated: [_____]

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Proposed Counsel for the Debtor

Exhibit 3

Notice of Assumption and Assignment

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

In re:

BLACK NEWS CHANNEL, LLC,¹

Debtor.

Case No. 4:22-bk-40087

Chapter 11

**NOTICE TO CONTRACT PARTIES TO POTENTIALLY ASSUMED
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

PLEASE TAKE NOTICE that on [●], 2022, the United States Bankruptcy Court for the Northern District of Florida (the “Court”) entered the *Order Granting, in Part, Debtor’s Emergency Motion for (A) Approval of Bidding Procedures, (B) Authorization for Debtor to Designate Stalking Horse Bidder and Grant Certain Stalking Horse Inducements, (C) Scheduling Auction, Sale Hearing and Related Dates, (D) Approval of the Form and Manner of Notice Thereof, (E) Establishment of Notice and Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (F) Related Relief [Dkt. No. [●]]* (Docket No. [●]) (the “Bidding Procedures Order”),² authorizing the Debtor to conduct an auction (the “Auction”) to select the party to purchase the Debtor’s assets. The Auction will be governed by the bidding procedures approved pursuant to the Bidding Procedures Order (attached to the Bidding Procedures Order as Exhibit 1, the “Bidding Procedures”).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures and the terms of any Successful Bid, the Debtor may assume and assign to the Successful Bidder the contract or agreement listed on Exhibit A to which you are a counterparty (the “Designated Contracts”), upon approval of the Sale. The Debtor has conducted a review of its books and records and has determined that the cure amount for unpaid monetary obligations under such Designated Contracts is as set forth on Exhibit A attached hereto (the “Cure Costs”).

PLEASE TAKE FURTHER NOTICE that if you object to the scheduled Cure Costs and/or the potential assumption, assignment, and/or transfer of such Designated Contract (including the transfer of any related rights or benefits thereunder), other than objections that relate specifically to the identity of the Successful Bidder, your objection must: (a) be in writing, (b) state with specificity the nature of such objection, including the amount of Cure Costs in dispute, and (c) be filed with the Court and properly served

¹ The Debtor’s address is 2320 Killearn Center Blvd., Building D, Tallahassee, Florida 32309. The last four digits of the Debtor’s federal tax identification number are 5082.

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

so as to be received no later than **[May 25, 2022 at 5:00 p.m. (prevailing Eastern Time)]** (the “Cure Cost/Assignment Objection Deadline”) by the following parties: (i) counsel to the Debtor; (ii) counsel to any Stalking Horse Bidder that may be designated in accordance with the Bidding Procedures and the Bidding Procedures Order; (iii) counsel to the Prepetition Lender; (iv) counsel the DIP Lender; (v) counsel to the Committee; and (vi) the United States Trustee (collectively, the “Notice Parties”).

PLEASE TAKE FURTHER NOTICE that if you object solely to the identity of and adequate assurance of future performance provided by the Successful Bidder, your objection must: (a) be in writing, (b) state with specificity the nature of such objection, and (c) be filed with the Court and properly served on the Notice Parties so as to be received no later than **[June 22, 2022 at 5:00 p.m. (prevailing Eastern Time)]** (prevailing Eastern Time) which is intended to be two business days after the Auction (as such deadline may be extended from time to time, the “Post-Auction Objection Deadline”).

PLEASE TAKE FURTHER NOTICE that if no objection to (a) the Cure Costs, (b) the proposed assignment and assumption of any Designated Contract, or (c) adequate assurance of the Successful Bidder’s ability to perform is filed by the Cure Cost/Assignment Objection Deadline or the Post-Auction Objection Deadline, as applicable, then you will (i) be forever barred from objecting to the Cure Costs and from asserting any additional cure or other amounts with respect to such Designated Contract in the event it is assumed and/or assigned by the Debtor, and the Debtor and any successor to the Debtor on any such Designated Contract shall be entitled to rely solely upon the Cure Costs, and (ii) be deemed to have consented to the assumption, assignment and/or transfer of such Designated Contract (including the transfer of any related rights and benefits thereunder) to the relevant Successful Bidder and shall be forever barred and estopped from asserting or claiming against the Debtor or such Successful Bidder that any additional amounts are due or defaults exist, or conditions to assumption, assignment, and/or transfer must be satisfied under such Designated Contract, or that any related right or benefit under such Designated Contract cannot or will not be available to the Successful Bidder.

PLEASE TAKE FURTHER NOTICE that any objection to the proposed assumption and assignment of any Designated Contract or related Cure Costs in connection with the Successful Bid that otherwise complies with these procedures yet remains unresolved as of the commencement of the Sale Hearing, will be heard at the Sale Hearing; *provided, however*, that (i) any Designated Contract that is the subject of a Cure Cost/Assignment Objection with respect solely to the amount of the Cure Cost may be assumed and assigned prior to resolution of such objection and (ii) the Debtor may adjourn a Cure Cost/Assignment Objection in its discretion.

PLEASE THAT FURTHER NOTICE that, notwithstanding anything herein, the inclusion of a Designated Contract or Cure Costs with respect thereto in this notice shall not constitute or be deemed a determination or admission by the Debtor, the Stalking Horse Bidder, a Successful Bidder, or any other party in interest that such contract or

lease is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that the Debtor's inclusion of any Designated Contract on this notice shall not be a guarantee that such contract ultimately will be assumed or assumed and assigned, and shall be without prejudice to a Stalking Horse Bidder's or Successful Bidder's rights under the applicable purchase agreement to subsequently (1) exclude a contract from the schedule of Designated Contracts previously included on such notice or (2) include additional contracts for assumption and assignment in accordance with the applicable Stalking Horse Bidder's or Successful Bidder's purchase agreement.

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

PLEASE TAKE FURTHER NOTICE that the Debtor's decision to assume and assign the Designated Contracts to the relevant Successful Bidder is subject to the Court's approval and the closing of the Sale. Accordingly, absent the Court's approval and the closing of the Sale, the Designated Contracts shall not be deemed assumed or assumed and assigned, and shall in all respects be subject to further administration by the Debtor and its estate under the Bankruptcy Code in connection with the Chapter 11 Case.

PLEASE TAKE FURTHER NOTICE that you may obtain additional information regarding this Chapter 11 Case free of charge on the website maintained for the Chapter 11 Case by Stretto, Inc. in its role as the claims and noting agent appointed by the Court (<https://cases.stretto.com/BlackNewsChannel/>).

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Dated: [_____]

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