



Order Filed on October 24, 2022  
by Clerk  
U.S. Bankruptcy Court  
District of New Jersey

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

**FLASTER/GREENBERG P.C.**

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*Counsel for Carpenter Realty Corp., et al.*

In Re:

CARPENTER REALTY CORPORATION, *et al.*,

Debtors.

21-18789-JNP  
(Jointly Administered)

Judge: Jerrold N. Poslunsy, Jr.  
Chapter: 11

**REVISED**  
**ORDER APPROVING MOTION OF PLAN ADMINISTRATOR FOR ENTRY OF AN**  
**ORDER APPROVING CERTAIN BIDDING PROCEDURES**  
**RELATED TO THE SALE OF CERTAIN PROPERTIES OF THE DEBTORS**

The relief set forth on the following page is **ORDERED**.

**DATED: October 24, 2022**

A handwritten signature in dark ink, appearing to read "Jerrold N. Poslunsy, Jr.", is written over a horizontal line.

Honorable Jerrold N. Poslunsy, Jr.  
United States Bankruptcy Court

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**Debtors:** CARPENTER REALTY CORPORATION, *et al*

**Case No:** 21-18789-JNP

**Caption of Order:** Order Approving Motion of Plan Administrator for Entry of an Order Approving Certain Bidding Procedures Related to the Sale of Certain Properties of the Debtors

This matter having come before the Court upon the Motion of Holly S. Miller, as Plan Administrator to Carpenter Realty Corporation, *et al.* (the “Debtors”) in the above-captioned proceeding, by and through undersigned counsel, Flaster/Greenberg P.C. Motion for the entry of an order approving certain Bidding Procedures (the “Bidding Procedures”) relating to the sale of certain properties of the Debtor as set forth in the Motion and incorporated herein, and the Court having found that it is in the best interest of Debtors and the Estate to Establish Bidding Procedures, and for good cause shown, it is hereby ORDERED that:

1. The Motion is hereby GRANTED.
2. The Order initially entered approving the Motion on October 4, 2022 [Docket No. 196] is hereby SUPERSEDED.
3. The Bidding Procedures attached hereto are authorized and APPROVED.
4. The Bidding Procedures apply to the following properties:

Owner	Property Details	Property Nickname
Carpenter Realty	1 Glass Street, Bridgeton, NJ 08302  older industrial site consisting of (230,000± sq ft) 7 buildings and building complexes dating back to the 1880s. Block 128 Lot 1, Block 124 Lots 4 & 6, Block 126 Lots 9 & 10.	Bridgeton
Carpenter Realty	Heritage Bank HeadQuarters in 1984, (38,000±sq ft) Block 56 Lot 30.1 in Monroe Township, NJ right by exit 8A of the NJ turnpike	Rossmoor/Monroe Township
Carpenter Realty	14.5 acres in Estell Manor, NJ of wooded and wetland Lot 1 Block 1	Maurice River Township/Estelle Manor
Carpenter Realty	15 Lakeside Drive, Bridgeton, NJ 08302	15 Lakeside Drive
Briardale	Farm in Maurice River Township, Cumberland County, NJ  2150± acre farm Cumberland County, NJ. Block	Maurice River Township/Estelle Manor

	117 Lot 4 and 4.01 and Block 118 Lots 3 & 7. Briardale was developed as a Thoroughbred breeding farm in the 1950s and 60s and continued full force until 1981 and to a much lesser degree until 2005. The Property is in the Pinelands Protection Zone and has about 750+/- acres of wetlands and an additional 400 +/- acres in wetlands buffer area. More than 800 acres are not cleared.	
Equity	Maurice River Township Cumberland County, NJ 150 acres (Block 117 Lot 4.02) and a 1994 Built House of 13,000 total sq ft although only 6500 is truly finished. The property also has an impressive arena 20,000 sq ft and 8 stall horse barn The property is surrounded on 3 sides by Briardale Farm property and has road frontage directly across from my property	Maurice River Township/Estelle Manor

5. Provided however that the bidding increment in Section 6(k)(C) of the Bidding Procedures shall not apply to the 15 Lakeside Drive Property.

### **BIDDING PROCEDURES**

On November 12, 2021, Carpenter Realty Corporation and certain of its affiliates, as debtors and debtors in possession (collectively, the “Debtors”), filed voluntary petitions for relief under Subchapter V of Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

The Joint Small Business Debtors’ Plan of Liquidation (the “Plan”) was confirmed on June 23, 2022 (the “Confirmation Order”). The Plan and Confirmation Order appointed Holly S. Miller, Esquire as the Plan Administrator (the “Plan Administrator”). The Plan further provides, *inter alia*, that substantially all of the property of the Debtors, including but not limited to the Assets, will be transferred to a Liquidating Trust (the “Trust”), of which the Plan Administrator shall be the Trustee, vested with all authority and power to sell the Assets as provided therein.

The United States Bankruptcy Court for the District of New Jersey (the “Court”) shall have entered an order approving these Bidding Procedures (the “Bidding Procedures Order”), which, among other things, authorizes the Plan Administrator to solicit bids and approves these procedures (collectively, the “Bidding Procedures”), which are to be employed by the Plan Administrator in connection with the proposed sales of the Debtors’ real properties and/or other assets (collectively, the “Assets”) or other acquisition transactions (each a “Sale”), either individually or in groupings, free and clear of all liens, claims, encumbrances, and other interests (collectively, the “Encumbrances”), other than those Encumbrances permitted by a Transaction Agreement (as defined below), on an AS-IS, WHERE-IS with ALL FAULTS basis.

If, and to the extent that prior to the Bid Deadline (as defined below), the Plan Administrator receives one or more acceptable offers that seek stalking-horse status, the Plan Administrator reserves the right to seek Court approval, with notice and an opportunity for hearing, of one or more parties to serve as a stalking horse purchaser (each a “Stalking Horse Purchaser”) to acquire one or more of the Assets pursuant to a Transaction Agreement between the Plan Administrator and the Stalking Horse Purchaser (each a “Stalking Horse Agreement”). Notwithstanding the selection of any Stalking Horse Purchaser, the Plan Administrator will continue to solicit bids and accept bids through the Bid Deadline.

### **ANY PARTY INTERESTED IN BIDDING ON THE ASSETS SHOULD CONTACT:**

**Jamie DiOrio**  
**Roman Drukarov**  
**Berkshire Hathaway Home Services New Jersey Properties**  
**Commercial Division**  
**O: 973-992-6363 | F: 973-992-4863**  
**79 South Livingston Ave**  
**Livingston, NJ 07039**  
**[james.diorio@BHHSNJ.com](mailto:james.diorio@BHHSNJ.com) (Cell: (201)696-536)**  
**[roman-drukarov@bhhsnj.com](mailto:roman-drukarov@bhhsnj.com) (Cell: (973)454-3218)**



<b>Event</b>	<b>Proposed Dates</b>
Notice of Bid Deadline	<b>To be filed with the Court and served at such a time deemed appropriate by the Plan Administrator and the Broker</b>
Bid Deadline	<b>A date clearly noted in the Bid Deadline and is between 30 and 60 days after Notice of Bid Deadline is filed. The Bid Deadline will be set by the Plan Administrator in her sole discretion under the circumstances of the transaction and the property being sold.</b>
Auction to commence	<b>5 days after Bid Deadline</b>
Deadline to object to adequate assurance	<b>Prior to commencement of Sale Hearing</b>
Deadline to Object to Conduct of Auction	<b>Prior to commencement of Sale Hearing</b>
Sale Hearing	<b>3 business days after the Auction, subject to Court availability</b>
Outside Closing Date	<b>15 days after Sale Hearing</b>

**1. Assets to be Sold**

The Plan Administrator shall offer for sale the specific property or Asset subject to be sold as set forth and identified in detail in the Notice of Bid Deadline. Potential Bidders may bid on all or any number or combination of the Assets offered to be sold in such Notice of Bid Deadline.

**2. Participation Requirements**

Any person or entity that wishes to conduct due diligence and gain access to the Debtors' confidential electronic data room concerning the Assets to be sold (the "Data Room" and such

person or entity, a “Potential Bidder”) must submit to the Plan Administrator and her advisors an executed confidentiality agreement in form and substance reasonably satisfactory to the Plan Administrator, which by its terms will inure to the benefit of the Successful Bidders, to the extent of confidential information relating to the Assets acquired by such party.

Any Potential Bidder that wishes to participate in the bidding process for the Assets must first become a “Qualifying Bidder.” Parties may be qualified as a Qualifying Bidder up to the Bid Deadline **(parties interested in submitting a bid for any of the Assets are encouraged to qualify as soon as possible because the Bidding Procedures do not permit any due diligence or financing conditions in Qualifying Bids)**. To become a Qualifying Bidder, Potential Bidders must submit sufficient information, as determined by the Plan Administrator, to allow the Plan Administrator, after consultation with her advisors and the Debtors, to determine that the interested party (i) has, or can obtain, the financial wherewithal and any required internal corporate, legal or other authorizations to close a sale transaction, including, but not limited to, current audited financial statements of the interested party (or such other form of financial disclosure acceptable to the Plan Administrator in her discretion) and (ii) can provide adequate assurance of future performance under any executory contracts and unexpired leases to be assumed by the Plan Administrator and assigned to such bidder pursuant to section 365 of the Bankruptcy Code in connection with the Sale.

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

Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bidding Procedures, if and when there is one or more Stalking Horse Purchaser, any such designated Stalking Horse Purchasers shall be considered a Qualifying Bidder and any Stalking Horse Agreement shall be a Qualifying Bid.

To the extent that a bid is proposed by a group or committee to which Bankruptcy Rule 2019 applies, such parties must promptly file the statement required by such rule as a condition to becoming a Qualifying Bidder.

### **3. Bankruptcy Court Jurisdiction**

In conjunction with any actions or proceedings arising from or relating to the Bidding Procedures, the Sale, the Auction (as defined below), the acts or omissions of the Plan Administrator, Berkshire Hathaway Home Services New Jersey Properties, and their respective representatives and/or the construction and enforcement of the contemplated transaction documents of such parties, any Potential Bidders and Qualifying Bidders shall: (a) be deemed to have waived any right to a jury trial and consented and submitted to the exclusive jurisdiction of the Court, (b) bring any such action or proceeding in the Court, and (c) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

**4. Form of Agreement**

Each Qualifying Bidder, must include with its bid:

(a) an executed asset purchase agreement or other agreement for the applicable Sale (each a “Transaction Agreement”), clean and marked against the form provided by the Plan Administrator or Stalking Horse Bid, which must include the following:

i. identification of the specific Assets to be acquired either in the Transaction Agreement itself or as a schedule to the Transaction Agreement;

ii. full disclosure of the identity of the bidder and whether such party is an insider (as defined in section 101 of the Bankruptcy Code) of any Debtor, along with the contact information of the specific person(s) whom the Plan Administrator or her advisors should contact in the event that the Plan Administrator wishes to discuss the bid submitted by the Qualifying Bidder;

iii. the purchase price to be paid by such Qualifying Bidder, including what amount is being paid as cash and what amount constitutes a credit bid, as well as any liabilities proposed to be paid or assumed by such Qualifying Bidder;

iv. identify whether the Qualifying Bidder or the Debtors shall be responsible for (a) any transfer or similar taxes that arise from the Sale and (b) any cure costs required to be paid to assume and assign executory contracts and unexpired leases that are included in the bid;

v. a commitment to close the transactions contemplated by the Transaction Agreement promptly upon entry of the order approving the Sale;

vi. contain a written acknowledgement and representation that the bidder (i) has had an opportunity to conduct any and all due diligence regarding the Assets, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and other information in making its bid, (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any documents or other information provided in connection with the Bidding Procedures and the Sale, and (iv) has not entered into any agreement with any other potential bidder concerning the Auction or the Sale or discloses any agreement with any other potential bidder concerning the Auction or Sale;

vii. a statement that the Transaction Agreement is not subject to contingencies of any kind, including, including without limitation, contingencies related to financing, due diligence or third party, regulatory or internal approval

(unless the Plan Administrator in her sole discretion determines that certain contingencies are acceptable under the circumstances of the transaction and the property being sold);

viii. a statement that the Qualifying bidder has obtained any required internal corporate, legal or other authorizations to close a sale transaction and to provide adequate assurance of future performance as required under section 365 of the Bankruptcy Code; and

ix. if there is any break-up fee and/or expense reimbursement, that it not be in excess of 3% of the purchase price and that it be subject to further approval of the Bankruptcy Court.

## **5. Due Diligence**

Subject to the execution of a confidentiality agreement by a Potential Bidder or Qualifying Bidder, the Plan Administrator, will provide any Potential Bidder or Qualifying Bidder with reasonable access to the Data Room and any other additional information that the Debtors believe to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to the Brokers at the contact information provided above.

All due diligence materials provided to Potential Bidders and Qualifying Bidders shall be subject to the limitations on use and disclosure included in any confidentiality agreement entered into pursuant to the Bidding Procedures.

Notwithstanding any limitations provided for in any due diligence materials in the Debtors' possession, including, without limitation, any non-disclosure, confidentiality or similar provisions, the Plan Administrator, the Debtors and their estates shall be authorized to provide due diligence information to Potential Bidders that have executed a confidentiality agreement. Once a Potential Bidder becomes a Qualifying Bidder, the due diligence materials cannot be used as a basis for termination, as such bids may not be contingent on further due diligence (unless the Plan Administrator in her sole discretion determines that certain contingencies are acceptable under the circumstances of the transaction and the property being sold)

## **6. Bid Requirements**

To be deemed a "Qualifying Bid," a bid must be received from a Qualifying Bidder on or before the Bid Deadline and must satisfy each of the following requirements (each, a "Bid Requirement"):

(a) be in writing;

(b) fully disclose the identity of the Qualifying Bidder and whether such party is an insider (as defined in section 101 of the Bankruptcy Code) of any Debtor, and

provide the contact information of the specific person(s) whom the Plan Administrator or her advisors should contact in the event that the Plan Administrator has any questions or wish to discuss the bid submitted by the Qualifying Bidder;

(c) be accompanied by a clean, executed copy of a Transaction Agreement that satisfies the requirements of Section 4 of these Bidding Procedures, along with a marked copy of the Transaction Agreement that reflects any variations from the form of Transaction Agreement provided by the Plan Administrator;

(d) set forth the purchase price to be paid by such Qualifying Bidder, including what amount is being paid as cash and what amount constitutes a credit bid, and identify the liabilities proposed to be paid or assumed by such Qualifying Bidder;

(e) specify the Assets that are included in the bid and, to the extent a Stalking Horse Purchaser is designated, state that such Qualifying Bidder offers to purchase those Assets included in the applicable Stalking Horse Agreement upon substantially the same terms as, or terms more favorable to the Debtors and their estates than, the terms set forth in the applicable Stalking Horse Agreement;

(f) state that such Qualifying Bidder's offer is formal, binding and unconditional and is irrevocable until the conclusion of the Sale Hearing unless such party is the Successful Bidder or Back-Up Bidder (both as defined below) in which case such offer is formal, binding and unconditional and is irrevocable until two (2) business days after the closing of the Sale of the subject Assets;

(g) state that such Qualifying Bidder is financially capable of consummating the transactions contemplated by the Transaction Agreement and contain such financial and other information to allow the Plan Administrator to make a reasonable determination as to the Qualifying Bidder's financial and other capabilities to close the transactions contemplated by its proposed Transaction Agreement, including, without limitation, (i) written evidence satisfactory to the Plan Administrator, in consultation with her advisors, that the Qualifying Bidder has a commitment for financing or other evidence of the ability to close the transactions contemplated by the Transaction Agreement, and (ii) such financial and other information supporting the Qualifying Bidder's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code, including the Qualifying Bidder's financial wherewithal and willingness to perform under any contracts that are assumed and assigned to the Qualifying Bidder, in a form that allows the Plan Administrator to make available, within one (1) business day after such receipt, such information to any counterparties to any contracts or leases being assumed and assigned in connection with the Sale that have requested, in writing, such information;

(h) identify with particularity each and every executory contract, unexpired lease and unexpired sublease the assumption and assignment of which is a condition to close the transactions contemplated by the proposed Transaction Agreement;

(i) a commitment to close the transactions contemplated by the Transaction Agreement promptly upon entry of the order approving the sale;

(j) not request or entitle such Qualifying Bidder (other than a Stalking Horse Purchaser) to any break-up fee, termination fee, expense reimbursement or similar type of fee or payment;

(k) in the event that there is a Stalking Horse Purchaser, and the Qualifying Bidder wishes to bid on the same Assets that are included in the Stalking Horse Agreement, the aggregate consideration proposed by the Qualifying Bidder must equal or exceed the sum of the amount of (A) the purchase price under the Stalking Horse Agreement, plus (B) any break-up fee, expense reimbursement, or other bid protection provided under the Stalking Horse Agreement, plus (C) \$100,000 of the purchase price under the Stalking Horse Agreement;

(l) not contain any contingencies of any kind, including, including without limitation, contingencies related to financing, due diligence or third party, regulatory or internal approval (unless the Plan Administrator in her sole discretion determines that certain contingencies are acceptable under the circumstances of the transaction and the property being sold);

(m) provide for the Qualifying Bidder to serve as a backup bidder (the “Back-Up Bidder”) if the Qualifying Bidder’s bid is the next highest and best bid (the “Back-Up Bid”) after the Successful Bid (as defined below), in accordance with the terms of the Transaction Agreement and these Bidding Procedures;

(n) include written evidence of authorization and approval from the Qualifying Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Transaction Agreement;

(o) provide a good faith cash deposit (the “Deposit”) in an amount equal to ten percent (10%) of the total consideration provided under the proposed Transaction Agreement; provided, that the Plan Administrator may alter the Deposit requirement for any party selected as a Stalking Horse Purchaser with leave of the Court; and

(p) provide for liquidated damages in the event of the Qualifying Bidder’s breach of, or failure to perform under, the Transaction Agreement equal to the amount of the Deposit; and

Subject to the next sentence, a bid from a Qualifying Bidder satisfying all of the above requirements, as determined by the Plan Administrator in consultation with her advisors, shall constitute a Qualifying Bid. The Plan Administrator reserves the right and is authorized to work with any Qualifying Bidder in advance of the Auction to cure any deficiencies in a bid that is not initially deemed a Qualifying Bid.

Each Qualifying Bidder submitting a bid shall be deemed to: (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures; and (b) have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures, and the Sale.

**7. Credit Bidding**

Any party that wishes to submit a credit bid either as a component or as the entirety of the consideration for its bid shall identify the amount of the claim and the nature, extent, and priority of the lien upon which its credit bid is premised. Any party submitting a credit bid agrees to provide the Plan Administrator with documentation to evidence the amount, nature, extent, validity and perfection of such claim and lien to the extent it has not already done so.

Parties entitled to credit bid shall be required to comply with the Bidding Procedures regarding providing a Deposit in connection with their bids.

**8. Bid Deadline**

A Qualifying Bidder that desires to make a bid shall deliver a written and electronic copy of its bid in both PDF and MS-WORD format to the Plan Administrator, with a copy to her counsel, so as to be received on or before the Bid Deadline (provided that the Plan Administrator may extend the Bid Deadline after filing a revised Notice of Bid Deadline with the Court). All parties wishing to submit a Qualifying Bid shall submit the bid materials required by Section 6 hereof (including the executed Transaction Agreement and a certified check or wire transfer for the Deposit amount) to the Broker at the contact information provided above with a copy to counsel to the Plan Administrator, Flaster/Greenberg P.C., 1717 Arch Street, Suite 3300, Philadelphia, PA 19103; Attn: William J. Burnett., Esquire ([William.Burnett@flastergreenberg.com](mailto:William.Burnett@flastergreenberg.com)).

**Any party that does not submit a bid by the Bid Deadline will not be allowed to (a) submit any offer after the Bid Deadline, or (b) participate in the Auction. Consistent with the terms of any confidentiality agreements executed by them, all Potential Bidders and Qualifying Bidders shall maintain as confidential, up until the Auction, the fact that they have submitted a bid and the terms and conditions of such bid.**

**9. Evaluation of Qualifying Bids**

The Plan Administrator in consultation with her advisors shall make a determination regarding whether a timely submitted bid from a Qualifying Bidder is a Qualifying Bid, and shall notify all Qualifying Bidders whether their bids have been determined to be a Qualifying Bid by no later than five (5) days prior to the Auction Date (as defined below). In the event that a bid is determined not to be a Qualifying Bid, the Qualifying Bidder shall be notified by the Plan Administrator and shall have one (1) day

from the date of such notification to modify its bid so as to become a Qualifying Bid; provided that any Qualifying Bid may be improved at the Auction as set forth herein.

Prior to the commencement of the Auction, the Plan Administrator in consultation with her advisors, shall determine which of the Qualifying Bids, at such time, is the highest and best bid for purposes of constituting the opening bid of the Auction (the “Baseline Bid” and the Qualifying Bidder submitting the Baseline Bid, the “Baseline Bidder”), and shall promptly notify all Qualifying Bidders with Qualifying Bids of the Baseline Bid. The Baseline Bid may be comprised of any combination of Assets, and the Plan Administrator may determine that different Baseline Bids exist for different lots of the Assets. The Plan Administrator in consultation with her advisors, shall have the discretion to determine how to proceed when auctioning the Assets in lots that do not include all of the Assets in the Notice of Bid Deadline so as to maximize the value of the Assets.

#### **10. One Qualifying Bid**

If only one Qualifying Bid is submitted on or before the Bid Deadline, the Plan Administrator shall not hold an Auction and shall have the right to request at the Sale Hearing (as defined in the Bidding Procedures Order) that the Court approve the Transaction Agreement with the Qualifying Bidder and the transactions contemplated thereunder.

#### **11. Auction**

In the event that the Plan Administrator timely receives more than one Qualifying Bid, the Plan Administrator shall conduct an auction (the “Auction”). Following the Auction, the Plan Administrator in consultation with her advisors, shall determine which Qualifying Bid is the highest and best bid for the Assets, which will be determined by considering, among other things, the following non-binding and non-exclusive factors: (a) the transaction structure and execution risk, including conditions to, timing of and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, and required governmental or other approval; (b) variations between competing bids and any incremental execution risk that the Plan Administrator in consultation with her advisors, reasonably determine exists as a result of such variations; (c) the time needed to close a Sale or other transaction compared with other Qualifying Bids and the cost to the Plan Administrator and the Trust of any incremental delay; (d) the total consideration to be received by the Plan Administrator and the Trust; (e) the ability to obtain a higher or better offer for an Asset when sold individually or in combination with one or more other Assets; (f) existing funding available or proposed to be provided by the Qualifying Bidder during the period necessary to close the Sale or other transaction; (g) the net benefit to the Plan Administrator and the Trust, taking into account any Stalking Horse Purchaser’s rights to any break-up fee, expense reimbursement, or similar bid protection; (h) the proposed treatment of existing secured interests in the subject Assets, including any senior indebtedness in the case of a credit bid; (i) the impact on employees, Counterparties



(including claims that may be asserted related to rejection and objections to adequate assurance), and other creditors; and (j) any other factors the Plan Administrator may reasonably deem relevant.

Notwithstanding anything to the contrary contained herein, the Plan Administrator in consultation with her advisors, reserves the right to determine that no Qualifying Bid was received and/or to not select a Successful Bidder if the Plan Administrator in consultation with her advisors, determines it is not in the best interests of the Plan Administrator and the Trust and its creditors to do so.

The Auction shall be governed by the following procedures:

(a) the Auction shall be held on **the date specified in the Notice of Bid Deadline and which shall be 5 days after the Bid Deadline** (ET) (the “Auction Date”) at the offices of Flaster/Greenberg P.C., 1717 Arch Street, Suite 3300, Philadelphia, PA 19103;

(b) only Qualifying Bidders with Qualifying Bids (together, the “Auction Bidders”) shall be entitled to make any subsequent bids at the Auction;

(c) the Auction Bidders shall appear in person at the Auction, or through a duly authorized representative. In the event that a Qualifying Bidder becomes a Successful Bidder or Back-up Bidder, then whomever is attending the Auction on behalf of a Qualifying Bidder must have the authority, immediately after the conclusion of the Auction, to complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which a Successful Bid or Back-up Bid was made;

(d) only the Plan Administrator, her advisors, the Debtors, the Auction Bidders, and any creditors of the Debtors (including the NJ Litigants), together with the professional advisors to each of the foregoing parties, may attend the Auction. Parties who intend to attend the Auction must provide counsel for the Plan Administrator at least one (1) business day’s written notice of their intent to attend the Auction so that the Plan Administrator can make appropriate arrangements;

(e) the Plan Administrator and her advisors shall direct and preside over the Auction, which shall be transcribed;

(f) the Auction Bidders shall confirm that they have not engaged in any collusion with respect to the Bidding Procedures, the Auction, or the Sale;

(g) bidding on any lot of Assets shall commence at the amount of the Baseline Bid, and the Auction Bidders may submit successive bids in increments of at least the greater of \$100,000 and 1% of the Baseline Bid, provided that: (i) each such successive bid must be a Qualifying Bid; (ii) if the then-highest and best bid was made by any Stalking Horse Purchaser, such bid shall be deemed to include the sum of the amount of

any break-up fee, expense reimbursement, or other bid protections available to such Stalking Horse Purchaser; (iii) any bid made by any Stalking Horse Purchaser, including in each and every round of bidding, shall be deemed to include the sum of the amount of any break-up fee, expense reimbursement, or other bid protection available to such Stalking Horse Purchaser in addition to the cash and other consideration provided for in its bid; and (iv) the Plan Administrator in consultation with her advisors shall retain the right to modify the bid increment requirements at the Auction;

(h) the Auction may include individual negotiations with any of the Auction Bidders, but all bids shall be made on the record and in the presence of all of the Auction Bidders;

(i) all material terms of the bid that is deemed to be the highest and best bid for each round of bidding shall be fully disclosed to the Auction Bidders, and the Plan Administrator in consultation with her advisors shall use reasonable efforts to clarify any and all questions that the Auction Bidders may have regarding the announcement of the then-current highest and best bid;

(j) the Plan Administrator in consultation with her advisors may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make subsequent bids) for conducting the Auction, provided that such rules are (i) not inconsistent with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of New Jersey, or any applicable order of the Court entered in connection with these Chapter 11 Cases, including, without limitation, the Bidding Procedures Order, and (ii) disclosed to the Auction Bidders;

(k) the Auction Bidders shall have the right to make additional modifications to their Transaction Agreement in conjunction with each Qualifying Bid submitted in each round of bidding during the Auction, provided that (i) any such modifications on an aggregate basis and viewed in whole, shall not, in the discretion of the Plan Administrator in consultation with her advisors, be less favorable to the Trust than the terms of any Qualifying Bid that was announced as the then-current highest and best bid for the Assets that are the subject of the bids, and (ii) each Qualifying Bid (unless superseded by a subsequent Qualifying Bid at the Auction) shall constitute an irrevocable offer and shall be binding on the Auction Bidder submitting such bid until the conclusion of the Sale Hearing, unless such bid is selected as a Successful Bid or Back-Up Bid, which shall remain binding as provided for herein;

(l) the Plan Administrator shall have the right to request any additional financial information that will allow the Plan Administrator in consultation with her advisors to make a reasonable determination as to an Auction Bidder's financial and other capabilities to consummate the transactions contemplated by the Transaction Agreement, as may be amended during the Auction, and any further information that the

Plan Administrator may believe is reasonably necessary to clarify and evaluate any bid made by an Auction Bidder during the Auction;

(m) upon the conclusion of the Auction, the Plan Administrator in consultation with her advisors, subject to Court approval, shall determine the offer or offers for the Assets that is or are the highest and best from among the Qualifying Bids submitted at the Auction (each a “Successful Bid”). The bidder submitting a Successful Bid shall be the “Successful Bidder” for such Assets and shall have such rights and responsibilities of the purchaser as set forth in the Transaction Agreement. The Plan Administrator in consultation with her advisors shall designate a “Back-Up Bid (or Bids)” (and the corresponding “Back-Up Bidder (or Bidders)”) in the event that a Successful Bidder does not close a Sale or the Court does not approve the Successful Bid. Subject to Section 7 of the Bidding Procedures, within one business day after the conclusion of the Auction, the Successful Bidder(s) and any Back-Up Bidder(s) shall deliver an additional Deposit payment so that each such bidder’s total Deposit amount equal to ten percent (10%) of the cash amount of the Successful Bid or Back-Up Bid, as applicable; and

(n) immediately after the conclusion of the Auction and without undue delay, each Successful Bidder and Back-Up Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid or Back-Up Bid was made.

**EACH SUCCESSFUL BID AND ANY BACK-UP BID SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE APPLICABLE SUCCESSFUL BIDDER AND BACK-UP BIDDER, RESPECTIVELY, FROM THE TIME THE BID IS SUBMITTED UNTIL THE TIME PERIOD SPECIFIED IN THESE BIDDING PROCEDURES. EACH QUALIFYING BID THAT IS NOT A SUCCESSFUL BID OR BACK-UP BID SHALL BE IRREVOCABLE UNTIL THE CONCLUSION OF THE SALE HEARING, AT WHICH POINT THEY SHALL BE DEEMED WITHDRAWN AND TERMINATED.**

**12. Sale Hearing**

The Successful Bid (which, if no Auction is held, may be the Staking Horse Agreement) and any Back-Up Bid will be subject to approval by the Court. The Sale Hearing to approve the Successful Bid(s) and any Back-Up Bid(s) shall be scheduled by the Court. The Sale Hearing may be adjourned by the Plan Administrator from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a notice on the docket of the Debtors’ chapter 11 cases.

**13. Backup Bidder**

Notwithstanding any of the foregoing, in the event that a Successful Bidder fails to close the applicable Sale promptly after the Court enters an order approving of the

Successful Bid by (or such date as may be extended by the Plan Administrator in consultation with her advisors,), (i) the Back-Up Bid for that Sale will be deemed to be the Successful Bid, (ii) the Back-Up Bidder will be deemed to be the Successful Bidder, and (iii) the Plan Administrator will be authorized, but not directed, to immediately close that Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any interested parties.

**14. Return of Deposits**

All Deposits shall be returned to each bidder not selected by the Plan Administrator as a Successful Bidder or Back-Up Bidder for any Sale no later than three (3) business days following the conclusion of the Sale Hearing. The deposit of a Back-Up Bidder shall be returned within three (3) business days of the closing of the applicable Sale to the Successful Bidder; the deposit of the Successful Bidder or, if the Sale is closed with the Back-Up Bidder, the deposit of the Back-Up Bidder, shall be applied to the purchase price for the Sale. If the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then the Plan Administrator shall be entitled to retain the Deposit of the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) as liquidated damages resulting to the Plan Administrator and the Trust for such breach or failure to perform.

**15. Reservation of Rights**

Notwithstanding any of the foregoing, the Plan Administrator in consultation with her advisors, reserves the right to modify these Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, to allow for bidding on only a portion of the Assets and not all of them, modify bidding increments, to waive terms and conditions set forth herein with respect to any or all potential bidders (including, without limitation, the Bid Requirements), to impose additional terms and conditions with respect to any or all Potential Bidders, to adjourn or cancel the Auction at or prior to the Auction, and to adjourn or cancel the Sale Hearing.

Additionally, the Plan Administrator in consultation with her advisors, has the right to terminate the sale and auction process with respect to any or all of the Assets at any time.

**16. Buyer's Brokers/Indemnity**

Each Potential Bidder or Qualifying Bidder warrants and represents that it is a principal acting on its own behalf, and not as a broker, finder, or agent acting on another's behalf. Each Potential Bidder or Qualifying Bidder understands that the Plan Administrator and the Broker and their respective representatives have not agreed to pay any brokerage commissions, finder's fee or other compensation in connection with a

Potential Bidder's or Qualifying Bidder's possible purchase other than to the Broker. In addition, each Potential Bidder or Qualifying Bidder hereby agrees to indemnify, defend and hold the Plan Administrator and the Broker, and their respective representatives harmless from and against any and all claims, damages, losses and liabilities, costs and expenses (including reasonable attorneys' fees and disbursements) arising out of any such claims made by third-party brokers on account of or related to such Potential Bidder or Qualifying Bidder.

**17. Disclaimer**

By submitting a bid, each Potential Bidder and Qualifying Bidder agrees to and acknowledges the following terms and conditions with respect to any information received from the Debtors and/or the Plan Administrator related to the Assets ("Information"):

- (a) The Assets are being offered AS-IS, WHERE-IS, with ALL FAULTS.
- (b) The Information has been prepared:
  - i. for informational purposes only;
  - ii. from materials supplied by the Debtors and/or the Plan Administrator, local municipalities, and other sources commonly accepted as reliable sources for such type of Information; and
  - iii. to assist Potential Bidders and Qualifying Bidders in making their own evaluation of the offering and does not purport to be all-inclusive or to contain all of the information that interested parties may desire. The Plan Administrator and the Broker and their respective officers, directors, employees, affiliates, agents, advisors and representatives (such parties, collectively, "Representatives") have not assumed responsibility for independent verification of any of the information contained therein and have not in fact in any way audited such Information. In all cases, Potential Bidders and Qualifying Bidders should conduct their own investigation and analysis of the offering, conduct site inspections, and scrutinize the Information. Potential Bidders and Qualifying Bidders should engage legal counsel, accountants, engineers, and/or such other professional advisors as Potential Bidders and Qualifying Bidders deem appropriate for evaluating the Assets.
- (c) None of Potential Bidders, Qualifying Bidders or their respective Representatives are entitled to rely on the accuracy or completeness of the Information except as provided for in a Transaction Agreement that is authorized and approved by the Court.
- (d) Although the Plan Administrator and the Broker have endeavored for the Information to contain data which they believe to be relevant for the purpose of any Potential Bidder's or Qualifying Bidder's investigation, except as expressly set forth in a

Transaction Agreement accepted by the Plan Administrator and approved by the Court, neither the Plan Administrator, the Debtors, the Broker or any of their respective Representatives:

i. have made or make and expressly disclaim making any written or oral statements, representations, warranties, promises or guarantees, whether express or implied or by operation of law or otherwise, with respect to the Assets or with respect to the accuracy, reliability or completeness of the Information;

ii. to the fullest extent permitted by law, shall have any liability whatsoever to Potential Bidders, Qualifying Bidders or their Representatives on any basis (including, without limitation, in contract, tort, under federal, foreign or state securities laws or otherwise) as a result of, relating or pertaining to, or resulting or arising from (i) any Potential Bidder's, any Qualifying Bidder's, or any of their Representative's reliance on the Information, (ii) Potential Bidder's, Qualifying Bidder's, or their Representatives' use or non-use of the Information, or (iii) any alleged acts or omissions of the Plan Administrator, the Debtors or the Broker, or any of their respective Representatives, or any errors or omissions in the Information;

iii. shall have any liability or responsibility for any decisions made by any Potential Bidder, Qualifying Bidder or any of their Representatives in reliance on any Information;

iv. will be under any obligation or duty (express or implied) to make available any Information to any Potential Bidders, any Qualifying Bidders, or any of their Representatives; and

v. will be under any duty or obligation (express or implied) to update, supplement, revise or correct any Information disclosed under these Bidding Procedures, regardless of the circumstances.

(e) No contract or agreement providing for any transaction shall be deemed to exist between a Potential Bidder or Qualifying Bidder and any Debtor or the Plan Administrator unless and until a Qualifying Bidder and the Plan Administrator execute and deliver a Transaction Agreement that is authorized and approved by the Court, and Potential Bidders and Qualifying Bidders hereby waive, in advance, any claims (including, without limitation, breach of contract) in connection with any transaction unless and until a Potential Bidder or Qualifying Bidder and the Plan Administrator shall have executed and delivered a Transaction Agreement, which has been authorized and approved by the Court. The Plan Administrator in consultation with her advisors, reserves the right, in her discretion, to reject any and all proposals made by any Potential Bidder or Qualifying Bidder with regard to a transaction, and to terminate discussions and negotiations with a Potential Bidder or Qualifying Bidder at any time. Subject to the terms of these Bidding Procedures, The Plan Administrator in consultation with her advisors, shall be free to establish and change any process or procedure with respect to a

transaction as the Plan Administrator in consultation with her advisors, shall determine (including, without limitation, negotiating with any other interested party and entering into a final definitive agreement relating to a transaction with any other party without prior notice to any Potential Bidder, Qualifying Bidder or any other person).

(f) The Plan Administrator, the Debtors, the Broker and their advisors, individually and collectively, have not made any representations or warranties except as expressly set forth in any Transaction Agreement executed by the Plan Administrator, which has been authorized and approved by the Court. Potential Bidders and Qualifying Bidders may rely only on the representations and warranties expressly set forth in a Transaction Agreement executed by the Plan Administrator, which has been authorized and approved by the Court.

**END**