

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE:	§	CASE NO: 22-10082
	§	
WESTBANK HOLDINGS, LLC, <i>et al.</i> ¹	§	CHAPTER 11
	§	
DEBTOR.	§	SECTION A
	§	

ORDER

On Wednesday, November 23, 2023, the Court considered the *Motion for Entry of Orders (I) Establishing Bidding and Sale Procedures; (II) Approving the Sale of Assets; (III) Establishing Carve Out; and (IV) Granting Related Relief*, [ECF Doc. 570], filed by Dwayne M. Murray, solely in his capacity as chapter 11 trustee (the “Trustee”), and the Objections filed by Joshua L. Bruno, [ECF Doc. 610], and the Sewerage and Water Board of New Orleans, [ECF Doc. 608].

For the reasons stated on the record,

IT IS ORDERED that:

1. The proposed bidding procedures set forth in this order (the “Bidding Procedures”) are approved in all respects and shall govern any and all bids and bid proceedings related to the following assets to be sold (the “Assets” or “Properties”):

- a. Westbank Holdings – 336-unit apartment complex and related improvements located on two parcels of property described as 3690 Vespasian St., New Orleans, LA 70114 on just over 5 acre and 2200 Westbend Pkwy, New Orleans, LA 70114 located on just over 6.5 acres;

¹ An *Order* directing joint administration of the chapter 11 bankruptcy case of Westbank Holdings, LLC, as lead case, with the chapter 11 bankruptcy cases of affiliated debtors, Cypress Park Apartments II, LLC, Case No. 22-10083, Liberty Park Apartments, LLC, Case No. 22-10084, Forest Park Apartments, LLC, Case No. 22-10085, and Washington Place, LLC, Case No. 22-10086, was entered on February 4, 2022. [ECF Doc. 17]. An *Order* directing the joint administration of affiliated debtor Riverview Apartments, LLC, 22-10176, was entered on March 14, 2022. [ECF Doc. 57].

- b. Forest Park - 20-unit garden-style apartment complex and related improvements located at 2309-2311 Sixth Street, New Orleans, Louisiana;
- c. Cypress Park - 64-unit apartment complex located at 2110 Cypress Acres Drive, New Orleans, Louisiana;
- d. Liberty Park - 10 unit garden-style apartment building and related improvements located at 2817-2819 S. Liberty St., New Orleans, LA 70115;
- e. Riverview - 45-unit garden-style apartment complex and related improvements located at 1039 Rev. Richard Wilson Drive (a/k/a Third Street) Kenner, LA; and
- f. Washington Park - 25-unit garden-style apartment complex and related improvements located at 2316 Washington Ave., New Orleans, LA.

2. The Trustee and any party-in-interest shall have until January 30, 2023, to (a) challenge the existence, validity, and perfection of Federal National Mortgage Association d/b/a Fannie Mae (“Fannie Mae” or “Consultation Party”) liens and security interests and (b) object to Fannie Mae’s ability to credit bid under 11 U.S.C. §365(k). All rights of the Trustee and any party-in-interest to object to, or otherwise contest, the dispute the existence, validity, and perfection of the loans, mortgages and security interests of Fannie Mae, are preserved in this order through January 30, 2023, or, in the event of any timely filed objection, the resolution of any such timely filed objection. If there is no timely filed objection, the existence, validity and perfection of the security interests and liens of Fannie Mae as first priority liens on the assets subject to said liens (subject to any carve out and ad volorem taxes) shall be deemed valid and unavoidable and Fannie Mae shall be entitled to credit bid if it so chooses.

A. Bid Requirements

3. Any potential bidder (“Potential Bidder”) may submit a bid (each a “Bid”) for either: (a) all or substantially all of the Assets; or (b) any portion or combination of Assets (a “Piecemeal Bid”). The Consultation Party shall be deemed a Qualified Bidder.

4. To participate in the Sale process, each Potential Bidder must, on or before March 30, 2023, at 5:00 p.m. prevailing Central Time (the “Bid Deadline”):

a. Fully disclose the identity of each entity that will be bidding for the assets or otherwise participating in connection with such Bid and the complete terms of any such participation. Provide documents identifying the Potential Bidder, including its legal name, jurisdiction and form of organization, and details regarding the ownership and capital structure of the Potential Bidder, as well as the identity of any controlling persons, significant direct or indirect equity or debt investors, and/or guarantors of such entity;

b. Provide a list with the names and contact information for any financial, legal, and other advisors of the Potential Bidder has engaged to assist in connection with the proposed Sale.

c. Submit to the Trustee an executed purchase agreement substantially in the form of the APA (as defined below), as well as a redline of such agreement marked against the APA, memorializing a Bid for all or substantially all of the Assets or a Piecemeal Bid that comports with the terms of the Bidding Procedures and the proposed Sale, discussed *infra*. No later than December 30, 2022, the Trustee with the assistance of the Broker shall upload to the Data Room (defined below) a proposed form of asset purchase agreement for the acquisition of substantially all Assets of the Estates (the “APA”).

d. Submit a Bid that is: (i) binding and irrevocable for a period of no less than 120 days² from the Bid Deadline, unless and until the Trustee accept a higher Bid and such Potential Bidder is not selected as the Back-up Bidder; (ii) without financing, due diligence,

² Unless otherwise stated, all references to “days” contained herein refer to calendar days. Bankruptcy Rule 9006 shall govern the computation of any and all dates and deadline under the Bidding Procedures.

internal approval or any other contingencies, including with respect to title defect or environmental laws, unless otherwise consented to in writing by the Trustee, in consultation with the Consultation Party; *provided, however*, that a Bid may contain a list of anticipated required regulatory approvals and the expected timing for obtaining such approvals; (iii) on terms substantially similar to those terms contained in the APA; and (iv) in compliance with the Bidding Procedures.

e. Indicate the form of consideration of the Bid and the estimated market value of any non-cash consideration.

f. If the Potential Bidder is submitting a Piecemeal Bid, the Potential Bidder must identify specifically the Assets subject to the Piecemeal Bid.

g. Indicate the extent, if any, to which they agree to the following affordable housing and tenant rights provisions and indicate any additional similar provisions

1. Long term affordability of at least 30 years.
2. Accepting all tenant-based housing subsidies;
3. (a) Good cause protection at lease expiration, (b) Period of time to cure lease violations, and (c) No waiver of notice in leases;
4. Using an admissions policy that follows LHC's new criminal background screening policy and that does not automatically bar people with evictions on their record.
5. Former residents have first right to return to their complex once rehabilitated (assuming they qualify).
6. Making best effort to move tenants to temporary units if available in lieu of eviction for renovation/rehab.
7. List SLLS info on any notices of adverse action against tenants.

h. To the extent that the Potential Bidder proposes to do so, indicate its proposal to (a) rehabilitate, renovate and repair any or all of the Assets, and (b) return to or maintain those Assets as affordable housing ("Restoration Program") including but not limited to, the ability to fund the Restoration Program, the timeline for completion of the Restoration Program, and the ability to obtain any necessary regulatory approvals for the Restoration Program.

i. Confirm in writing that the Potential Bidder will cooperate with the Trustee, the Debtors' estates and with the loss payee, Fannie Mae, with respect to recovery of all pending claims against insurers for Hurricane Ida and post-petition claims, including but not limited to claims related to fires and vandalism.

j. Unless the Bid is a credit bid being submitted by the Consultation Party, make a good faith cash deposit in the form of a cashier's check or wire transfer into Trustee's counsel's non-interest bearing IOLTA account (the "Escrow Account") in an amount not less than ten percent (10%) of the total consideration for the Bid, which deposit shall immediately become (i) non-refundable and credited upon closing of the sale toward the purchase price if and when the Qualified Bidder (as defined below) making such deposit is declared to be the winning bidder (the "Winning Bid" and "Winning Bidder") or back-up bidder (the "Back-up Bid" and "Back-up Bidder") at the Sale Hearing or (ii) non-refundable and retained by Trustee for the benefit of the estates free and clear in the event the Winning Bidder fails to close for any reason other than as permitted by the Sale Order or the APA. In the event a Qualified Bidder is not the Winning Bidder or Back-up Bidder, such Qualified Bidder's deposit shall be promptly refunded as set forth herein.

k. Identify the liabilities, if any, that the Potential Bidder seeks to assume through the Sale transaction and the proposed value, if any, to the estates that the assumption of such liabilities comprises as part of the consideration.

l. Provide a list of Executory Contracts the Potential Bidder seeks to have the Trustee assume and assign to the Potential Bidder by and through the Sale. The list of Executory Contracts shall identify whether the Potential Bidder will assume any general contractor agreement the Trustee entered into during the bankruptcy cases for repair and/or demolition work at one or more of the Properties and pay any amounts due after closing or terminate such general contractor

agreement(s) for convenience and after closing, utilize its own general contractor to complete the renovations and repairs to the extent construction on any of the Assets is not complete as of the Closing. No later than December 30, 2022, the Trustee shall upload to the Data Room a list of Executory Contracts that may be subject to assumption and assignment as part of a Sale.

m. Provide documentary evidence satisfactory to the Trustee, in consultation with the Consultation Party, of the Potential Bidder's financial ability to (i) fully and timely perform and close the Sale pursuant to the Bid and proposed assets purchase agreement, if declared to be the Winning Bidder, and (ii) provide adequate assurance of future performance of all Executory Contracts identified for assumption and assignment to the Potential Bidder, including, without limitation, the following:

- i. evidence of the Potential Bidder's internal resources and proof of unconditional debt funding commitments from a recognized financial institution and, if applicable, equity commitments in an aggregate amount equal to the purchase price and any applicable cure amounts and other closing payments, if any, or the posting of an irrevocable letter of credit from a recognized banking institution issued in favor of the Trustee in such amount, in each case, as are needed to close the proposed Sale transaction;
- ii. contact names and telephone numbers for verification of financing sources;
- iii. current financial statements (or such other form of financial disclosure and credit-quality support or enhancement, acceptable to the Trustee, in consultation with the Consultation party) of the Potential Bidder or those entities that will guarantee in full the payment obligations of the Potential Bidder;
- iv. a description of the Potential Bidder's *pro forma* capital structure; and
- v. any such other form of financial disclosure or credit-quality support information or enhancement reasonably requested by the Trustee demonstrating that such Qualified Bidder has the ability to close the applicable Sale transaction.

n. Disclose any connections or agreement with the Debtors or their affiliates, including but not limited to, Joshua Bruno, Metro-Wide, and Downtown Development Group, the

Consultation Party, or Qualified Bidder, and/or any officer, director or equity security holder of the Debtors or their affiliates or any of the foregoing and confirm that it has not engaged in any collusion with respect to the bidding or the proposed Sale transaction.

o. Confirm in writing its agreement to accept and abide by the terms, conditions and procedures set forth herein and provide evidence of due authorization to enter into the proposed Sale pursuant to the asset purchase agreement submitted, or any derivation thereof. In the event that the Potential Bidder is an entity specially formed for the purpose of effectuating the contemplated transaction, then the Potential Bidder must furnish written evidence acceptable to the Trustee, in consultation with the Consultation party, of the approval of the contemplated transaction by the equity holders or members of such Potential Bidder. If the Potential Bidder is an entity other than the Qualified Bidder, such as an acquisition vehicle, shall unconditionally guarantee the obligations of the Qualified Bidder and be liable *in solido* with the Potential Bidder for the performance thereof.

p. Identify any and all bid protections (the “Bid Protections”) required by the Potential Bidder to serve as the Stalking Horse Bidder (defined below) for the Sale, including without limitation, any break-up fee, expense reimbursement, termination fee or similar type of payment or bid protections; *provided, however*, that the aggregate amount of any proposed Bid Protections may not exceed three percent (3%) of the total purchase price under the Bid.

5. For the avoidance of doubt, a Bid can be made that does not provide for affordable housing or tenant protections.

6. The Trustee, in consultation with the Consultation Party, or the Bankruptcy Court, in the event of a dispute with anyone regarding whether a Potential Bidder is a Qualified Bidder, or a Bid or Piecemeal Bid constitutes a Qualified Bid, shall determine whether a Potential Bidder

is a Qualified Bidder and whether a Bid or Piecemeal Bid complies with the above minimum requirements and constitutes a qualified bid (a “Qualified Bid”, and the bidder submitting such Qualified Bid, a “Qualified Bidder”). The Trustee will promptly advise each Potential Bidder in writing whether or not the Potential Bidder is a Qualified Bidder. If a Bid submitted on or prior to the Bid Deadline fails to meet all requirements of a Qualified Bid, the Trustee, after consulting with the Consultation Party, may work with the Potential Bidder in an effort to cure any defects in the Bid and to cause such Bid to become a Qualified Bid prior to the commencement of the Auction (as defined below). Fannie Mae shall be deemed a Qualified Bidder and shall be allowed to participate in the Auction without the need to submit a Qualified Bid.

7. The Trustee, in consultation with the Consultation Party, may select a Qualified Bid and Qualified Bidder to serve as the Stalking Horse Bid (defined below) and Stalking Horse Bidder on or before April 10, 2023 (the “Stalking Horse Designation Deadline”). If the Trustee does not select a Stalking Horse Bidder, then the Trustee shall file a notice with the Court within 24 hours following the Stalking Horse Designation Deadline that there is no Stalking Horse Bid.

8. The Trustee and his advisors, following consultation with the Consultation Party, shall: (a) receive and evaluate any Bid from a Potential Bidder; (b) request information from Potential Bidders, engage in discussions with Potential Bidders, and take such actions to determine whether any Bid constitutes or could lead to a Qualified Bid; and (c) take any other actions contemplated under these Bidding Procedures.

B. Submission of Bids

9. A Potential Bidder must deliver written copies of its Bid and all supporting documents and information, by mail, facsimile, or email, prior to the Bid Deadline to: (i) counsel to the Trustee, Fishman Haygood, LLP, 201 St. Charles Avenue, Floor 46, New Orleans, Louisiana

70170, Attn: William H. Patrick, III and Cherie Nobles (wpatrick@fishmanhaygood.com and cnobles@fishmanhaygood.com). The Potential Bidder must deliver the proposed Bid, and all supporting documents and information, such that the Bid and related documents and information are actually received by the aforementioned parties no later than the Bid Deadline.

10. As soon as reasonably practicable following receipt, the Trustee shall provide summaries of the materials terms of each Bid, which summaries shall be treated as confidential, conditioned on the Consultation Party agreeing in writing that it does not intend to make a credit bid. Consultation Party shall not be entitled to Bid materials otherwise not available to other Qualified Bidders if it intends to credit bid at the Auction if it intends to credit bid at the Auction.

C. Designation of a Stalking Horse Bidder

11. The Trustee, in consultation with the Consultation Party, shall prepare a list of all Qualified Bidders and a summary of the highest and best Bid(s) for all or substantially all of the Assets and/or the highest and best Piecemeal Bid(s) received as of such date (the “Bid Summary”). The Trustee shall upload the Bid Summary to the Data Room no later than April 6, 2023 (the “Bid Summary Deadline”).

12. On or before April 10, 2023, the Trustee, in consultation with the Consultation Party, may designate one or more Qualified Bidders as the stalking horse bidder(s) (the “Stalking Horse Bidder”) and one or more Qualified Bids as the stalking horse bid(s) (the “Stalking Horse Bid”) with respect to a sale of all or substantially all the Assets of the Trustee.

13. On or before April 10, 2023, if the Trustee has designated a Stalking Horse Bidder, the Trustee shall file a Notice of Designation of Stalking Horse Bidder (the “Stalking Horse Notice”) and serve the Stalking Horse Notice on all interested parties, including any Potential Bidders and counterparties to any Executory Contracts identified as Purchased Contracts (defined

below) in the Stalking Horse Bid or Stalking Horse APA (defined below). The Stalking Horse Notice shall (a) identify the Stalking Horse Bidder, (b) provide a summary of the Stalking Horse Bid, (c) outline any and all proposed Bid Protections, which may include the payment of a break-up fee and any other appropriate or customary protections, *provided* that the aggregate amount of the Bid Protections that may be paid to any or all Stalking Horse Bidders shall not exceed three percent (3%) of the proposed purchase price and that any Bid Protections shall only be payable upon the closing of and out of the proceeds of a sale transaction, and (d) provide a copy or the means of accessing a digital copy of the asset purchase agreement for the Stalking Horse Bid (the “Stalking Horse APA”) and a redline marked against the APA. The Trustee may modify the terms of the Bidding Procedures³ through the Stalking Horse Notice, in consultation with the Consultation Party, at any time in his discretion, unless otherwise ordered by the Court. Parties-in-interest have until April 13, 2023 to object to the Stalking Horse Notice.

D. Access to Due Diligence Materials

14. The Trustee shall establish a digital data room (the “Data Room”) for purposes of maintaining and providing Potential Bidders access to information regarding the Debtor and the Assets for purposes of conducting due diligence as soon as reasonably practicable, but in no event later than November 30, 2022; *provided, however*, that the Trustee reserve the right to add or remove materials from the Data Room at any time.

15. The Trustee shall be authorized to engage an on-line marketing and advertising platform for commercial real estate to assist with the data room, marketing, data exchange and bidding process for the Auction.

³ Unless otherwise stated, “Bidding Procedures” includes the Bidding Procedures, the procedures governing any Auction (the “Auction Procedures”), including the Open Auction Procedures, and the Assumption and Assignment Procedures, as may be amended from time to time by the Trustee in his discretion.

16. Upon execution of a Confidentiality Agreement, any Potential Bidder that wishes to conduct due diligence on the Assets may be granted access to the Data Room. The due diligence period for Potential Bidders will end one (1) day prior to the Bid Deadline.

17. The Trustee, along with his advisors, shall coordinate all reasonable requests for access to the Data Room and any additional information and due diligence from Potential Bidders and provide each Potential Bidder access to the Data Room and additional reasonable due diligence information, as requested by such Potential Bidder in writing as soon as reasonably practicable after such request; *provided, however*, unless otherwise ordered by the Court, the Trustee may decline to provide such information to Potential Bidders who the Trustee, in his reasonable business judgment (in consultation with the Consultation Party), determines do not intend in good faith to, or do not have the capacity to, consummate the purchase of any or all of the Assets or seek access to the Data Room and information contained therein for any improper purpose. Unless otherwise ordered by the Court, the Trustee shall have the right, but not the duty, to provide any additional information or due diligence to any Potential Bidder or include it in the Data Room at his discretion and is not obligated to provide any information or due diligence to anyone that is not in the Data Room.

18. Each Potential Bidder shall be required to inspect and examine the Property(ies) by March 24, 2023.

19. Each Potential Bidder shall comply with all reasonable requests for additional information by the Trustee or their advisors, including, without limitation, information regarding such Potential Bidder's financial wherewithal to consummate and perform obligations in connection with the Sale. If a Potential Bidder fails to comply with any such request(s), unless otherwise ordered by the Court, the Trustee may, in his discretion, in consultation with the

Consultation Party, disqualify the Potential Bidder and/or the subject Bid and deny or terminate access to the Data Room.

E. “As Is, Where Is”

20. The Sale of any Assets shall be on an “as is, where is” basis and without representations or warranties of any kind, nature or description by the Trustee, his agents or the Estates, including a full waiver of redhibition, except to the extent set forth in the asset purchase agreement between the Trustee and a Winning Bidder, the assignment and bill of sale, if any, delivered pursuant to such asset purchase agreement, or the order approving the Sale of the Assets by the Trustee to the Winning Bidder. Except as may be provided in the subject asset purchase agreements or the Sale Order, all of the Trustee’s rights, title, and interest in and to the Assets shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interest thereon, (collectively, the “Interests”), with such Interests attaching to the proceeds of the Sale of the Assets (other than the Carve Out (defined below)), with the same validity and priority as existed immediately prior to such Sale.

21. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to inspect and examine the Assets prior to making its Bid, that it has relied solely upon its independent review, investigation and/or inspection of any documents or information in making its Bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Assets or the completeness of any information provided in connection with the bidding process, in each case except as expressly stated in any executed asset purchase agreement.

22. The Properties have mold contaminants. The Winning Bidder shall agree to hold harmless the Trustee and the Debtors' Estates for mold contamination and any asset purchase agreement and mortgage shall provide for such waiver.

F. Credit Bidding

23. Unless otherwise prohibited to do so by order of the Court or subject to compliance with any limitations the Court may impose, the Consultation Party may credit bid up to the full amount of its claims to acquire any or all Assets subject to the Consultation Party's respective security interests on a dollar-for-dollar basis, as provided in Section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing such credit bid and whether any Sale is (a) pursuant to Section 363 of the Bankruptcy Code or (b) pursuant to a chapter 11 plan.

24. Notwithstanding anything to the contrary contained herein, the Consultation Party's credit bid shall not constitute a Qualified Bid if the bid does not include a cash component sufficient to pay in full, in cash, the Carve Out (defined below) or there is not other available cash in DIP accounts to satisfy the Carve Out.

25. If the Consultation Party intends to credit bid for any of the Assets it shall notify the Trustee, the Office of the U.S. Trustee (the "U.S. Trustee"), and the other Notice Parties of its intention to credit bid no later than March 30, 2023 (the "Credit Bid Designation Deadline"). If the Consultation Party intends to submit a Bid (including a credit bid) for any or all of the Assets, such party shall waive the right to receive (i) information that is not generally available to all Potential Bidders and (ii) any notice, consultation, and/or consent rights as the Consultation Party under the Bidding Procedures, except as otherwise ordered by the Court. The Consultation Party may waive its credit bid rights in writing to the Trustee and the Trustee shall be entitled to disclose any such waiver.

G. The Auction

26. If the Trustee receive one or more Qualified Bids from Qualified Bidders by the Bid Deadline, in addition to any Stalking Horse Bid, an Auction with respect to the sale of the subject Assets shall take place on April 20, 2023, at 10:00 a.m. (prevailing Central Time) (the “Auction Date”) at (a) the New Orleans office of Fishman Haygood LLP, (b) another suitable physical location, or (c) via a virtual platform, such as Zoom, as the Trustee designates. No later than forty-eight (48) hours prior to the Auction Date, the Trustee shall provide notice of the Auction location and, if via a virtual platform, the credentials required to access such platform, to all Qualified Bidders, the Consultation Party, and the U.S. Trustee.

27. The only persons or entities who will be permitted to bid at the Auction are the authorized representatives of each Qualified Bidder (“Auction Participants”). While only the Auction Participants may make Qualified Bids at the Auction, the Auction may be attended and viewed also by the Trustee and representatives of the Consulting Party, and their respective advisors and/or other authorized representatives. Any other person wishing to attend the Auction must indicate it wishes to do so by contacting counsel to the Trustee, Cherie Nobles, cnobles@fishmanhaygood.com, no later than three (3) days prior to the start of the Auction. Unless otherwise ordered by the Court, the Trustee in his discretion may determine whether such person may attend the Auction.

28. If the Stalking Horse Bid is the only Qualified Bid the Trustee receives by the Bid Deadline, the Trustee shall have the right in his discretion to cancel the Auction. In such case, if cancelled, the Stalking Horse Bid and Stalking Horse Bidder shall be designated by the Trustee as the Winning Bid and Winning Bidder effective as of the Bid Deadline.

29. If the Trustee does not receive any Qualified Bids by the Bid Deadline, the Trustee may elect to hold an open auction for the Assets, or any of them (an “Open Auction”) on the Auction Date, subject to the agreement of the Consultation Party or in the event of a dispute, between the Trustee and Consultation Party, order of the Court. If the Court authorizes or the Trustee and the Consultation Party agree to hold an Open Auction, the Trustee shall provide notice to the Court, the U.S. Trustee, the Consultation Party, and any and all Potential Bidders that executed a Confidentiality Agreement of the Open Auction (the “Open Auction Notice”). The Open Auction Notice shall identify the procedures applicable to the Open Auction, including, without limitation, any deposits required to participate in the Open Auction (the “Open Auction Procedures”). The Trustee shall prepare the Open Auction Procedures in consultation with the Consultation Party and U.S. Trustee. Notwithstanding anything in the Motion, Bidding Procedures or Open Auction Procedures to the contrary, unless otherwise ordered by the Court and/or subject to any limitations or restrictions imposed by the Court on any such credit bid, the Consultation Party will be entitled to credit bid in any Open Auction and shall be deemed to be Qualified Bidder for purposes of any Open Auction.

30. Unless modified by any Open Auction Procedures, the following rules shall apply to any Auction:

- a. only Qualified Bidders shall be entitled to make a bid at and otherwise participate in the Auction;
- b. each Qualified Bidder shall appear in person, or in the event of a virtual auction, appear virtually, or have an authorized representative appear on their behalf, *provided* the authorized representative has the authority to bind the Qualified Bidder to the terms of any bid at the Auction without further or additional approval or authorization;
- c. each Qualified Bidder participating in the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale;

- d. the Trustee, in his business judgment and in consultation with the Consultation Party, will conduct the Auction in the manner that he determines will best promote the goals of the bidding process and will achieve the maximum value for the Assets including negotiating with Qualified Bidders and the Consultation Party;
- e. the Stalking Horse Bid shall constitute the opening bid at the Auction (the “Opening Bid”) for the Assets subject to the Stalking Horse APA and the minimum overbid at the Auction shall be an amount equal to the total approved Bid Protections provided under the Stalking Horse APA *plus* \$100,000, with each successive bid being in increments of at least \$100,000 higher than the preceding bid; *provided, however*, if the Stalking Horse Bids constitute Piecemeal Bids, the minimum overbids and bid increments shall be specified in the Stalking Horse Notices;
- f. the Stalking Horse Bidder may not use the amount of approved Bid Protections as consideration under any bid during the Auction; *provided, however*, that the Trustee, in consultation with the Consultation Party, may consider the amount of approved Bid Protections in evaluating the highest and best Bid for purposes of designating the Winning Bid or Back-up Bid;
- g. the Trustee, in consultation with the Consultation Party, may, at any point during the Auction, modify the bid increment amounts; and
- h. unless otherwise ordered by the Court, the Trustee, in consultation with the Consultation Party, may continue the Auction from time to time, adjourn the Auction at any time, and re-open the Auction at any time prior to the commencement of the Sale Hearing.

31. The Auction shall be conducted by the Trustee in accordance with such procedures and requirements as may be established at the discretion of the Trustee and his advisors following consultation with the Consulting Party to result in the highest and best offer for the Assets, which rules shall be announced prior to commencement of the Auction, and may include the determination of the amount of time between Qualified Bids, the conducting of multiple rounds of open bidding, and to declare that the Auction has ended when no further Bids are timely made or otherwise. Following consultation with the Consulting Party, the Trustee may waive and/or employ and announce at the Auction additional rules that are reasonable under the circumstances for conducting the Auction provided that such rules are: (a) subject to further order of the Bankruptcy Court in the event of a dispute, (b) not inconsistent with the Bidding Procedures Order,

the Bankruptcy Code, Bankruptcy Rules, the Local Bankruptcy Rules of the Bankruptcy Court, or any order of the Bankruptcy Court entered in connection with the Debtors' bankruptcy cases; and (c) disclosed to each Auction Participant.

32. At the conclusion of the Auction, the Trustee, in consultation with the Consultation Party, shall select and identify the Winning Bid and the Winning Bidder. There may be more than one Winning Bid and Winning Bidder if individual Piecemeal Bids are determined to be Qualified Bids and are selected as Winning Bids by the Trustee. The Trustee, in consultation with the Consultation Party, shall also select and identify the entity presenting the next highest and best bid (the "Back-up Bid") and the entity presenting same (the "Back-up Bidder"). At the Sale Hearing (as defined below), the Trustee shall present the Winning Bid and Back-up Bid to the Court for approval. The Trustee's presentation of the Winning Bid to the Court for approval does not constitute the Trustee's acceptance of such Winning Bid. The Trustee shall have accepted a Winning Bid if and after the Court has entered an order approving such bid and the Sale of the Asset subject thereto, and only then upon the Trustee's execution of an Asset Purchase Agreement at Closing.

33. Notwithstanding the foregoing, unless otherwise ordered by the Court, the Trustee in his discretion may terminate the bidding process at any time if the Trustee, consistent with his fiduciary duties and business judgment, and in consultation with the Consultation Party, determines that the bidding process is not in the best interest of the estates. Without limiting the generality of the foregoing, unless otherwise ordered by the Court, the Trustee, in consultation with the Consultation Party, may reject at any time before entry of a Sale Order approving such bid, any Bid that, in the Trustee's discretion, (i) is inadequate or insufficient, (ii) is not in

conformity with the requirements of the Bankruptcy Code or the Bidding Procedures, and (iii) is contrary to the best interests of the Trustee, the Estate and the creditors.

34. If an Auction is held, the Trustee shall be deemed to have accepted a Qualified Bid only when: (i) such bid is declared the Winning Bid at the conclusion of the Auction; (ii) the Winning Bidder shall have paid an additional deposit which, when added to the initial deposit, equals fifteen percent (15%) of the Winning Bid (the “Additional Deposit”); *provided* that to the extent the Winning Bid is a credit bid submitted by the Consultation Party, no Additional Deposit shall be required; (iii) definitive documentation has been executed in respect thereof; and (iv) the Court has entered an order approving such bid and the Sale of the Assets subject thereto. The Winning Bidder shall make the Additional Deposit into the Escrow Account within one (1) business day after the conclusion of the Auction. Acceptance by the Trustee of the Winning Bid is conditioned upon entry of a Sale Order approving such Winning Bid and the subsequent execution by the Trustee of definitive document for the sale of the Assets pursuant to the Sale Order.

35. As soon as practicable following the conclusion of the Auction, the Trustee shall file a notice designating the Winning Bid and Winning Bidder, as well as the Back-up Bid and Back-up Bidder (the “Designation of Winning Bid”) and serve the Designation of Winning Bid on all interested parties, including, without limitation, all counterparties to any Purchased Contract(s). The Designation of Winning Bid shall: (i) identify the Winning Bidder and Back-up Bidder; (ii) provide a summary of the Winning Bid and Back-up Bid; (iii) if the Winning Bidder is not the Stalking Horse Bidder, provide a copy or the means of accessing a digital copy of the asset purchase agreement(s) for the Winning Bid(s) (the “Modified APA(s)”) and a redline marked against the Stalking Horse APA; (iv) identify all Purchased Contracts designated by the Winning

Bidder or Back-up Bidder; (v) identify the Cure Amount, if any, the Trustee estimate is required to assume and assign each Purchased Contract in compliance with Section 365(b) and 365(f)(2) of the Bankruptcy Code; and (vi) contain a statement as to the Winning Bidder's and Back-up Bidder's ability to perform the Trustee's obligations under the subject Purchased Contracts. The Trustee reserves the right to amend the Designation of Winning Bid to identify additional Executory Contracts up to six (6) days before the Sale Hearing (defined below) and to remove any Executory Contracts up to the Closing Date (defined below). Simultaneously with the filing of the Designation of Winning Bid, the Trustee shall file a proposed Sale Order and any supplemental filings related to the Designation of Winning Bid or approval of the proposed Sale pursuant thereto.

36. In the event that the Winning Bidder fails to timely pay the Additional Deposit or otherwise comply with its obligations as the Winning Bidder, the Qualified Bidder with the Back-up Bid shall be declared the Winning Bid and Winning Bidder without further order of the Court. If the Winning Bid is a Piecemeal Bid (the "Winning Piecemeal Bid"), the bidder with the next highest or best bid shall be deemed the Winning Bid and Winning Bidder without further order of the Court.

H. Carve Out

37. Out of the sales proceeds of the Assets and from any other assets of the estates subject to any pre-petition or post-petition lien or post-petition administrative and/or superpriority Claims and any pre-petition or post-petition liens securing same of the Consultation Party, a carve out will be provided to the Trustee (and any successor Chapter 11 trustee, or chapter 7 trustee in the event of conversion of any Case, and which carve out will survive and shall not be modified, impaired or discharged by entry of a confirmation order confirming any plan of reorganization in the Cases, or converting any of the Cases to a case under Chapter 7 of the Bankruptcy Code, or

dismissing any of the Cases) pursuant to applicable law, including but not limited to 11 U.S.C. §506(c), for the payment in full, in preference and priority to the claims and liens of the Consultation Party, of the following expenses and liabilities set forth in subparagraphs (1)-(8) below (or a reserve established for the payment of such expenses and liabilities) incurred during the cases in connection with preserving, operating and disposing of the Assets (such expenses and liabilities or the reserves therefor, collectively, the “Carve Out”).

- (1) The Allowed professional fees and expenses of Fishman Haygood, LLP’s and other Professionals retained by the Trustee;
- (2) Broker’s allowed fees and expenses;
- (3) Allowed fees and expenses for any on-line marketing and advertising platform.
- (4) Costs to maintain and operate the Assets until the Closing Date (defined below);
- (5) Wind down costs;
- (6) Closing costs, Real Estate Taxes, priority claims, any break-up fees, expenses reimbursements, and other similar costs;
- (7) any commission and expenses to which the Trustee may be entitled pursuant to 11 U.S.C. §§326, 330 and 331;
- (8) the quarterly fees required to be paid pursuant to 28 U.S.C. §1930(a)(6) and any fees payable to the Clerk of the Bankruptcy Court;

In addition, and subject to satisfaction of all legal requirements (such as for example, the approval of a disclosure statement and entry of a confirmation order of a plan of reorganization which is supported by the Consulting Party), a Carve Out with respect to subparagraphs (9) and (10) below:

(9) for a pro rata distribution as set forth in a plan on account of claims of Tenants and allowed general unsecured claims (not including any claims of or held by insiders or affiliates) in such amounts as provided in such plan; and

(10) for the initial funding of \$150,000 (or such greater amount as may be agreed by the Consulting Party) for the payment of expenses of a liquidating trust (or other legal entity satisfactory to Fannie Mae) vested with the rights to pursue avoidance and other claims of the estates and Debtors.

The amount and sufficiency of any proposed Carve Out to tenants and unsecured creditors and the allocation of the proposed future carve out among unsecured creditors as discussed in subparagraph (9) and the funding proposed in subparagraph (10) are not being decided at the bid procedures stage and any such proposed Carve Out in subparagraphs (9) and (10) and any objections thereto will be addressed at the Sale Hearing or confirmation of a plan.

I. Fees and Expenses

38. Any and all bidders submitting Bids shall bear their own fees, costs, and expenses in connection with the proposed sale, whether or not such sale is ultimately approved, except to the extent reimbursement of expenses constitutes an approved Bid Protection under a Stalking Horse APA. Further, by submitting a Bid, a Potential Bidder shall be deemed to waive its right to pursue a substantial contribution claim under Section 503 of the Bankruptcy Code or other priority unsecured or administrative claims in any way related to the submission or acceptance of its Bid or the Bidding Procedures. Any and all bidders submitting Bids agree that they will waive any and all rights to, file any lien, lis pendens or other claim or document in the mortgage and/or conveyance records of the parish in which the Properties are located that would or could, in any

way, encumber or attach to the Properties or the current owner of the Properties or that would otherwise create a cloud on the marketability or merchantability of the title to the Properties or that would prevent, limit, delay, impede or impair the Trustee's ability to convey marketable title to the Properties to a third party.

J. Assumption and Assignment of Executory Contracts

39. The following procedures are hereby approved (the "Assumption and Assignment Procedures") by which counterparties to potential Executory Contracts designated by the Winning Bidder following the Auction, if any, pursuant to Section 365(f) of the Bankruptcy Code (collectively, the "Purchased Contracts") can ascertain the proposed cure payment and adequate assurance of future performance and, if deemed prudent, object to the potential assumption or assumption and assignment of the subject Purchased Contracts:

- a. As discussed above, the Trustee shall file and serve a Designation of Winning Bid as soon as practicable following the conclusion of the Auction, which shall, among other things, include a list of the Purchased Contracts with: (i) the name and address of the known contract counterparties thereto; (ii) the Cure Amount with respect to any such Purchased Contract; and (iii) the deadline by which any counterparties must file an objection to the proposed assumption and assignment of any Purchased Contract; provided, however, that the inclusion of any Purchased Contract in the Designation of Winning Bid shall not constitute an admission that the subject contract(s) or lease(s) are executory contract(s) or unexpired lease(s) for purposes of Section 365 of the Bankruptcy Code or an agreement to assume or assign such Purchased Contracts.
- b. The Trustee may (i) amend the Designation of Winning Bid at any time prior to the date that is two (2) days before the Sale Hearing to add or remove any Purchased Contracts or Potential Purchased Contracts (collectively, the "Subject Contracts") from the list of Purchased Contracts that are proposed to be assumed by the Trustee and assigned to the Winning Bidder and/or Back-up Bidder, subject to the right of any counterparties to newly-included Subject Contracts to adequate assurance or otherwise object to the assumption and assignment of the Subject Contracts, and (ii) amend the Designation of Winning Bid to remove any previously-designated Purchased Contracts at any time prior to the Closing Date, with such removal being effective immediately without further order of the Court.

Any amendments to the Designation of Winning Bid shall comply with the requirements of these procedures, as applicable; provided, however, that such amendments need not include information related to any previously-designated Subject Contracts unaffected by the amendment.

- c. Each Potential Bidder shall identify in its Bid any and all Executory Contracts the Potential Bidder may wish to designate for assumption and assignment to the Potential Bidder in any Sale; provided, however, the Winning Bidder(s) may amend such designation, consistent with the notice requirements of this Paragraph.
- d. As provided herein, the Trustee shall file and serve the Designation of Winning Bid on each counterparty to any Purchased Contract (and its counsel, if known) that is designated for assumption and assignment under the Winning Bid, among other parties. Such Designation of Winning Bid shall: (i) identify the Winning Bidder and Back-up Bidder; (ii) identify all Subject Contracts designated as Purchased Contracts by the Winning Bidder, subject to the right to amend such designation consistent with these Bidding Procedures; (iii) identify the Cure Amount, if any, the Trustee estimate is required to comply with Section 365(b) and 365(f)(2) of the Bankruptcy Code; and (iv) contain a statement as to the Winning Bidder's ability to perform the Trustee's obligations under the subject Purchased Contracts.
- e. All objections to the proposed assumption and assignment of any Subject Contracts (including with respect to any Cure Amount associated with such Subject Contracts) must: (i) be filed with the Court on or before two calendar days prior to the Sale Hearing, at 12:00 p.m. (prevailing Central time) (the "Contract Assumption Objection Deadline") and served on the Trustee, the U.S. Trustee, and the Consultation party; (ii) identify the Subject Contract(s) to which the objector is party; (iii) describe with particularity the Cure Amount that the objector contends is required under Section 365 of the Bankruptcy Code; (iv) identify the bases of the alleged Cure Amount under the Subject Contract; and (v) attach all documents supporting or evidencing the Cure Amount.
- f. If no objection is filed by the Contract Assumption Objection Deadline, or if the objection fails to comply with the requirements set forth herein, the Cure Amount set forth in the Designation of Winning Bid Notice or Notice of Potential Assumption and Assignment of Executory Contracts, or any amended version thereof, as applicable, shall control and any counterparties to the Subject Contract(s) shall be deemed to waive and shall be forever barred from asserting in any other claim or objection under Section 365 of the Bankruptcy Code, or otherwise, including, without limitation, any objection to the assignability of any of the purchased contracts, other than an objection to adequate assurance of performance under the Subject Contracts pursuant to Section 365(b)(1)(C) of the Bankruptcy Code;

provided, however, that to the extent the Trustee file a supplemental Notice of Potential Assumption and Assignment of Executory Contracts, counterparties to any newly-identified Potential Purchased Contracts shall have no less than five (5) days to object to the Cure Amount listed in such Notice of Potential Assumption and Assignment of Executory Contracts.

- g. To the extent any Cure Amount remains unresolved as of the Sale Hearing, such dispute shall be presented to the Court at the Sale Hearing, or such later date and time as the Trustee, the Winning Bidder, and the objecting party may agree or the Court may order, provided that the pendency of such dispute shall not affect in any way the closing of any proposed Sale or the effectiveness of any assumption and assignment of the subject Executory Contract under the Winning Bid or Back-up Bid, as applicable.

K. Cooperation and Information Sharing

40. The Trustee and his advisors shall consult regularly with the Consultation Party and its third-party professionals regarding the status of the Sale process and any potential Bids and provide any related information that may be reasonably requested by the Consultation Party. However, the Consultation Party shall not be provided Bids or summaries of the material terms of Bids unless it waives its right to credit bid in writing.

L. Return of Deposit

41. Within five (5) business days after the closing of the Sale to the Winning Bidder (“Closing”), the deposits of all unsuccessful bidders shall be refunded, except for any deposits forfeited by a Winning Bidder under the Bidding Procedures. In the event a dispute arises about whether a deposit is refundable or non-refundable, the deposit shall remain in the Escrow Account at no interest pending a resolution of the dispute by the Court. In presenting a Bid, any and all Potential Bidders, including Qualified Bidders, Back-up Bidder(s), and Winning Bidder(s), shall be deemed to consent to the jurisdiction and final adjudication of any and all matters related to the Bid(s) by the Court.

M. Failure to Close

42. The transaction evidenced by the Winning Bid shall close not later than thirty (30) days after entry the Sale Order, but in no event later than June 5, 2023, at 5:00 p.m. (prevailing Central time) (the “Closing Date”), unless the Closing Date is extended in accordance with the Bidding Procedures, at which time the Winning Bidder shall pay the balance of the Winning Bid (the Winning Bid amount less the deposit) into the Escrow Account. In the event a declared Winning Bidder fails to timely perform any of its obligations as set forth above or pursuant to the approved transaction documents:

- a. The declared Winning Bidder shall forfeit all deposits made without regard to the Trustee’s ultimate damages occasioned by such failure; such deposits shall be applied to the Trustee’s damages, if any, and shall not constitute liquidated damages; and, notwithstanding the foregoing, the Trustee and the Estate shall retain all other rights, remedies, claims, counterclaims, and defenses as to the Winning Bidder, including the right to seek equitable or injunctive relief.
- b. Each Back-up Bidder shall keep its final and highest bid open pending a closing of a transaction of the Winning Bid. In the event that a transaction of the Winning Bid is not consummated by the Closing Date (unless the Closing Date is extended), the Back-up Bidder with the Back-up Bid shall be deemed the Winning Bidder without further order of the Court, and such bidder shall be required to close the transaction contemplated in its Back-up Bid within seven (7) days of being deemed the Winning Bidder, but in no event later than June 30, 2023, at 5:00 p.m. (prevailing Central time), unless such deadline is extended in accordance with the Bidding Procedures. Any Back-up Bidder declared a Winning Bidder who fails to timely perform shall forfeit all deposits made without regard to the Trustee’s ultimate damages occasioned by such failure; such deposits shall be applied to the Trustee’s damages, if any, and shall not constitute liquidated damages; and, notwithstanding the foregoing, the Trustee and the Estate shall retain all other rights, remedies, claims, counterclaims, and defenses with respect to such bidder, including the right to seek equitable or injunctive relief.
- c. The Trustee, in consultation with the Consultation Party, may grant any declared Winning Bidder additional time to perform and, to the extent necessary, extend the Closing Date.

43. The Court shall hold a hearing to consider the approval of the Sale pursuant to the Winning Bid or Back-up Bid (the “Sale Hearing”) on **Tuesday, May 2, 2023, at 9:30 A.M.** before the undersigned at the U.S. Bankruptcy Court, 500 Poydras Street, Courtroom B-709, New Orleans, LA 70130. The dial-in number for hearings is 1-504-517-1385, Conference Code 129611. The parties are directed to this Court’s General Order 2021-2 for instructions regarding this Court’s hybrid model plan for conduct of hearings as of October 4, 2021 (<https://www.laeb.uscourts.gov/>). The Trustee shall serve all interested parties with a notice of the Sale Hearing and proposed Sale Order in accordance with applicable rules upon the filing of the Designation of Winning Bid. Objections to the Sale shall be filed no later than two (2) days before the Sale Hearing.

44. For the avoidance of doubt, all objections to approval of the sale of Assets pursuant to 11 U.S.C. §363(f), or on the basis that any such sale is inappropriate as a “sub rosa” plan, or for any other reason, including that the Carve Out as described in paragraph 37, subparagraphs (9) and (10) are insufficient or discriminatory, are reserved and are not prejudiced by this Order.

45. Unless otherwise ordered by the Court, the Trustee is authorized and empowered to take all actions necessary to implement the relief granted in this order.

46. Any period of time prescribed or allowed by this order or the Bidding Procedures shall be computed in accordance with Bankruptcy Rule 9006.

47. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this order.

IT IS FURTHER ORDERED that attached as Exhibit A is a chart summarizing the dates and deadlines for the bid procedures, auction, and sale.

IT IS FURTHER ORDERED that Movant shall serve this Order on the required parties who will not receive a copy through the ECF system pursuant to the FRBP and the LBRs and file a certificate of service to that effect within three (3) days.

New Orleans, Louisiana, December 13, 2022.



MEREDITH S. GRABILL
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Event	Date/ Deadline
Upload Data Room	No later than November 30, 2022
Deadline for Trustee to Upload Form APA and Executory Contracts to Data Room	December 30, 2023
Deadline to Challenge Fannie Mae Claims, Liens, etc./Object to Fannie Mae's Ability to Credit Bid	January 30, 2023
Deadline to Inspect Properties/Due Diligence Period Ends	March 24, 2023
Bid, Credit Bid, and Executory Designation Deadlines	March 30, 2023
Bid Summary Uploaded to Data Room	April 6, 2023
Stalking Horse Bid Designation Deadline	On or before April 10, 2023
Deadline to File Stalking Horse Notice	On or before April 10, 2023
Deadline to Object to Stalking Horse Notice	April 13, 2023
Deadline to Notify Trustee if want to attend Auction	April 17, 2023 (3 days prior to auction)
Deadline for Trustee to Provide Notice of Auction Location and credentials to access auction platform	April 18, 2023 (48 hours prior to auction)
Auction Date	April 20, 2023
Deadline to File the Designation of Winning Bid(s)	As soon as reasonably practical
Deadline to File Amended Designation of Winning Bid(s) to add or remove previously identified executory contracts	No later than 2 days before Sale Hearing
Deadline to object to Sale and Contract Assumption	No later than 5:00 pm two calendar days prior to Sale Hearing
Sale Hearing	May 2, 2023, at 9:30 am
Deadline for Winning Bidder to Close	No later than 30 days after entry of sale order but in no event later than June 5, 2023

Deadline for Back-up Bidder to close	No later than 7 days of being deemed Winning Bidder but in no event later than June 30, 2023
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