IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re: NEWBURY POWER CENTER A-1, L.P., *Debtor*.	)	Chapter 11 Case No. 26-20022-GLT
NEWBURY POWER CENTER A-1, L.P., *Movant*, v. 30 WEST PERSHING, LLC; 84 FINANCIAL LP; ALLEGHENY COUNTY; BEAZER EAST INC.; CARVANA LLC; FUND INVESTMENT 154, LLC; LAFAYETTE CROSSING III, LLC; LAFAYETTE CROSSING IV, LLC; MSP PROPERTIES OF BRIDGEVILLE PA, LP; NEWBURY OFFICE, LLC; NEWBURY PARTNERS, LLC; SOUTH FAYETTE SCHOOL DISTRICT; TF SOUTH FAYETTE LLC; and TOWNSHIP OF SOUTH FAYETTE. *Respondents*.	)	Docket No. __

BIDDING PROCEDURES

On January 5, 2026 (the "**Seller Debtor Petition Date**"), the above-captioned debtor Newbury Power Center A-1, L.P. (the "**Debtor**" or "**Seller**") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101, et seq. (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Western District of Pennsylvania (the "**Court**").

On June 11, 2026, the Court entered the *Order (I)(A) Approving Bidding Procedures for Sale of the Property, (B) Authorizing Designation of a Stalking Horse Bidder, (C) Authorizing Conduct of the Auction and Sale Hearing, (D) Approving Form and Manner of Notice of Sale, Auction, and Sale Hearing, and (E) Approving Assumption and Assignment Procedures; (II) Authorizing the Sale of the Property Free and Clear of Liens, Claims, Interests, and Encumbrances; and (III) Granting Related Relief* [Dkt. No. 111] (the "**Bidding Procedures**

Order"),[1] by which the Court approved the following procedures (these "**Bidding Procedures**"). These Bidding Procedures set forth the process by which the Debtor is authorized to conduct an auction (the "**Auction**") to determine the Transaction that provides the highest or otherwise best offer.

I. Marketing Process

A. Contact Parties.

The Debtor, pursuant to its commercial real estate development and brokering experience, has developed a list of parties whom it believes are interested in, and whom the Debtor reasonably believes would have the financial resources to consummate, a transaction to purchase all or substantially all of the assets of the Debtor (such a transaction, a "**Transaction**"). The list of parties includes strategic investors, real estate developers, and financial investors (collectively, the "**Contact Parties**"). The Debtor will contact (to the extent not already contacted) the Contact Parties to explore their interest in pursuing a Transaction. The Contact Parties may include parties whom the Debtor or its advisors previously contacted regarding a transaction, regardless of whether such parties expressed any interest at such time in pursuing a transaction. The Debtor will continue to discuss and may supplement the list of Contact Parties throughout the marketing process, as appropriate.

The Debtor may distribute (to the extent not already distributed) to each Contact Party and any other interested party an information package consisting of: (i) a copy of the Bidding Procedures, the Bidding Procedures Order, and any other related documents; (ii) a form confidentiality agreement (a "**Confidentiality Agreement**"); and (iii) such other materials as appropriate under the circumstances.

B. Participation Requirements.

To receive due diligence information, including non-public information regarding the Debtor, a party interested in consummating a Transaction (a "**Potential Bidder**") should deliver (or have delivered) to counsel to the Debtor, Campbell & Levine LLC, 310 Grant Street, Suite 1700, Pittsburgh, PA 15219 c/o Alexis Leventhal (aleventhal@camlev.com) (the "**Debtor's Counsel**"), the following documents (collectively, the "**Preliminary Bid Documents**"):

(i) an executed Confidentiality Agreement, to the extent a Potential Bidder has not already executed a Confidentiality Agreement; and

(ii) proof or other documentation acceptable to the Debtor of the Potential Bidder's financial capacity to close a proposed Transaction (or, if the Potential Bidder is an entity formed for the purpose of consummating the Transaction, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtor (with the assistance of its advisors).

[1] Capitalized terms not defined in these Bidding Procedures have the meaning given them in the Bidding Procedures Order.

Until Fund submits a bid, Debtor's Counsel will also provide the Preliminary Bid Documents to Buchanan Ingersoll & Rooney PC, c/o Terry Shulsky, 501 Grant Street, Suite 201, Pittsburgh, PA 15219 (the "**Fund's Counsel**"). For purposes of clarity, notwithstanding any consultation right given to Fund or anything else to the contrary, if Fund submits a bid for the Property, Fund shall not have any consultation rights as otherwise provided in this Bidding Procedures.

Promptly after a Potential Bidder delivers Preliminary Bid Documents, the Debtor, upon consultation with Fund, will determine and notify the Potential Bidder whether such Potential Bidder has submitted acceptable Preliminary Bid Documents so that the Potential Bidder may proceed to conduct due diligence and ultimately submit a Bid (as defined below) and participate in the Auction, as applicable, and will provide copies of any such notices to the Notice Parties. Except as otherwise determined in the Debtor's business judgment, upon consultation with Fund, only those Potential Bidders that have submitted acceptable Preliminary Bid Documents (each, an "**Acceptable Bidder**") may submit Bids.

Beginning on or as soon as is reasonably practicable after the Debtor determines that a Potential Bidder is an Acceptable Bidder, the Debtor will provide such Acceptable Bidder with reasonable due diligence information, as requested by such Acceptable Bidder, as soon as reasonably practicable after such request, and the Debtor shall post substantially all written due diligence provided to any Acceptable Bidder to the Debtor's Counsel. To the extent reasonably practicable, the Debtor's Counsel will also facilitate meetings between any interested Acceptable Bidder and the Debtor's management team, which meetings will proceed in a manner determined by the Debtor, in its reasonable discretion. The due diligence period will end on the Bid Deadline (as defined below), and, subsequent to the Bid Deadline, the Debtor will have no obligation to furnish any due diligence information.

The Debtor will provide access to a form asset purchase agreement and all other documents necessary for consummating the Transaction (collectively, the "**Form Documents**").

The Debtor and its advisors will coordinate all reasonable requests from Acceptable Bidders for additional information and due diligence access; provided that the Debtor may decline to provide such information to Acceptable Bidders who, at such time and in the Debtor's business judgment, have not established, or who have raised doubt, that such Acceptable Bidder intends in good faith to, or has the capacity to, consummate a Transaction.

For any Acceptable Bidder who is a competitor of the Debtor or is affiliated with any competitor of the Debtor, the Debtor reserves the right to withhold, or to delay providing, any diligence materials that the Debtor determines are business-sensitive or otherwise inappropriate for disclosure to such Acceptable Bidder at such time.

Each Acceptable Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtor or its advisors regarding such Acceptable Bidder and its contemplated transaction.

II. <u>Auction Process</u>.

A. Bid Deadline.

An Acceptable Bidder that desires to make a proposal, solicitation, or offer (each, a "**Bid**") shall transmit such proposal, solicitation, or offer via email (in .pdf or similar format) so as to be **<u>actually received</u>** on or before **July 3, 2026** (the "**Bid Deadline**") to Debtor's Counsel.

B. Bid Requirements.

Each Bid by an Acceptable Bidder must be submitted in writing and satisfy the following requirements (collectively, the "**Bid Requirements**"):

1. <u>Purpose</u>. Each Acceptable Bidder must state which executory contracts and unexpired leases the Acceptable Bidder seeks to have assumed and assigned as part of the Transaction and provide information sufficient to demonstrate adequate assurance of future performance under such contracts and leases.

2. <u>Purchase Price</u>. Each Bid must clearly set forth the terms of any proposed Transaction, including and identifying separately any cash and non-cash components of the proposed Transaction consideration, including, for example, certain liabilities to be assumed by the Acceptable Bidder as part of the Transaction (the "**Purchase Price**").

3. <u>Cure Costs</u>. Each Bid must provide for payment of all Cure Costs associated with the Proposed Assumed Contracts (as defined in the Bidding Procedures Order).

4. <u>Deposit</u>. Each Bid must be accompanied by a cash deposit in the amount not less than $50,000.00 to be held in one or more escrow accounts on terms acceptable to the Debtor (the "**Deposit**"); *including* a Secured Creditor who shall have the right to credit bid its claim pursuant to section (C) ("**Right to Credit Bid**") below.

5. <u>Marked Agreement</u>. Acceptable Bidders may, but are not required to use the Form Document. If the Form Document is used, each Bid must include a marked version of the applicable Form Documents, in each case, together with the exhibits and schedules related thereto and any related Transaction documents or other material documents integral to such Bid, pursuant to which the Acceptable Bidder proposes to effectuate the Transaction (collectively, the "**Transaction Documents**").

6. <u>Committed Financing</u>. To the extent that a Bid is not accompanied by evidence of the Acceptable Bidder's capacity to consummate the Transaction set forth in its Bid with cash on hand, each Bid must include committed financing documented to the Debtor's satisfaction that demonstrates that the Acceptable Bidder has received sufficient debt and/or equity funding commitments to satisfy the Acceptable Bidder's Purchase Price and other obligations under its Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, or shall have covenants and conditions acceptable to the Debtor.

7. **No Financing or Diligence Outs**. A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence.

8. **No Bidding Protections**. Each Bid (other than a Stalking Horse Bid, if applicable) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (other than a Stalking Horse Bidder) will be permitted to request, nor be granted by the Debtor, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. By submitting its Bid, each Bidder (other than the Stalking Horse Bidder) is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including pursuant to section 503(b) of the Bankruptcy Code.

9. **Identity**. Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Acceptable Bidder if such Acceptable Bidder is an entity formed for the purpose of consummating the proposed transaction contemplated by such Bid), and the complete terms of any such participation. Each Bid also should include contact information for the specific person(s) and counsel whom the Debtor should contact regarding such Bid.

10. **Authorization**. Each Bid must contain evidence acceptable to the Debtor that the Acceptable Bidder has obtained authorization or approval from its board of directors (or a comparable governing body) with respect to the submission of its Bid and the consummation of the Transaction contemplated in such Bid.

11. **As-Is, Where-Is**. Each Bid must include a written acknowledgement and representation that the Acceptable Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Transaction prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents 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 Transaction or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Bidder's Transaction Documents; and (iv) the Acceptable Bidder did not engage in any collusive conduct and acted in good faith in submitting its Bid.

By submitting its Bid, each Acceptable Bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of the Bidding Procedures and to refrain from submitting a Bid, or seeking to reopen the Auction, after conclusion of the Auction. **The submission of a Bid shall constitute a binding and irrevocable offer to consummate the Transaction reflected in such Bid.**

C. Right to Credit Bid.

Any Qualified Bidder who has a valid and perfected lien on the Property (a "**Secured Creditor**") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims—to the extent not subject to an objection or *bona fide* dispute—within the meaning of section 363(k) of the Bankruptcy Code. With respect to Fund, such Secured Creditor shall be automatically deemed a Qualified Bidder subject to the Bid Requirements. If Fund submits a Qualified Bid, Fund shall be permitted to participate in the Auction and credit bid its judgment balance in the amount of $3,685,118.65 (comprised of the judgment amount of $3,530,177.70 and interest in the amount of $154,940.95 calculated at 6% per annum from April 14, 2025, through the Petition Date), provided, however, that if this Court rules on the pending *Debtor's Objection to Proof of Claim of Fund Investment 154, LLC Filed at Proof of Claim No. 3-1* [ECF No. 92] (the "**Claim Objection**") prior to the Auction, then Fund shall be permitted to credit bid up to an amount equal to the amount of its allowed secured claim. Any credit bid shall be submitted to Debtor's Counsel so actually received on or before **July 10, 2026, at 12:00 p.m. (ET).** Any bid by a Secured Creditor over its allowed secured claim, must be paid in cash.

Any Secured Creditor with a Qualified Bid shall be required to submit the cash deposit described above as well as, if the Winning Bidder, cash sufficient to pay any senior secured liens in the Property, United States Trustee Fees, and Cure Costs and the reasonable, necessary costs and expenses of preserving or disposing of the Property (including costs associated with the Transaction), including all ad valorem property taxes.

D. Designation of Qualified Bidders.

A Bid will be considered a "**Qualified Bid**," and each Acceptable Bidder that submits a Qualified Bid will be considered a "**Qualified Bidder**," if the Debtor, upon consultation with Fund, determines that such Bid:

(i) satisfies the Bid Requirements set forth above, including the Initial Overbid; and

(ii) is reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Winning Bid (as defined below), within a time frame acceptable to the Debtor.

By **July 10, 2026**, the Debtor will notify each Qualified Bidder whether such party is a Qualified Bidder.

If any Bid is determined by the Debtor, upon consultation with Fund, not to be a Qualified Bid, the Debtor will refund such Acceptable Bidder's Deposit on the date that is three (3) business days after the Bid Deadline.

Between the date that the Debtor notifies an Acceptable Bidder that it is a Qualified Bidder and the Auction, the Debtor may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtor, upon consultation with Fund, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase their Purchase Price, or otherwise improve the terms of the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; *provided* that, any Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures.

Notwithstanding anything herein to the contrary, the Debtor, upon consultation with Fund, reserves the right to cooperate with any Acceptable Bidder to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid.

E. Potential Stalking Horse Bid.

The Debtor may, on or before **June 19, 2026** (the "**Stalking Horse Bidder Designation Deadline**") designate a Qualified Bidder that submits a Qualified Bid for the Property as a stalking horse bidder (each a "**Stalking Horse Bidder**"), whose Qualified Bid shall constitute a stalking horse bid (a "**Stalking Horse Bid**" or "**Baseline Bid**") subject to any further necessary approval by this Court as provided herein. The Debtor and the Stalking Horse Bidder, if any, shall execute one or more purchase agreements memorializing the terms of the proposed transaction set forth in the Stalking Horse Bid, which shall be subject to higher or better offers (a "**Stalking Horse APA**"). The Debtor may negotiate potential protections for inclusion in the Stalking Horse APA (the "**Bidding Protections**") and may seek, on an expedited basis, approval of the Bidding Protections from this Court. For purposes of certainty, no Bidding Protections are approved until further Order of this Court.

To the extent the Debtor, consistent with these Bidding Procedures, designates a Stalking Horse Bidder, the Debtor shall file a notice (the "**Stalking Horse Notice**") disclosing: (a) the identity of the Stalking Horse Bidder; (b) the amount of the Stalking Horse Bid; (c) a copy of the Stalking Horse APA; (d) the proposed Bidding Protections, if any; and (e) a declaration in support thereof, which shall disclose any connection between the Debtor and the Stalking Horse Bidder other than that which arises from the Stalking Horse Bid. Objections, if any, to the designation of the Stalking Horse Bidder are due on or before **June 26, 2026, at 5:00 p.m. (prevailing Eastern Time)**.

F. The Auction.

If the Debtor receives two or more Qualified Bids, the Debtor will conduct the Auction to determine the Winning Bidder with respect to the Transaction.

Unless otherwise indicated as provided by the Bidding Procedures Order, the Auction shall take place on **July 14, 2026, at 9:00 a.m. (prevailing Eastern Time)**, either via videoconference or at the offices of Campbell & Levine LLC, 310 Grant Street, Suite 1700, Pittsburgh, PA 15219, or such date and time or location as selected by the Debtor. The Auction shall be conducted in a timely fashion according to the following procedures:

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

Only Qualified Bidders, Fund, the Debtor, and each of its respective legal and financial advisors, and any other parties specifically invited or permitted to attend by the Debtor, shall be entitled to attend the Auction, and the Qualified Bidders shall appear at the Auction in person and may speak or bid themselves or through duly authorized representatives. Except as otherwise permitted by the Debtor, only Qualified Bidders shall be entitled to bid at the Auction.

(ii) **Terms of Overbids.** "**Overbid**" means any Bid made at the Auction by a Qualified Bidder subsequent to the Debtor's announcement of the Baseline Bid. Each Overbid must comply with the following conditions:

a. Minimum Overbid Increment. The initial overbid above the Stalking Horse Bid must exceed the value of the Stalking Horse Bid by $100,000 (the "**Baseline Overbid**") as determined by the Debtor, plus an amount equal to any break-up fee. Any Overbid following the Baseline Overbid or following any subsequent Prevailing Highest Bid (as defined below) shall be in increments of value equal to $100,000 of the Baseline Overbid, unless otherwise determined by the Debtor in an exercise of its business judgment, including the factors identified in (g)(ii) above.

b. Conclusion of Each Overbid Round. Upon the solicitation of each round of Overbids, the Debtor, upon consultation with Fund, may announce a deadline (as the Debtor may, in its business judgment, extend from time to time, the "**Overbid Round Deadline**") by which time any Overbids must be submitted to the Debtor.

c. Overbid Alterations. An Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable in the aggregate to the Debtor's estate than any prior Qualified Bid or Overbid, as determined in the Debtor's business judgment, upon consultation with Fund, but shall otherwise comply with the terms of these Bidding Procedures.

d. Announcing Highest Bid. Subsequent to each Overbid Round Deadline, the Debtor shall announce whether the Debtor has identified an Overbid as being higher or otherwise better than the Baseline Bid, in the initial Overbid Round, or, in subsequent rounds, the Overbid previously designated by the Debtor as the prevailing highest or otherwise best Bid (the "**Prevailing Highest Bid**"). The Debtor shall describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtor as the Prevailing Highest Bid, as well as the value attributable by the Debtor to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria.

(iii) **Consideration of Overbids.** The Debtor reserves the right, upon consultation with Fund, in its business judgment, to adjourn the Auction one or more times, to, among other things, (1) facilitate discussions between the Debtor and Potential Bidders, (2) allow Qualified Bidders to consider how they wish to proceed, and (3) provide Qualified Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor, in its business judgment, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed Transaction at the prevailing

Overbid amount.

(iv) **Closing the Auction.** The Auction shall continue until the Debtor, upon consultation with Fund, determines that, in its business judgment, only one Qualified Bid is the highest or otherwise best Qualified Bid. Such Qualified Bid shall be declared the "**Winning Bid**" and such Qualified Bidder, the "**Winning Bidder**," at which point the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then-Prevailing Highest Bid. Such acceptance by the Debtor, upon consultation with Fund, of the Winning Bid is conditioned upon approval by the Court of the Winning Bid. For the avoidance of doubt, nothing in these Bidding Procedures shall prevent the Debtor from exercising its fiduciary duties under applicable law. As soon as reasonably practicable after closing the Auction, the Debtor shall finalize definitive documentation to implement the terms of the Winning Bid, and, as applicable, cause such definitive documentation to be filed with the Court. To the extent the Winning Bidder is not the Stalking Horse Bidder, the documentation filed with the Court will include a redline of the Winning Bid and the Bid of the Back-Up Bidder (as defined below) as compared to the Stalking Horse Bid.

(v) **No Collusion; Good-Faith *Bona Fide* Offer**. Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that (1) it has not engaged in any collusion with respect to the bidding and (2) its Qualified Bid is a good-faith *bona fide* offer and it intends to consummate the proposed Transaction if selected as the Winning Bidder

G. Back-Up Bidder.

(i) Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next-highest or otherwise second-best Qualified Bid at the Auction, as determined by the Debtor in the exercise of its business judgment, shall be required to serve as a Back-Up bidder (the "**Back-Up Bidder**") until such time that the Transaction is consummated through confirmation of the Plan, and each Qualified Bidder shall agree and be deemed to agree to be the Back-Up Bidder if so designated by the Debtor.

(ii) The identity of the Back-Up Bidder and the amount and material terms of the Qualified Bid of the Back-Up Bidder shall be announced by the Debtor, at the conclusion of the Auction at the same time the Debtor announces the identity of the Winning Bidder. The Back-Up Bidder shall be required to keep its Qualified Bid (or if the Back-Up Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until such time that the Transaction is consummated through confirmation of the Plan. The Back-Up Bidder's Deposit shall be held in escrow pending confirmation of the Plan.

(iii) If the Winning Bidder fails to consummate the approved Transaction contemplated by its Winning Bid, the Debtor may select the Back-Up Bidder as the Winning Bidder, and such Back-Up Bidder shall be deemed a Winning Bidder for all purposes. The

Debtor, upon consultation with Fund, will be authorized, but not required, to consummate the Transaction contemplated by the Bid of such Back-Up Bidder without further order of the Court or notice to any party. In such case, the defaulting Winning Bidder's Deposit shall be forfeited to the Debtor's estate, and the Debtor, on behalf of itself and its estate, specifically reserves the right to seek all available remedies against the defaulting Winning Bidder, including, but not limited to, specific performance.

H. **"As-Is, Where-Is".**

Consummation of any Transaction will be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtor or its estate, except as specifically accepted or agreed to by the Debtor. Except as specifically accepted or agreed to by the Debtor, all of the Debtor's right, title, and interest in and to the respective assets will be transferred to the Winning Bidder free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests in accordance with sections 363(f) and l123(a)(5)(D) of the Bankruptcy Code.

By submitting a Bid, each Acceptable Bidder will be deemed to acknowledge and represent that it (A) has had an opportunity to conduct adequate due diligence regarding the Transaction prior to making its Bid, (B) has relied solely on its own independent review, investigation, and inspection of any document, including executory contracts and unexpired leases, in making its Bid, (C) did not rely on or receive from any party any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, with respect to the Transaction or the completeness of any information provided in connection with the Transaction or the Auction, and (D) the Acceptable Bidder did not engage in any collusive conduct and acted in good faith in submitting its Bid.

III. **Reservation of Rights**

The Debtor, upon consultation with Fund, reserves its right to modify these Bidding Procedures in its business judgment, in any manner that is not inconsistent with prior orders of the Court or applicable law and will best promote the goals of these Bidding Procedures, or impose, at or prior to the Auction, additional customary terms and conditions on a Transaction, including: (i) extending the deadlines set forth in these Bidding Procedures; (ii) adjourning the Auction at the Auction; (iii) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (iv) canceling the Auction; and (v) rejecting any or all Bids or Qualified Bids. Nothing in these Bidding Procedures shall abrogate the fiduciary duties of the Debtor.

IV. **Consent to Jurisdiction**

All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the construction, and enforcement of these Bidding Procedures.

V. <u>Return of Deposit</u>

The Deposit of the Winning Bidder shall be applied to the Purchase Price of such Transaction at closing. The Deposits for each Qualified Bidder shall be held in the client trust account of Debtor's Counsel and shall be returned (other than with respect to the Winning Bidder and the Back-Up Bidder) on the date that is three (3) business days after the Auction.

If a Winning Bidder fails to consummate a proposed Transaction because of a breach by such Winning Bidder, the Debtor will not have any obligation to return the Deposit deposited by such Winning Bidder, which may be retained by the Debtor as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtor and its estate, and the Debtor shall be free to consummate the proposed Transaction with the applicable Back-Up Bidder without the need for an additional hearing or order of the Court.

VI. <u>No Modification of Bidding Procedures</u>

These Bidding Procedures may not be modified except as permitted by these Bidding Procedures.

[Remainder of page intentionally left blank.]