

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:

3324 N. CLARK STREET, LLC,

Debtor

Chapter 11

Case No. 16-30934

Hon. Donald R. Cassling
Room 619

Hearing Date: November 15, 2016
Hearing Time: 9:30 a.m.

ORDER (I) APPROVING BIDDING PROCEDURES FOR THE SALE OF THE DEBTOR'S PROPERTY; (II) EMPLOYMENT OF BROKER IN CONNECTION THEREWITH; (III) SCHEDULING A FINAL HEARING; AND (IV) GRANTING RELATED RELIEF

Upon the *Motion for Order (I) Approving Sale Procedures for the Sale of the Debtor's Interest in Real Property; (II) Authorizing the Sale Of The Debtor's Interest in Real Property; (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (V) Granting Related Relief* (the "Motion") [D.R. 20], of 3324 N. Clark Street, LLC, debtor and debtor in possession herein (the "Debtor") for the issuance and entry of an order, among other things, (I) approving bidding procedures for the sale of certain real and personal property located 3324 N. Clark Street, Chicago, Illinois (the "Property"); (II) authorizing the sale of the Debtor's interests in the Property, and authorizing the Debtor's assumption and assignment of certain executory contracts and unexpired leases in connection with the sale of the Property; and (III) granting the Debtor such other and further relief as is just and proper; and the Court having conducted an initial hearing on the Motion on November 15, 2016 at 10:00 a.m. prevailing Central Time (the "Bidding Procedures Hearing"). The Court having considered the Motion, pursuant to Sections 105, 363 and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Local Bankruptcy Rules for the

United States Bankruptcy Court for the Northern District of Illinois, which seeks two separate orders of the Court in connection with the proposed sale of the Property.

First, the Debtor seeks entry of this Order (the "Bidding Procedures Order"), which, among other things, (i) approves the Bidding Procedures (defined below) in connection therewith (including a scheduled auction), (ii) approves the assumption of certain executory contracts and unexpired leases; and (iii) sets a date and time to conduct the Sale Hearing (defined below). Second, following the Sale Hearing, the Debtor will seek the entry of a "Sale Order" which will approve the sale of the Property to the highest and/or best bidder at the Auction and the assignment to the Winning Bidder of certain unexpired leases pursuant to the sale of the Property.

This Bidding Procedures Order considers, among other things, the Bidding Procedures attached hereto as Exhibit "1" for the sale of the Property, as contemplated by the Stalking Horse Agreement.

The Court having conducted the Bidding Procedures Hearing, at which time all interested parties were offered an opportunity to be heard with respect to entry of the Bidding Procedures Order; the Court having reviewed and considered (i) the Motion and the exhibits thereto, (ii) the Bidding Procedures attached hereto as Exhibit "1", (iii) any objections to the Bidding Procedures, (iv) the Sale Notice attached hereto as Exhibit "2", (v) the arguments of counsel made, and the evidence proffered or adduced, at the Bidding Procedures Hearing; and it appearing that the relief requested in the Motion is reasonable and in the best interests of the Debtor's estate, its creditors and other parties-in-interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The Court has jurisdiction over the Motion, the underlying sale transaction and the Stalking Horse Agreement pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue of this case and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. The Debtor has articulated good and sufficient reasons for, and the best interests of the estate, creditors and other parties in interest will be served by, this Court granting that portion of the relief

requested in the Motion pertaining to approval of: (1) the Bidding Procedures and the auction contemplated therein; and (2) the form, timing and manner of notice of the proposed sale, the Bidding Procedures, the notice procedures ("Notice Procedures") set forth herein below and the other matters described herein, including the form of notice of the proposed sale attached hereto as Exhibit "2" (the "Sale Notice").

C. Under the circumstances, the Bidding Procedures constitute a reasonable, sufficient, adequate and proper means to provide potential competing bidders with an opportunity to submit and pursue higher and better offers for all or substantially all of the Property.

D. The Debtor has articulated good and sufficient reasons for, and the best interests of the estate and stakeholders will be served by this Court scheduling a Sale Hearing to consider entry of the Sale Order, including approval of the sale transaction and the transfer of the Property to the Winning Bidder as may emerge at the Auction free and clear of all Claims, pursuant to Section 363(f) of the Bankruptcy Code.

E. The Sale Notice is reasonably calculated to provide parties in interest with proper notice of the potential sale of the Property, the related Bidding Procedures, the Sale Hearing, the sale transaction(s) and related implications on creditors and other parties in interest.

F. The Motion and this Bidding Procedures Order comply with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules.

G. Due, sufficient and adequate notice of the relief granted herein has been given to parties in interest.

H. Any finding of fact that would more appropriately be described as a conclusion of law shall be deemed to be a conclusion of law.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, CONCLUDED AND DECREED AS FOLLOWS:

1. The Motion is GRANTED to the extent set forth herein.

2. All objections to entry of the Bidding Procedures Order that have not been withdrawn, waived or settled as announced to the Court at the Bidding Procedures Hearing or by stipulation filed with the Court are overruled except as otherwise set forth herein.

3. The Bidding Procedures, which are attached hereto as Exhibit "1" and incorporated herein by reference, are hereby approved in all respects and shall govern all bids and bid proceedings relating to the sale of the Property pursuant to the terms of the Stalking Horse Agreement.

4. The failure to specifically include or reference any particular provision of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such procedure, it being the intent of the Court that the Bidding Procedures be authorized and approved in their entirety.

5. Any person wishing to submit a bid or offer for the Property, or desiring to participate in the Auction in any respect, must do so in accordance with the terms of the Bidding Procedures.

6. The Wintrust Bank is hereby deemed to be a Qualified Bidder (as defined in the Bidding Procedures) for all purposes and in all respects with regard to the Bidding Procedures, and the Wintrust Bank's credit bidding rights under Section 363(k) are hereby preserved and affirmed.

7. The auction for the sale of the Property (the "Auction") shall be held on January 6, 2017, or at such other time as may be designated by the Broker (following consultation with the Debtor and the Bank), pursuant to the terms and conditions set forth in the Bidding Procedures to determine the Winning Bidder.

8. The deadline for objecting to the approval of the sale of the Property pursuant to the terms of the Stalking Horse Agreement, or to such higher and/or better offeror as may appear at the Auction and be deemed to be the Winning Bidder (other than an objection to the proposed assumption and assignment of the Assumed Contracts or to any proposed Cure Costs), or the rejection of any Rejected Contract, including the sale of the Property free and clear of all Claims pursuant to Section 363(f) of the Bankruptcy Code, shall be February 1, 2017 (the "Objection Deadline") for all parties in interest. The failure of any objecting person or entity to timely file its objection shall be a bar to the

assertion, at the Sale Hearing or thereafter, of any objection to the Motion, or the consummation and performance of the sale of the Property contemplated by the Stalking Horse Agreement.

9. The Court shall conduct the Sale Hearing on February 7, 2017, at 10:00 a.m., prevailing Central Time, at which time the Bankruptcy Court will consider approval of the sale of the Property pursuant to the terms of the Stalking Horse Agreement, or to such higher and/or better offeror as may appear at the Auction and be deemed to be the Winning Bidder. The Sale Hearing may be adjourned or rescheduled with notice by an announcement of the adjourned date at the Sale Hearing.

10. The Debtor is authorized to and directed to comply with his obligations and undertakings under the Bidding Procedures and to execute the Stalking Horse Agreement.

11. The manner of notice of the proposed sale, the Bidding Procedures and the Sale Hearing as set forth in this paragraph are approved in all respects. In particular, no other or further notice of the proposed sale, the Bidding Procedures and the Sale Hearing shall be required except as follows: (a) within two business days after entry of this Bidding Procedures Order (the "Mailing Deadline"), the Debtor shall serve the Sale Notice by first-class mail, postage prepaid.

12. No person or entity shall be entitled to any expense reimbursement, break-up fees, "topping," termination or other similar fee or payment in connection with the Bidding Procedures.

13. Unless expressly set forth herein all time periods set forth in this Bidding Procedures Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

14. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062, 9014 or otherwise, the terms and conditions of this Bidding Procedures Order shall be immediately effective and enforceable upon its entry.

15. The Debtor is authorized and empowered to take such steps and do such other things as may be necessary to implement and effect the terms and requirements established and relief granted in this Order.

16. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

17. Any conclusion of law that would more appropriately be described as finding of fact shall be deemed to be finding of fact.

Dated: Chicago, IL

DEC 30 2016

Donald R. Cassling
UNITED STATES BANKRUPTCY JUDGE *Smf*

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:

3324 N. CLARK STREET, LLC,

Debtor

Chapter 11

Case No. 16-30934

Hon. Donald R. Cassling
Room 619

BIDDING PROCEDURES

Set forth below are the bidding procedures (the "Bidding Procedures") to be employed in connection with that certain "Purchase and Sale Agreement" ("Purchase Agreement"), pursuant to which the any Qualified Bidder (as defined below) may acquire the Seller and the Debtor's interests in the property and improvements located at 3324 N. Clark Street, Chicago, Illinois ("Property"). The Debtor shall obtain the entry of an order of the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division ("Court"), as "stalking horse" bidder under the Purchase Agreement, which, among other things (a) approves the sale of the Property under the terms of the Purchase Agreement, or to such other better and/or higher offeror as may appear at the Auction (defined below), (b) approves the within Bidding Procedures, (c) approves the form and manner of the sale notice and bidding procedures notice, (d) schedules a Sale Hearing (as defined below), and (e) approves procedures for the assumption and, if necessary, assignment of executory contracts and unexpired leases. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Purchase Agreement.

1. Assets to be Sold. The Debtor shall offer for sale certain of the property and assets (the "Asset Sale") of the Debtor's interests in the Property as set forth more fully in the Purchase Agreement (collectively the "Acquired Property").

2. Due Diligence. In order to conduct due diligence, any potential bidder ("Potential Bidder"): (a) must deliver an executed confidentiality agreement in form and substance

acceptable to the Debtor; and (b) must be able, as determined by the Debtor, to consummate a transaction based upon the Asset Sale, as applicable, if selected as the successful bidder. A Potential Bidder will have the opportunity to conduct reasonable due diligence through and including the Bid Deadline (defined below). The Debtor and its representatives shall not be obligated to furnish any due diligence information after the Bid Deadline.

3. Qualifying Bids. Any Potential Bidder that wishes to participate in the bidding process must become a "Qualifying Bidder." Wintrust Bank is deemed a Qualifying Bidder for all purposes. To be deemed a "Qualifying Bidder," a bid must be received from a Qualifying Bidder by a date no later than the Bid Deadline that:

(a) states that such Qualifying Bidder offers to purchase all or substantially all of the Property upon the terms and conditions substantially as set forth in the Purchase Agreement;

(b) is accompanied by a clean and duly executed purchase agreement (the "Modified Purchase Agreement") and a marked Modified Asset Purchase Agreement reflecting any variations from the Purchase Agreement;

(c) states that such Qualifying Bidder is financially capable of consummating the transactions contemplated by the Modified Purchase Agreement, and provides written evidence satisfactory to the Debtor demonstrating that such bidder has the financial ability to consummate the purchase of all of the Property;

(d) contains such financial and other information to allow the Debtor, to make a reasonable determination as to the Qualifying Bidder's financial and other capabilities to consummate the transactions contemplated by the Modified Purchase Agreement, including, without limitation, such financial and other information setting forth adequate assurance of future performance under contracts and leases to be assumed pursuant to section 365 of the Bankruptcy Code in a form requested by the Debtor to allow the Debtor to serve, within one (1) business day after such receipt, such information on counter-parties to any contracts or leases

being assumed or assumed and assigned in connection with the proposed sale that have requested, in writing, such information;

(e) states that such Qualifying Bidder's offer is irrevocable until the closing of the Asset Sale if such Qualifying Bidder is the Winning Bidder (defined below);

(f) identifies with particularity each and every executory contract and unexpired lease, the assumption and, as applicable, assignment of which is a condition to closing;

(g) does not request or entitle such Qualifying Bidder to any break-up fee, expense reimbursement, or similar type of payment;

(h) fully discloses the identity of each entity that will be bidding in the Asset Sale or otherwise participating in connection with such bid, and the complete terms of any such participation;

(i) does not contain any financing contingencies of any kind; (x) provides for expiration of any due diligence contingency on or before the Auction Date (as defined below); and (y) contains evidence that the Qualifying Bidder has received debt and/or equity funding commitments or has financial resources readily available sufficient in the aggregate to consummate the Asset Sale, which evidence is reasonably satisfactory to the Debtor;

(j) includes 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 Modified Purchase Agreement; and

(k) provides a purchase deposit equal to ten percent (10%) of the purchase price contained in the Modified Purchase Agreement.

A competing bid that satisfies all the above requirements shall constitute a "Qualifying Bid".

4. Bid Deadline. A Qualifying Bidder that desires to make a bid shall deliver a written or electronic copy of its bid to counsel to the Debtor, Weissberg and Associates, Ltd., Attn: Ariel Weissberg, Esq., 401 S. LaSalle Street, Suite 403, Chicago, IL 60605, so as to be actually received no later than two (2) business days before the Auction (defined below) (“Bid Deadline”).

5. Evaluation of Qualifying Bids. The Debtor shall make a determination regarding whether a bid is a Qualifying Bid and shall notify bidders whether their bids have been determined to be qualified by a date no later than two (2) days prior to the Auction Date. Prior to the Auction (as defined below), the Debtor shall determine, in its reasonable judgment, which of the Qualifying Bids is likely to be the highest or best.

6. No Qualifying Bids. If no timely, conforming Qualifying Bids are submitted by the Bid Deadline, the Debtor shall not hold the Auction and shall proceed to a closing of the sale transaction contemplated by the Stalking Horse Agreement.

7. Auction. In the event that the Debtor timely receives one or more Qualifying Bids other than the Purchase Agreement, the Debtor shall conduct an auction at the Court (the “Auction”) on such date as the Court may set in the Bidding Procedures Order (the “Auction Date”). The Auction shall be governed by the following procedures:

- (a) only the Qualifying Bidders shall be entitled to make any bids at the Auction;
- (b) Qualifying Bidders shall appear in person at the Auction, or through a duly authorized representative;
- (c) bidding shall commence at the amount of the highest Qualifying Bid submitted by the Qualifying Bidders prior to the Auction;
- (d) Qualifying Bidders may then submit successive bids in increments of at least twenty-five thousand dollars (\$25,000) higher than the preceding bid; provided, however, that

the Debtor may alter the minimum bid increments in its sole and absolute discretion following consultation with the Bank;

(e) The Bank may make one or more credit bids pursuant to section 363(k) of the Bankruptcy Code;

(f) all Qualifying Bidders shall have the right to submit additional bids and make additional modifications to the Purchase Agreement or Modified Purchase Agreement at the Auction, provided that any such modifications to the Purchase Agreement or Modified Purchase Agreement on an aggregate basis and viewed in whole, shall not be less favorable to the Debtor than the terms of the Purchase Agreement;

(g) the Auction shall continue until there is only one offer that the Debtor determines subject to Court approval, is the highest or best from among the Qualifying Bids submitted at the Auction (the "Winning Bid"). In making this decision, the Debtor shall consider, without limitation, the amount of the purchase price, the form of consideration being offered, the likelihood of the bidder's ability to close a transaction and the timing thereof, the number, type and nature of any changes to the Purchase Agreement requested by each bidder, and the net benefit to the Debtor's estate. The bidder submitting such Winning Bid shall become the "Winning Bidder," and shall have such rights and responsibilities of the purchaser, as set forth in the applicable Purchase Agreement or Modified Purchase Agreement; and

(h) within one (1) day after adjournment of the Auction, the Winning Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Winning Bid was made.

8. Sale Hearing. The Winning Bid will be subject to approval by the Court. The hearing to approve the Winning Bid (the "Sale Hearing") shall take place at a date, time and place as directed by the Court.

9. Return of Deposits. All deposits shall be returned to each Qualifying Bidder not selected by the Debtor as the Winning Bidder no later than five (5) business days following the conclusion of the Sale Hearing.

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:

3324 N. CLARK STREET, LLC,

Debtor

Chapter 11

Case No. 16-30934

Hon. Donald R. Cassling
Room 619

**NOTICE OF (A) THE PROPOSED SALE OF THE DEBTOR'S
INTERESTS IN REAL PROPERTY AND OPPORTUNITY TO
OVERBID; (B) THE PROPOSED ASSUMPTION AND ASSIGNMENT
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED
LEASES; AND (C) PROPOSED RELATED RELIEF**

1. The above-captioned debtor ("Debtor") has filed a voluntary petition under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Illinois (Eastern Division) (the "Bankruptcy Court").
2. On October 24, 2016, the Debtor filed a motion with the Bankruptcy Court (the "Sale Motion") seeking, among other things, (a) authority to sell the estate's interests in the real property located at 3324 N. Clark Street, Chicago, Illinois, and all personal property assets related thereto (collectively, the "Property") free and clear of all liens, claims, interests and encumbrances (the "Sale Transaction"); (b) approval of certain procedures (the "Bidding Procedures") for the solicitation of bids with respect to the Sale Transaction; (c) authority to assume and assign certain executory contracts and unexpired leases in connection with the Sale Transaction; and (d) the scheduling of a final hearing with the Bankruptcy Court for approval of the Sale Transaction (the "Sale Hearing"). All terms not defined herein shall have the meaning given them in the Sale Motion.
3. A hearing on the Bidding Procedures was held before the Bankruptcy Court on November 15, 2016, after which the Bankruptcy Court entered an order, among other things, approving the Bidding Procedures [Docket No. ___] (the "Bidding Procedures Order").
4. A copy of the Bidding Procedures Order and the Bidding Procedures (attached to the Bidding Procedures Order as Exhibit A) are attached hereto as Exhibit 1. The Bidding Procedures Order

establishes the Bidding Procedures that govern the manner in which the Property is to be sold. All bids must comply with the Bidding Procedures and be submitted so as to be received not later than 5:00 p.m., prevailing Central Time, on January 2, 2017.

5. The Sale Hearing currently is scheduled to be conducted on February 7, 2017, at 10:00 a.m. prevailing Central Time, at the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, located at 219 South Dearborn, Chicago, IL, before the Honorable Donald R. Cassling, United States Bankruptcy Judge, to consider the approval of the Purchase Agreement (or any higher and better offer by a Qualifying Bidder in accordance with the Bidding Procedures. If the Buyer is the Winning Bidder, the Debtor will be seeking entry of the Sale Order substantially in the form of that accompanying the Sale Motion. The Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the Sale Hearing.

6. A copy of the Purchase Agreement and the Sale Motion (including the proposed Sale Order) may be obtained by (a) sending a written request to counsel to the Debtor at the address shown in paragraph 9 below.

7. OBJECTIONS TO ANY RELIEF REQUESTED IN THE SALE MOTION, INCLUDING THE DEBTOR'S REQUEST TO APPROVE THE SALE OF THE PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES TO THE BUYER OR ANOTHER WINNING BIDDER (EACH, AN "OBJECTION"), MUST BE MADE IN WRITING, FILED WITH THE BANKRUPTCY COURT, AND SERVED SO AS TO BE ACTUALLY RECEIVED BY 4:00 P.M. (PREVAILING CENTRAL TIME) ON FEBRUARY 1, 2017 FOR ALL PARTIES IN INTEREST; PROVIDED, HOWEVER, THAT IF A DETERMINATION IS MADE AT THE SALE HEARING THAT THE WINNING BIDDER IS A BIDDER OTHER THAN THE BUYER, PARTIES IN INTEREST MAY OBJECT SOLELY TO SUCH DETERMINATION AT THE SALE HEARING.

8. ANY OBJECTION MUST BE SERVED IN ACCORDANCE WITH PARAGRAPH 8 ABOVE ON EACH OF THE FOLLOWING PARTIES:

Counsel to the Debtor:

Ariel Weissberg, Esq.
WEISSBERG AND ASSOCIATES, LTD.
401 S. LaSalle Street, Suite 403
Chicago, IL 60605

Tel: 312.663.0004
Fax: 312.663.1514

9. The Purchase Agreement contemplates, and the Sale Order, if approved, shall authorize the assumption and assignment of various executory contracts and unexpired leases that are the property of the Debtor (collectively, the "Assumed Contracts"). In accordance with the Bidding Procedures Order, additional individual notices setting forth the specific Assumed Contracts (or groups thereof) to be assumed by the Debtor and assigned to the Buyer and the proposed cure amounts for such contracts will be given to all counterparties to Assumed Contracts.

10. The failure of any person or entity to file an Objection on or before the Objection Deadline (February 1, 2017) shall be deemed a consent to the Sale Transaction contemplating the sale of the Property to the Buyer or another Winning Bidder as may appear at the Auction and the other relief requested in the Sale Motion, and be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Bidding Procedures, the Sale Motion, the Auction, the sale of the Property, the Debtor's consummation and performance of the Purchase Agreement or other agreement with a different Winning Bidder (including in any such case, without limitation, the transfer of the Property free and clear of all liens, claims and encumbrances).

11. This Notice is subject to the full terms and conditions of the Sale Motion, the Bidding Procedures Order and the Bidding Procedures, which shall control in the event of any conflict. Parties in interest are encouraged to review such documents in their entirety and consult an attorney if they have questions or want advice.

DATED this day of _____, 2016.

Ariel Weissberg, Esq.
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