

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
Greenbelt Division**

In re:

THE CONDOMINIUM ASSOCIATION OF
THE LYNNHILL CONDOMINIUM,

Debtor.¹

Case No. 18-10334

Chapter 11

**DEBTOR’S MOTION FOR AN ORDER (I) APPROVING
AHH16 DEVELOPMENT, LLC AS “STALKING HORSE” BY
APPROVING THE BREAK-UP FEE AND EXPENSE REIMBURSEMENT
(II) APPROVING AUCTION AND BIDDING PROCEDURES AND
(III) GRANTING OTHER RELATED RELIEF**

Pursuant to sections 105, 363 and 503 of the U.S. Bankruptcy Code,² Rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 6004-1(c),³ the Condominium Association of the Lynnhill Condominium (the “Debtor”), respectfully requests entry of an order approving AHH16 Development, LLC (“AHH”) as “stalking horse” by approving the break-up fee and expense reimbursement agreed to by the Debtor in the Commitment and the PSA (each defined below), and if the Court orders a chapter 11 auction of the Property, then approving auction and bidding procedures and granting related relief (the “Motion”).

¹ The Debtor’s federal identification number is 52-0993760.

² 11 U.S.C. §§ 101–1532 (2012) (the “Bankruptcy Code”).

³ Unless otherwise indicated, section references are to the Bankruptcy Code, rule references are to the Bankruptcy Rules, and local rule references are to the Local Bankruptcy Rules of the U.S. Bankruptcy Court for the District of Maryland.



Jurisdiction

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. § 1408.

Background

A. The Debtor

2. On January 10, 2018 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

3. The Debtor continues to manage and preserve its property as debtor-in-possession pursuant to sections 1107(a) and 1108. No trustee, examiner or committee has been appointed in this case.

4. General information about the Debtor, its assets and liabilities, and the events leading to this bankruptcy case are detailed in the *Declaration of Stanley Briscoe in Support of First Day Motions* [Doc. 11] (the “Briscoe Declaration”).

5. The Debtor is an unincorporated condominium association owning and controlling certain real estate, amenities and improvements (including residential units) located at 3103 and 3107 Good Hope Avenue, Temple Hills, Maryland 20748 (the “Property”).

6. The Debtor was to be funded by monthly condominium fees collected from residents of the Property. Briscoe Declaration at ¶ 7. The Debtor’s ability to collect condominium fees from residents became increasingly difficult over the years affecting the Debtor’s ability to pay for property insurance and utilities, and preventing the Debtor from making necessary repairs and capital improvements to the Property. Briscoe Declaration at ¶ 7. As a result, the Property’s condition deteriorated significantly, to the point that utilities were

terminated on more than one occasion, and by mid-2017 the Property was approximately 40% vacant. Briscoe Declaration at ¶ 18. Prince George's County (the "County") eventually found the Property uninhabitable and threatened condemnation. Briscoe Declaration at ¶ 19. By the fall of 2017, utilities were conclusively terminated and the Property was completely vacated and abandoned. Briscoe Declaration at ¶ 18.

B. The Circuit Court Judgement and Pre-Bankruptcy Sale Process

7. To address the issues confronting the Debtor, the County and other parties in interest, on October 4, 2017, the Circuit Court for Prince George's County (the "Circuit Court") entered a judgment and order authorizing the Debtor to, among other things, (i) conduct a sale process and convey the Property, including through the chapter 11 bankruptcy process, (ii) engage professionals, including real estate brokers and advisors, to assist the Debtor in consummating a sale of the Property, and (iii) encumber the Property with first-priority liens to obtain financing to pay for insurance and the expenses associated with documenting, seeking bankruptcy court approval of, and closing the sale of the Property. Briscoe Declaration at ¶ 20.

8. On September 24, 2017, after interviewing approximately a half-dozen brokers, the Debtor agreed to retain Transwestern as real estate broker to develop and implement a marketing and sale process to obtain the highest and best offer for the Property. Briscoe Declaration at ¶ 23.

9. Transwestern launched a vigorous marketing process following its engagement by the Debtor. Among other things, Transwestern prepared and sent marketing materials to over 3,500 parties, provided interested parties access to a "data room," and gave 19 tours of the Property. *See Declaration of Robin Williams in Support of First Day Motions* [Doc.

14] (the “Williams Declaration”) at ¶ 12.⁴ Transwestern then made an initial request for offers, setting November 17, 2017 as the offer deadline. Williams Declaration at ¶ 12. Transwestern received nine initial offers ranging from \$1 million to \$13.2 million; in the final round of bidding, Transwestern received five offers ranging from \$7 million to \$13.2 million. Williams Declaration at ¶ 13.

C. The Selection of AHH as the Highest Pre-Bankruptcy Bidder

10. AHH’s offer was the best and highest offer at \$13.2 million (subject to, among other things, title unification and confirmation of a plan providing for the free-and-clear sale of the Property), with a commitment to advance \$400,000.00 pre-petition to fund expenses related to the Property and the commencement of this bankruptcy case, and to provide debtor-in-possession financing to underwrite the chapter 11 plan-confirmation and sale process. Williams Declaration at ¶ 15.

D. AHH Agrees to Underwrite the Sale Process Pursuant to the Commitment

11. Following completion of a ten-day due diligence period (which no other bidder agreed to), on or about December 18, 2017, AHH and the Debtor executed the *Amended Commitment Letter of AHH16 Development, LLC or its Designee to Be Purchaser of the Property and Post-Petition Secured Lender in Connection with Lynnhill Condominium Bankruptcy Case* (the “Commitment”) memorializing both AHH’s offer to purchase the Property and agreement to serve as the Debtor’s pre- and post-petition secured lender.⁵ Briscoe Declaration at ¶ 26.

⁴ At the January 12 hearing as discussed below, both the Williams Declaration and the Briscoe Declaration were admitted into evidence. *See infra* ¶ 19. Parties were given the opportunity to cross-examine Mr. Williams and Mr. Briscoe but chose not to.

⁵ AHH will receive a \$1 million credit towards the purchase price for certain life, health and safety requirements of the County in connection with rehabbing the Property that AHH uncovered during AHH’s due diligence.

12. Given that (a) the Property was vacant, nearly-condemned, and deteriorating by the day, (b) winter was approaching, (c) the Property had thrice been through chapter 11 (where it could have been sold), (d) real estate developers had expressed interest in the Property for years, and knew that at least informally, the Property was for sale, (e) Transwestern conducted a thorough two-month sale process and AHH's proposal emerged as superior in pricing and presented the only real borrowing option, and (f) AHH agreed to a ten-day due diligence period, whereafter it would be bound to purchase the Property, the Debtor agreed in the Commitment to sell the Property to AHH through an expedited chapter 11 process without an auction and bidding procedures, unless ordered by the Court.

13. If the Court ordered an auction of the Property, then the Debtor and AHH agreed, in the Commitment, that the auction would be conducted pursuant to a "Bid Procedures Order," that would provide for, among other things:

- a. qualified competing bidders (i) using the form of AHH's bid documents, (ii) being bound to their bid in the same fashion as AHH without material deviation, and (iii) complying with the bidding strictures in the order approving this motion and establishing bidding procedures (the "Bidding Procedures Order");
- b. a break-up fee and expense reimbursement totaling \$800,000;
- c. an initial overbid of \$250,000; and
- d. subsequent incremental bids of \$150,000.

Briscoe Declaration ¶ 26, Ex. C.

14. Immediately upon execution of the Commitment, AHH funded a \$400,000 pre-petition loan to the Debtor, which enabled the Debtor to pay for insurance (which had lapsed a year earlier), and security and winterization services for the Property. Briscoe Declaration at ¶ 26. Loan proceeds were also used to pay (a) Pillsbury's retainer so that the substantial work necessary to present this case to the Court in an appropriate manner could be undertaken, (b)

KCC's retainer (to ensure thorough and reliable service on creditors, unit owners and parties in interest, and (c) the chapter 11 filing fee.

15. Given all of the factors presented, including the the Property's condition and a variety of other uncertainties, AHH undertook an extraordinary risk in funding the Property and this process; one that has secured the Property and enabled the Debtor to present a chapter 11 plan to sell unified title to the Property free and clear of all liens, encumbrances, claims and interests. AHH has added substantial value to the Debtor's estate and the Property.

E. The Purchase and Sale Agreement

16. On or about January 10, 2018, the Debtor and AHH entered into that certain Purchase and Sale Agreement (the "PSA").⁶

17. The PSA also addresses the potential for a court-ordered auction of the Property. Section 8.4 of the PSA reads as follows:

8.4 Bankruptcy Conditions. The obligations of each Party to consummate the transactions contemplated by this Agreement shall be subject to entry of the Sale Order (defined below) by February 13, 2018. The Seller engaged in a marketing and auction process that resulted in the execution of this Agreement and induced the Purchaser to undertake its obligation to facilitate and effectuate the Plan to the benefit of the Seller and its estate. The Parties have agreed, in light of the substantial pre-bankruptcy marketing of the Property and the results thereof, the deleterious and the continuously depreciating condition of the Property and the inherent life and safety concerns affecting the citizens and professionals of Prince George's County as described in the State Court Order and the urgent need to transfer the Property to ownership who can immediately begin undertaking the efforts to ameliorate the severe health and safety concerns with respect to the Property and restore the Property to use, that it would be futile and risky for the Seller to engage in another auction process after the Petition Date. Instead, the Seller will proceed immediately on the Petition Date to seek to obtain confirmation of a chapter 11 plan providing for the free-and-clear sale of the Property to Purchaser as contemplated by the State Court Order. Notwithstanding the agreement and intentions of the Parties, if Seller is ordered by the Bankruptcy Court to engage in another auction process after the Petition Date and to solicit competing bid proposals (each, an "**Alternative**

⁶ A copy of the PSA is attached as Exhibit 2 to the Disclosure Statement [Doc. 27].

Transaction”), then Seller will seek approval from the Bankruptcy Court of the following procedures and bid protections for Purchaser, who for such purpose will be treated as the “stalking horse.” In the event that Seller is not ordered by the Bankruptcy Court to conduct a further auction of the Property, then Sections 8.4.1 (and its sub-parts) shall have no application to this transaction.

8.4.1 Approval of Break-Up Fee and Expense Reimbursement. Seller acknowledges and agrees that Purchaser has expended considerable time and expense in connection with this Agreement and the negotiation thereof and the identification and quantification of assets of Seller. In consideration therefor:

8.4.1.1 Seller shall file a bidding procedures motion with the Bankruptcy Court, and seek the entry by the Bankruptcy Court of the bidding procedures order, including the approval of the payment of a break-up fee in an amount equal to \$600,000 (the “**Break-Up Fee**”) and an expense reimbursement in an amount not to exceed \$200,000 (the “**Expense Reimbursement**”) for Purchaser’s reasonable and documented out-of-pocket expenses incurred in connection with the transaction contemplated hereby;

8.4.1.2 The Bidding Procedures Order shall provide that the Break-Up Fee and the Expense Reimbursement shall be paid to Purchaser from the proceeds (the “**Alternative Transaction Proceeds**”) of sale on the closing of an Alternative Transaction (as hereinafter defined) approved by Bankruptcy Court and prior to any other distributions to creditors (or otherwise) from the Alternative Transaction Proceeds; and

8.4.1.3 The Bidding Procedures Order shall also provide that no further or additional order from the Bankruptcy Court shall be required in order to give effect to these provisions relating to the terms of payment of the Break-Up Fee and the Expense Reimbursement.

8.4.1.4 In order for any Alternative Transaction to be a qualified bid (each, a “**Qualified Bid**”), it must be:

(i) in writing;

(ii) received by Seller and Purchaser at their respective addresses set forth in Section 13.3 no later than the deadline for submitting an Alternative Transaction agreed to by the parties and approved by the Bankruptcy Court (the “**Bid Deadline**”);

(iii) a firm, unconditional bid to purchase the Property, not subject to any contingencies as to the validity, effectiveness and/or binding nature of the offer, including, without limitation, further due diligence review or financing;

(iv) a firm bid of at least \$250,000 in excess of the Purchase Price plus the Break-Up Fee plus the Expense Reimbursement;

(v) accompanied by sufficient information to demonstrate that the competing bidder has the financial wherewithal and ability to timely consummate the acquisition of the Property on terms and conditions substantially the same as this Agreement, including evidence of adequate financing and a financial guaranty, if appropriate;

(vi) accompanied by a signed contract substantially in the form of this Agreement, and marked to show any changes made to this Agreement; and

(vii) accompanied by a good faith cash deposit in an amount equal to the Deposit plus the Break-Up Fee plus the Expense Reimbursement, to be deposited with Seller (or Escrow Agent) on or before the Bid Deadline.

8.4.1.5 Seller shall promptly inform Purchaser of all Qualified Bids and any information received related to the terms and conditions of such Qualified Bids;

8.4.1.6 Purchaser shall have the opportunity to increase its offer to a level at least \$150,000 in excess of any Qualified Bid to be eligible to become the starting bid at the auction (the “**Auction**”) contemplated by the Bidding Procedures Order (the “**Starting Auction Bid**”); and, in connection therewith, Purchaser shall be entitled to credit bid the Bankruptcy Funding Commitment against the purchase price reflected in such Qualified Bid;

8.4.1.7 Seller shall evaluate all Qualified Bids received and shall determine, in consultation with the Purchaser, which Qualified Bid reflects the highest or best offer as the Starting Auction Bid for the Property. Seller shall announce its determination of the Starting Auction Bid at the commencement of the Auction;

8.4.1.8 The first incremental competitive bid at the Auction shall be at least \$150,000 in excess of the Starting Auction Bid, with any subsequent increases of bids to be made in increments of at least \$150,000;

8.4.1.9 No bids shall be considered by Seller unless a party submitted a Qualified Bid and participates in the Auction;

8.4.1.10 The Property shall be sold in a single lot;

8.4.1.11 If Seller desires to select a bid from an entity other than Purchaser that Purchaser believes is not the highest or best bid, the Bankruptcy Court shall determine which is the successful bidder;

8.4.1.12 When determining the highest or best bid, Seller shall include the Break-Up Fee and the Expense Reimbursement in Purchaser’s last bid, which Break-Up Fee and Expense Reimbursement would otherwise be payable to Purchaser;

8.4.1.13 If any overbid from an entity other than Purchaser is accepted but fails to be consummated, Seller shall be obligated to consummate the transaction with Purchaser, at Purchaser's option, on the terms of this Agreement, except for the purchase price, which shall equal the purchase price of the next highest bid that was submitted to Seller during the Auction; and

8.4.1.14 In the event that Seller determines in good faith that it has not received a Qualified Bid by the Bid Deadline that is a higher or better bid than the one represented by this Agreement, Seller shall seek approval of this Agreement at the hearing or hearings held by the Bankruptcy Court to consider the transactions contemplated by this Agreement (the "**Sale Hearing**") without conducting an Auction and without further motion.

18. On the Petition Date, the Debtor sought the Court's approval of the PSA by way of confirmation of the Debtor and AHH's joint chapter 11 plan (the "Plan").

F. Events Since the Debtor's Bankruptcy Filing

19. The Court graciously held expedited hearings on the Debtor's "first day" motions on January 12, 2018. With modifications from the Court, all motions were approved from the bench, with orders being entered the following week. Importantly, the Court approved the Debtor's post-petition financing (the "DIP Loan") on an interim basis. And, the Court approved procedures for filing claims and soliciting votes on the Plan. Since entry of these orders, AHH has fulfilled its commitment to advance \$450,000 under the DIP Loan, and the Debtor has served and delivered claim-filing and solicitation packages to all known creditors and unit owners.

G. Dragone Emerges as a Potential Bidder

20. As reported to the Court at the January 12, 2018 hearing, counsel for Dragone Realty LLC ("Dragone") contacted Debtor's counsel on the evening of January 11, 2018 to express its interest in purchasing the Property. Shortly before the January 12 hearing, Dragone filed a limited objection to the Debtor's request for conditional approval of the disclosure statement. Mr. Bezalel Stern was present in the courtroom at the January 12 hearing

and appeared on the record on behalf of Dragone. Mr. Stern did not object to any evidence nor did he request to cross-examine any of the Debtor's witnesses. The Court denied Dragone's limited objection. *See* Doc. 42.

21. On Tuesday, January 16, 2018, Dragone sent a marked-up version of the PSA to the Debtor, offering to purchase the Property for a nominal amount more than AHH's offer; though not satisfying the bidding requirements had the Debtor been in auction mode. After additional email exchanges between respective counsel, Dragone increased its offer to purchase the Property for \$14,250,000. AHH responded by increasing the purchase price under the PSA by \$250,000 (to \$13,450,000). Altogether, including the \$600,000 break-up fee (the "Break-Up Fee") and \$200,000 expense reimbursement (the "Expense Reimbursement"), AHH's increased offer totaled \$14,250,000 and matched the then-pending offer by Dragone. The Debtor promptly reported all of these events to the Court in its *Notice of Post-Petition Written Offers for the Property and Related Developments* [Doc. 73], filed with the Court on January 18, 2018 (the "Notice of Post-Petition Offers").

22. On the afternoon of Friday, January 19, 2018, Dragone filed a revised PSA containing an offer to purchase the Property for as much as \$14.5 million. *See* Doc. 75. If accepted, this offer is \$250,000 higher than the price under the amended PSA. The \$600,000 Break-Up Fee would be paid to AHH, as well as up to \$200,000 of the Expense Reimbursement.

23. That same day, in response to the Notice of Post-Petition Offers, the Court advised the parties of its availability to conduct a status conference on Monday, January 22, 2018, if desired by the parties. Counsel for each party responded with their respective availability. The Debtor also filed the *Debtor's Supplemental Notice Regarding Post-Petition Written Offers for the Property and Related Developments* [Doc. 78] with the Court indicating,

among other things, its intention to honor the Break-Up Fee and Expense Reimbursement, take all bids seriously, and follow any order to conduct a chapter 11 auction for the Property in an effort to sell the Property for the highest price.

24. On Saturday, January 20, 2018, the Debtor and its counsel participated in a community meeting attended by approximately sixty (60) unit owners and Mr. Gregory R. Singleton, counsel for the unit owners. The unit owners share the Debtor's desire to sell the Property for the highest possible price.

25. While the Debtor will continue to seek confirmation of the Plan, the Debtor submits this Motion to approve the Break-Up Fee and Expense Reimbursement (and other terms that apply in chapter 11 auctions) if the Court orders a chapter 11 auction to be held. The Debtor has consulted with AHH, and understands that AHH supports the Debtor's request.

Relief Requested

26. The Debtor respectfully requests entry of an order designating AHH as the "stalking horse" for the purchase of the Property by approving the Break-Up Fee and the Expense Reimbursement. To the fullest extent permitted, and without violating any agreements with AHH, the Debtor seeks approval of bidding procedures that comply with the PSA, as set forth herein and the proposed bidding procedures.

27. Pursuant to Local Rule 6004-1(c), if the Court orders an auction of the Property, then the Debtor requests that the order (among other things):

- a. contain all of the procedural and bidding requirements agreed to by the Debtor and AHH in Section 8.4 of the PSA, including but not limited to the bidding increments (Bid Procedures Order ¶ 3 and Exhibit 1 thereto);
- b. declare Dragone a qualified bidder, bound to purchase the Property for \$14.5 million (subject to Dragone making a higher bid at the auction) (Bid Procedures Order ¶ 6);

- c. to be a qualified bid, all other bidders (other than AHH) must offer at least \$14,650,000 (*i.e.*, \$150,000 in cash consideration above Dragone's); AHH may appear at the auction without increasing its offer in advance, but must offer to increase its purchase price by at least \$250,000 at the commencement of the auction in order to match the existing Dragone offer (Bid Procedures Order ¶ 7);
- d. approve a bid deadline and auction schedule that concludes in time for the prevailing bidder to be approved under the Plan at the February 27, 2017 confirmation hearing (Bid Procedures Order ¶¶ 4, 10, 12); namely:
 - i. January 31, 2018 at 10:00 a.m. EST: Hearing to approve Motion;
 - ii. February 2, 2018: Service of Notice of Bid Procedures;
 - iii. February 16, 2018 at 5:00 p.m. EST: Deadline for qualified bid packages;
 - iv. February 19, 2018 at 10:00 a.m. EST: Auction;
 - v. February 27, 2018 at 10:00 a.m. EST: Approval of Sale Pursuant to the Plan;
- e. qualified bid packages due on February 16, 2018 at 5:00 p.m. EST, to include:
 - i. proof of available cash funds (no financing) to close by March 14, 2018;
 - ii. no study or due diligence period;
 - iii. PSA and all transaction document conforming to that on record with the Court for AHH, with all changes shown in redline;
 - iv. agreement to substitute as co-plan proponent under the Plan at the February 27, 2018 confirmation hearing;
 - v. agreement to immediately replace the existing DIP Loan (on existing terms and documents) if AHH calls the DIP Loan in accordance with the terms of the DIP Loan;
 - vi. binding offer to purchase must remain open through the earlier of a closing on a sale of the Property and March 25, 2018 (and must close on 5 business days' notice if selected as the backup bidder(s));
 - vii. deposit of \$250,000.00 held in escrow until binding offer is terminated or applied to purchase price at closing;

- f. auction to be conducted at the offices of Pillsbury Winthrop Shaw Pittman LLP on February 19, 2018, commencing at 10:00 a.m. EST, and continuing from day to day if necessary until completed:
 - i. bidding activity to be recorded by stenographer;
 - ii. the baseline-bid for the auction will be Dragone's \$14.5 million bid;
- g. each qualified bidder participating in the auction shall confirm that it has not engaged in any collusion with respect to the bidding or the sale; and
- h. the auction will not be open for all creditors to attend; only the Debtor, qualified bidders, and their representatives may attend.

Basis for Relief Requested

28. Chapter 11 bidding procedures are authorized as a matter of law pursuant to sections 105, 363 and 503 of the Bankruptcy Code, Rules 2002, 6004 and 9014, and Local Rule 6004-1(c).

A. AHH as Stalking Horse: Break-Up Fee and Expense Reimbursement

29. The Court should approve AHH as a "stalking horse" by approving the Break-Up Fee and Expense Reimbursement.

30. The Property has effectively been on the market for many years (including through three prior chapter 11 cases). Transwestern implemented a thorough two-month process to obtain highest and best prices from potential bidders. At a time when the future of the Property was substantially more uncertain than it is today, AHH emerged as the highest bidder for the Property. Moreover, it demonstrated to the Debtor its finances and other bona fides to not only close the transaction, but also to fulfill a high-risk commitment to loan money to the Debtor needed to insure and secure the Property and to underwrite the cost of this chapter 11 case. The Debtor understands that AHH would not have agreed to take on this extraordinary risk absent the Break-Up Fee and Expense Reimbursement.

31. Indeed, this is a prime example of why break-up fees and expense reimbursements should be approved, as a matter of policy. Not only are these protections designed to compensate for extraordinary risk and efforts undertaken by the stalking horse, but also to reward the stalking horse if those efforts result in subsequent higher bids by other potential buyers. This is precisely what has occurred in this case. As a result of the Debtor's efforts and the risk underwritten by AHH, the Debtor has received an initial bid from Dragone of \$250,000 more (which was matched by AHH), and an apparent present bid (to be confirmed and fixed as a condition to an auction) of up to another \$500,000 more by Dragone. Dragone sees and appreciates the value that AHH and the Debtor have created, and with full knowledge of the Break-Up Fee and Expense Reimbursement, made its offers. In contrast, in late November and early December 2017, no other bidder was willing to assume the level of risk AHH assumed. The net result has benefited the Debtor and the estate by at least hundreds of thousands of dollars. Accordingly, the Debtor will not renege on its agreement to pay AHH the Break-Up Fee and Expense Reimbursement if it is outbid, and submits that approval of the same by the Court is appropriate.

32. Particularly under the circumstances confronting the Property at the time the Debtor and AHH reached agreement, the terms of the Break-Up Fee and Expense Reimbursement are warranted. The range of an acceptable Break-Up Fee for a much less risky transaction is 3% to as much as 5% of the purchase price. *Here*, the Break-Up Fee is 4.5% of the original \$13.2 purchase price; and a lower percentage of the present \$13,450,000 purchase price. *See, e.g.*, 3-363 Collier on Bankruptcy ¶ 363.02[7] (“Courts have adopted as a rule of thumb a limitation on a breakup or topping fee of about 3 percent of the consideration the buyer will pay

for the assets, including assumption of liabilities, although courts have approved higher amounts, up to about 5 percent of the consideration, in unusual circumstances.”).

33. An Expense Reimbursement of up to \$200,000 in actual costs is entirely appropriate given the complex and challenging nature of the transaction. *Id.* (explaining that expense reimbursement “is typically an amount in addition and is subject to a reasonableness requirement so that it is not a disguised breakup or topping fee.”).

34. For all of these reasons, the Court should declare AHH the “stalking horse” by approving the Break-Up Fee and Expense Reimbursement if the Court orders an auction of the Property.

B. The Remaining Bid Procedures are Balanced and can be Ordered

35. The Debtor must borrow through the DIP Loan the money necessary to fund the Debtor through a closing on the sale of the Property; and all money borrowed is credited against the buyer’s purchase price, reducing the total sum distributable to creditors and unit owners. In short, the longer the process, the more it will cost the creditors and unit owners.

36. The proposed schedule, with (a) bid deadline of February 16, 2018; (b) an auction, if there is one, on February 19, 2018; and (c) approval of the sale as part of confirmation of the chapter 11 plan on February 27, 2018, keeps the case on track and should not result in material amounts of additional sums being borrowed as result of layering in an auction process with the existing plan confirmation process.

37. The balance of the conditions to ordering an auction (including binding Dragone to purchase at no less than \$14.5 million) and bid increments of \$150,000 are all reasonable and fair for purposes of encouraging an auction.

38. The number of creditors and unit owners (more than 200) in the case is substantial. Although the Debtor does not know whether any would be interested in observing the auction, the Debtor submits that Pillsbury's offices could not accommodate substantial numbers of observers. And, since they are not bidding, their presence will not aid in the auction process. Moreover, the bidding portions of the auction will be transcribed and made available. If creditors and unit owners are unhappy with the results, in addition to their other rights, they will have the right to challenge the Debtor's selection of the highest or otherwise best bidder. Accordingly, the Debtor requests to be relieved from Local Rule 6004-1(c)(2)(C), and that only the Debtor, qualified bidders and their representative be permitted to attend the auction.

Notice

39. The Debtor will provide notice of this Motion to: (i) the Office of the U.S. Trustee; (ii) counsel to AHH; (iii) counsel to Dragone; (iv) all parties listed on the Debtor's Schedule D (creditors who hold claims secured by property); (v) the parties listed on the Debtor's list of creditors holding the 20 largest unsecured claims; and (vi) parties requesting notice in this chapter 11 case. Under the circumstances, the Debtor submits that no further notice is required.

Conclusion

WHEREFORE, the Debtor respectfully requests that the Court enter an order declaring that AHH is the "stalking horse" in this case by approving the Break-Up Fee and Expense Reimbursement. The Debtor believes that the Court ordering an auction is in the best interest of the Debtor, its estate, creditors and unit owners. If the Court orders an auction, then the Debtor requests that the Court approve the bidding procedures detailed in this Motion and as set forth in the proposed order (and exhibits) attached hereto as **Exhibit A**, including the provisions from

Section 8.4 of the PSA quoted in paragraph 17. The Debtor requests such other and additional relief as the Court deems appropriate for the case.

Dated: January 23, 2018

Respectfully submitted,

Pillsbury Winthrop Shaw Pittman LLP

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Proposed Counsel for the Debtor

Exhibit A

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
Greenbelt Division**

In re:

THE CONDOMINIUM ASSOCIATION OF
THE LYNNHILL CONDOMINIUM,

Debtor.¹

Case No. 18-10334

Chapter 11

**ORDER GRANTING DEBTOR’S MOTION FOR AN ORDER (I) APPROVING
AHH16 DEVELOPMENT, LLC AS “STALKING HORSE” BY
APPROVING THE BREAK-UP FEE AND EXPENSE REIMBURSEMENT
(II) APPROVING AUCTION AND BIDDING PROCEDURES AND
(III) GRANTING OTHER RELATED RELIEF**

Upon the Debtor’s motion for entry of an order approving AHH16 Development, LLC (“AHH”) as “Stalking Horse” by approving the Break-Up Fee and Expense Reimbursement agreed to by the Debtor, approving auction and bidding procedures and granting other related relief (the “Motion”);² the Court finding that (a) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28

¹ The Debtor’s federal identification number is 52-0993760.

² Capitalized terms used but not defined in this Order have the meaning given such terms in the Motion or the Bidding Procedures, as applicable.

U.S.C. § 157(b)(2); (c) adequate notice of the Motion and the hearing thereon was given under the circumstances and that no other or further notice is necessary; and (d) the legal and factual bases set forth in the Motion and on the record establish just cause for the relief granted herein, and it appearing that the relief requested is in the best interest of the Debtor's estate, creditors and other parties-in-interest; and after due deliberation, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.
2. All Objections to the Motion and the relief granted herein that have not been withdrawn, waived, resolved or settled are hereby denied and overruled in their entirety.
3. The Bidding Procedures, as attached hereto as **Exhibit 1**, are approved. The Debtors are authorized to take any and all actions reasonably necessary or appropriate to implement the Bidding Procedures.

The Bid Deadline

4. For a potential bidder's bid to be considered to participate in the Auction, its bid package must be delivered, **so as to be actually received** on or before **February 16, 2018 at 5:00 p.m. EST** (the "**Bid Deadline**"), to Pillsbury Winthrop Shaw Pittman LLP, Attn: Patrick J. Potter (patrick.potter@pillsburylaw.com) 1200 Seventeenth Street, NW, Washington, DC 20036 **and** Attn: Dania Slim (dania.slim@pillsburylaw.com) 324 Royal Palm Way, Suite 220 Palm Beach, FL 33480.
5. For the avoidance of doubt, AHH shall constitute a Qualified Bidder and the PSA (as amended) shall constitute a Qualified Bid.

6. Further, Dragone shall also constitute a Qualified Bidder, bound to purchase the Property for \$14.5 million (subject to a higher bid by Dragone at the Auction).

7. To constitute a Qualified Bid, all other bidders (other than AHH and Dragone) must offer at least \$14,650,000 in cash consideration.

8. If AHH is going to compete at the Auction, then its first bid must exceed the Auction Baseline Bid by at least \$150,000, taking into account its credit for the Break-Up Fee and Expense Reimbursement.

Notice of the Sale and the Sale Hearing

9. Within three (3) business days after the entry of this Order (the “Mailing Date”), the Debtor shall serve notice of the this Order and the Bidding Procedures by first-class mail, postage prepaid, upon (a) all entities known to have expressed an interest to Transwestern (since its engagement on or about September 29, 2017) in purchasing the Property; (b) all entities known by the Debtor to have asserted a liens against the Property; (c) the parties included on the Debtor’s list of twenty (20) largest unsecured creditors; (d) those parties who have filed the appropriate notice requesting notice of all pleadings filed in these cases; (e) the Attorney General of Maryland; and (g) the Office of the United States Trustee.

10. On the Mailing Date or as soon thereafter as practicable, the Debtor shall serve by first-class mail, postage prepaid, the *Notice of Auction*, substantially in the form attached hereto as **Exhibit 2**, upon all other known creditors of the Debtor.

11. The hearing to approve the sale of the Property shall be held on **February 27, 2018 at 10:00 a.m. EST.**

The Auction

12. The Debtor is authorized to conduct an auction (the “Auction”) of the Property. Notwithstanding anything to the contrary, the Debtor and its representatives, including Transwestern are authorized to take all appropriate measures to market the Property for purposes of generating Qualified Bids for the Auction.

13. The Auction shall take place on **February 19, 2018 at 10:00 a.m. EST** at the offices of counsel for the Debtor, Pillsbury Winthrop Shaw Pittman LLP, 1200 Seventeenth Street NW, Washington, DC 20036.

14. The Debtor is authorized, subject to the terms of this Order, to take actions reasonably necessary, in the discretion of the Debtor, to conduct and implement the Auction. The Debtor is also authorized to take all measures to provide additional notice or advertising of the Auction as the Debtor deems appropriate.

15. The Debtor, AHH and any other Qualified Bidder, in each case, along with their representatives and counsel, or such other parties as the Debtor shall determine in its reasonable discretion, shall attend the Auction (such attendance to be in person) and only Qualified Bidders will be entitled to make any Bids at the Auction. The Debtor and its professionals shall direct and preside over the Auction and all bidding at the Auction shall be transcribed.

16. AHH (in its capacity as a Qualified Bidder), and each Qualified Bidder participating in the Auction must confirm that it (a) has not engaged in any collusion with respect to the bidding or sale of any of the assets described herein, (b) has reviewed, understands and accepts the Bidding Procedures, and (c) has consented to the core jurisdiction of this Court and to the entry of a final order by this Court on any matter related to this Order, the Sale or the Auction.

17. The Debtor may (i) select, in its business judgment, pursuant to the Bidding Procedures, the highest or otherwise best offer and the Successful Bid and Back-Up Bid(s), and (ii) reject any bid that, in the Debtor's business judgment, is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules or the Bidding Procedures, or (c) contrary to the best interests of the Debtor and its estates, creditors, or parties-in-interest.

18. The Debtor may modify the Bidding Procedures and conduct of the Auction without further order of the Court, provided the modifications are reasonable and intended to maximize the value of the Debtor's estate.

19. The Debtor shall file notice of the identity of the Successful Bidder within twenty-four (24) hours of the conclusion of the Auction.

20. The failure to specifically include or reference any particular provision, section or article of the Bidding Procedures in this Order shall not diminish or impair the effectiveness or such procedures, it being the Court's intent to authorize and approve the Bidding Procedures in their entirety.

The Bid Protections

21. Pursuant to Bankruptcy Code sections 105, 363 and 503, and Local Rule 6004-1(c), the Debtor's request to declare AHH as the stalking horse is granted, and the Break-Up Fee and the Expense Reimbursement are approved.

22. The Bid Procedures are hereby approved.

23. In the event the Debtor consummates a sale of the Property to a Successful Bidder other than AHH (an "Alternative Closing"), the Break-Up Fee and Expense Reimbursement shall be payable from the first cash proceeds of any Alternative Closing.

Related Relief

24. The Debtor is hereby authorized and empowered to take such actions as may be reasonably necessary to implement and effect the terms and requirements established in this Order.

25. This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof.

26. This Order shall be binding on the Debtor, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the Debtor's estate.

27. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h) and 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

28. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order, including, but not limited to, any matter, claim or dispute arising from or relating to the Bidding Procedures and the implementation of this Order.

cc: Patrick J. Potter
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street, NW
Washington, DC 20036

Dania Slim
Pillsbury Winthrop Shaw Pittman LLP
324 Royal Palm Way, Suite 220
Palm Beach, FL 33480

Jason S. Sharp
Pillsbury Winthrop Shaw Pittman LLP
2 Houston Center
909 Fannin, Suite 2000
Houston, TX 77010-1028

William C. Johnson, Jr.
1310 L Street NW, Suite 750
Washington, DC 20005

Michael J. Lichtenstein
Shulman Rogers
12505 Park Potomac Avenue
Potomac, MD 20854

Jeanne M. Crouse
Office of the United States Trustee
6305 Ivy Lane, Suite 600
Greenbelt, MD 20770

All Parties Requesting Notice

End of Order

Exhibit 1

Bidding Procedures

These are the bidding procedures (the “Bidding Procedures”)¹ that will be used in connection with an auction (the “Auction”) and sale (the “Sale”) of the property located at 3103 and 3107 Good Hope Avenue, Temple Hills, Maryland 20748 (the “Property”) in the chapter 11 proceeding of the Condominium Association of the Lynnhill Condominium (the “Debtor”), pending in the U.S. Bankruptcy Court for the District of Maryland (the “Bankruptcy Court”).

The Property and the terms and conditions upon which the Debtor contemplates consummating the Sale of the Property are further described in that certain Purchase and Sale Agreement (as amended, the “PSA”), by and between the Debtor and AHH16 Development, LLC (“AHH”), together with the *Joint Chapter 11 Plan of (I) The Condominium Association of the Lynnhill Condominium, and (II) AHH16 Development, LLC, dated as of January 10, 2018* [Doc. 65, Ex. A] (the “Plan”).

On January [31], 2018 the Bankruptcy Court entered an order [Doc. ___] (the “Bidding Procedures Order”), which, among other things, authorized the Debtor to determine the highest and best offer for the Property through the process and procedures set forth herein (the “Bidding Procedures”).

A copy of the PSA is attached as Exhibit 2 to the Debtor’s disclosure statement [Doc. 27] and a copy of the *First Amendment to Purchase and Sale Agreement* between the Debtor and AHH is attached as Exhibit A to Doc. 92, both of which are available at the website established for this case at: <http://www.kccllc.net/lynnhill>. Word versions of the PSA will be made available upon written e-mail request to Debtor’s counsel.

Property to be Sold

Except as otherwise provided in the PSA or a Modified PSA (as defined below) submitted by a Successful Bidder (as defined below) (including any exhibits or schedules thereto) all right, title and interest in and to the Property shall be sold free and clear of, among other things, any and all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon (collectively, the “Interests”) to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the Sale of the Property with the same validity and priority as such Interests applied against the Property, subject in each case to the terms of the Plan or the order confirming the Plan (the “Confirmation Order”).

The PSA provides that AHH will acquire the Property for \$13,450,000, minus a credit for all amounts advanced and accrued under the DIP Loan and a \$1 million credit for certain life, health, and safety requirements of the County (the “Purchase Price”).

After the Auction, the Debtor will seek approval of the sale transaction to the Qualified Bidder (defined below) that the Debtor determines has made the highest and best offer (the

¹ All capitalized terms not defined herein shall have the meaning given such terms in the Motion.

“Successful Bidder”) in connection with confirmation of the Plan. The form Confirmation Order can be found at Doc. 65, Ex. C, and the Successful Bidder will be identified as the Purchaser in the Confirmation Order.

The Bidding Process

Pursuant to the terms hereof, the Debtor and its advisors shall (i) determine whether any person is a Qualified Bidder, (ii) receive offers from bidders, and (iii) negotiate any offers made to acquire the Property (collectively, the “Bidding Process”).

Key Dates for Potential Competing Bidders

The Bidding Procedures provide interested bidders with the opportunity to qualify for and participate in an Auction to be conducted by the Debtor and to submit competing bids for the Property. The Debtor shall accept Bids (as defined below) until **February 16, 2018 at 5:00 p.m. EST** (the “Bid Deadline”).

The key dates for the sale process are as follows:

Date	Event/Deadline
February 16, 2018 at 5:00 p.m. EST	Bid Deadline - Due Date for Bids and Deposits
February 19, 2018 at 10:00 a.m. EST	Auction
February 27, 2018 at 10:00 a.m. EST	Approval of Sale Pursuant to the Plan

Participation Requirements

To participate in the Bidding Process, each party that intends to submit a bid (a “Potential Bidder”) must deliver to the Debtor written evidence of the Qualified Bidder’s financial and other ability to consummate the sale transaction (and provide replacement DIP financing if necessary) satisfactory to the Debtor and its advisors.

A “Qualified Bidder” is a Potential Bidder that timely delivers the document(s) described above, whose financial information demonstrates the Potential Bidder’s financial capability to consummate the Sale, and that the Debtor determines is reasonably likely (based on availability of experience and other considerations) to be able to consummate the Sale if selected as the Successful Bidder.

As soon as reasonably practicable after a Potential Bidder delivers the documents described above, the Debtor shall determine, and shall notify the Potential Bidder, if such Potential Bidder is a Qualified Bidder. For avoidance of doubt, the Debtor has determined that AHH and Dragone are Qualified Bidders. **Only Qualified Bidders will be permitted to attend and participate in the Auction. Bids not constituting Qualified Bids will be disregarded.**

Due Diligence

There is no due diligence period. Any bid containing a diligence period will be disqualified automatically and conclusively determined to not be a Qualified Bid.

Bid Deadline

For a Potential Bidder to be eligible to participate in the Auction, its bid must be delivered, **so as to be actually received** on or before **February 16, 2018 at 5:00 p.m. EST** (the “Bid Deadline”), to the Debtor’s counsel, Pillsbury Winthrop Shaw Pittman LLP, 1200 Seventeenth Street NW, Washington, DC 20036 (Attn: Patrick Potter, patrick.potter@pillsburylaw.com) **and** 324 Royal Palm Way, Suite 220, Palm Beach, FL 33480 (Attn: Dania Slim, dania.slim@pillsburylaw.com).

Bid Requirements

To be eligible to participate in the Auction, each bid must include the following documents (the “Required Bid Documents”) and satisfy the following requirements (the “Bid Requirements”), all of which shall be re-affirmed in a signed writing in the bid package and/or cover letter from the submitting bidder:

- A. **Executed Agreement**: Each bid must be presented in the form of the PSA, as revised by the bidder, and must include executed transaction documents (a “Modified PSA”) that provide for (i) a minimum purchase price for the Property of not less than \$14,650,000, all of which must be cash consideration and (ii) a commitment to immediately replace the existing DIP Loan (on existing terms and documents) if AHH calls the DIP Loan in accordance with the terms of the DIP Loan, which may occur prior to the hearing to consider confirmation of the Plan on February 27, 2018.
- B. A bid must also include a copy of the Modified PSA marked to show modifications to the PSA. Each Modified PSA must provide a commitment to close within fifteen (15) calendar days from entry of the Confirmation Order.
- C. **Corporate Authority**: A bid must include written evidence demonstrating appropriate corporate authorization to consummate the Modified PS; *provided* that, if the bidder is an entity specially formed for the purpose of effectuating the Modified PSA, then the bidder must furnish written evidence reasonably acceptable to the Debtor of the approval of the Modified PSA by the equity holder(s) of such bidder.
- D. **Disclosure of Identity of Bidder**: A bid must fully disclose the identity and contact information of the entity bidding for the Property.
- E. **Contingencies**: Any bid with contingencies other than those that may be contained in the PSA shall be disqualified, and the party submitting the same will not be qualified as a Qualified Bidder.

- F. Irrevocable: Each bid must be irrevocable until the Sale Hearing (defined below); *provided, further*, that the Successful Bid and all Back-Up Bids (defined below) shall remain open and shall be irrevocable until the earlier of a closing on a sale of the Property and March 25, 2018 (and must close on 5 business days' notice if selected as the Back-Up Bidder(s)).
- G. Compliance with Information Requests. The bidder must comply with reasonable requests for additional information from the Debtor.
- H. Termination Fees. The bid must not entitle the bidder to any break-up fee, termination fee or similar type of payment or reimbursement
- I. Good Faith Deposit: Each bid must be accompanied by a \$250,000.00 deposit, with in an escrow agent as set forth in the PSA (the "Good Faith Deposit").
- J. Proof of Financial Ability to Perform: The bidder shall provide written evidence of the bidder's ability to consummate the sale transaction (and provide replacement DIP financing if necessary).

A bid from a bidder other than AHH and Dragone will be considered to be a qualified bid (a "Qualified Bid") only if the bid is received before the Bid Deadline, includes all of the Required Bid Documents, satisfies the Bid Requirements, and acknowledges and represents that the bidder (i) has relied solely on its own independent review, investigation, and inspection of any documents and the Property in making its bid, and (ii) did not rely on any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information provided in connection therewith or the Auction.

The Debtor shall inform counsel to AHH, Dragone, and any other Qualified Bidder whether the Debtor will consider any bid to be a Qualified Bid no later than two (2) days (to the extent practicable) before the Auction. The Debtor shall further provide at that time a copy of all Qualified Bids (if any) to counsel to AHH, Dragone, and all Qualified Bidders (if any).

Auction

The Debtor shall commence the Auction on February 19, 2018, to determine the highest or otherwise best bid for the Property. In evaluating bids, the Debtor shall take into account any factors the Debtor reasonably deems relevant to the value of the Qualified Bid to the estate and may include, but are not limited to, the following: (a) the amount and nature of the consideration; (b) the number, type and nature of any changes to the PSA requested by each bidder; (c) the extent to which such modifications are likely to delay closing of the sale of the Property and the cost to the Debtor of such modifications or delay; (d) the total consideration to be received by the Debtor; (e) the likelihood of the bidder's ability to close a transaction and the timing thereof; (f) the net benefit to the Debtor's estate; and (g) any other qualitative or quantitative factor the Debtor deems reasonably appropriate under the circumstances (collectively, the "Bid Assessment Criteria").

The Auction shall commence at **10:00 a.m. (EST)** on **February 19, 2018** at the offices of Pillsbury Winthrop Shaw Pittman LLP, 1200 Seventeenth Street, NW, Washington, DC 20036.

Only the Debtor, AHH, Dragone and all bidders who have submitted a Qualified Bid are eligible to attend the Auction (such attendance to be in person). The Auction will not be open to anyone else.

The Debtor and its professionals shall direct and preside over the Auction, and the bidding at the Auction shall be transcribed. Other than as expressly set forth herein, the Debtor may conduct the Auction in the manner it reasonably determines will result in the highest or otherwise best offer for the Property.

The highest or otherwise best Qualified Bid as of the Bid Deadline shall be the "Auction Baseline Bid" (unless the only Qualified Bidders are AHH and Dragone, and in such case, then Dragone's \$14,500,000 offer [Doc. 75, Ex. A] shall be the Auction Baseline Bid, unless AHH has topped said Dragone bid prior to the Auction). At the start of the Auction, the Debtor shall identify the Auction Baseline Bid.

Each Qualified Bidder participating in the Auction must confirm (and in any event shall be deemed to have confirmed) that it (a) has not engaged in any collusion with respect to the bidding or sale of any of the assets described herein, (b) has reviewed, understands and accepts the Bidding Procedures and (c) has consented to the core jurisdiction of the Bankruptcy Court.

During the Auction, bidding shall begin initially with the Auction Baseline Bid. Any overbid (an "Overbid") must provide cash consideration of at least **\$150,000** higher than the previous bid. Also, any overbid must include, in addition to the amount and the form of consideration of the Overbid, a description of any new changes requested at the Auction by the Qualified Bidder to the PSA or Modified PSA, as the case may be, in connection therewith. Any Overbid must remain open and binding against the Qualified Bidder until the conclusion of the Auction (or March 25 if it constitutes the Successful Bid or the Back-Up Bid).

The Debtor shall announce at the Auction the total amount of consideration offered in each Overbid, and such other terms as the Debtor reasonably determines will facilitate the Auction.

The Auction shall continue until there is only one offer that the Debtor determines, in its business judgment and subject to court approval, is the highest and otherwise best offer from among the bids submitted at the Auction (the "Successful Bid"). In making this decision, the Debtor may consider, among other things, the amount of the purchase price, the net benefit to the Debtor's estate, the form of consideration being offered, the likelihood of the bidder's ability to close a transaction and the timing thereof and the number, and the type and nature of any changes to the PSA. The Qualified Bidder submitting the Successful Bid (as determine by the Debtor under these procedures) shall become the "Successful Bidder."

Promptly following the Debtor's selection of the Successful Bid and the conclusion of the Auction, the Debtor shall announce the Successful Bid and Successful Bidder and shall file with the Bankruptcy Court notice of the Successful Bid and Successful Bidder within twenty four (24) hours of the conclusion of the Auction.

Break-Up Fee and Expense Reimbursement Amount

To provide AHH with an incentive to participate in a competitive process and to compensate AHH for (i) expeditiously performing substantial due diligence and incurring the expenses related thereto and (ii) entering into the PSA with the knowledge and risk that arise from participating in the sale and subsequent bidding process, the Debtor has agreed to pay AHH the Break-Up Fee (in the amount of \$600,000) plus the aggregate amount of all reasonable and documented out of pocket expenses and fees incurred by AHH in connection with the transactions with the Debtor, including reasonable legal and other professional expenses of not more than \$200,000 in the event that the PSA is terminated pursuant its provisions (the “Expense Reimbursement”).

The Break-Up Fee and Expense Reimbursement were material inducements for, and a condition of, AHH’s entry into the PSA, agreeing to provide DIP financing, and becoming a co-plan sponsor. The Break-Up Fee and Expense Reimbursement shall be payable as set forth herein and the Bid Procedures Order (*i.e.*, from the first proceeds of sale of the Property to anyone else).

Back-Up Bidder

Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the Debtor may select one or more Qualified Bidders submitting the next highest or otherwise best bid(s) (in descending order) at the Auction, as determined by the Debtor, in the exercise of its business judgment, which bidders will be designated as the back-up bidder(s) (each a “Back-Up Bidder”). Each Back-Up Bidder shall be required to keep its initial bid (or if a Back-Up Bidder submitted one or more Overbids at the Auction, such Back-Up Bidder’s final Overbid) (a “Back-Up Bid”) open and irrevocable until the earlier of a closing on a Sale of the Property to a different buyer, and March 25, 2018 (and must close on 5 business days’ notice if selected as the Back-Up Bidder(s)).

Following the Sale Hearing, if the Successful Bidder fails to consummate the Sale, the next highest Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtor will be authorized, without further order of the Bankruptcy Court, to consummate the transaction with such Back-Up Bidder.

Combined Hearing

The hearing to approve the Sale will be held on **February 27, 2018 at 10:00 a.m. EST** in connection with confirmation of the Plan (the “Combined Hearing”) at the Bankruptcy Court, but may be adjourned or rescheduled without further notice by an announcement of the adjourned date at the Combined Hearing or as directed by the Bankruptcy Court. At the Combined Hearing, the Debtor shall seek entry of an order, authorizing and approving the Sale to the Successful Bidder, and, as may be warranted or required, the Back-Up Bidders.

Following the Combined Hearing, in the event that the approved sale is not consummated, the Debtor may seek to consummate a sale to one of the Back-Up Bidders (in descending order), as disclosed at the Combined Hearing; and, in such event, the next highest Back-Up Bidder shall be deemed to be the Successful Bidder. The Debtor shall be authorized,

but not required, to consummate the sale with Back-Up Bidders (in descending order) without further notice or order of the Bankruptcy Court.

Return of Good Faith Deposit

The Debtor shall refund to those bidders who are neither the Successful Bidder nor a Back-Up Bidder the Good Faith Deposit received from such bidders within five (5) business days after the Sale Hearing. The Good Faith Deposits of the bidders who have submitted the Successful Bid or a Back-Up Bid shall be held until the later of a closing on a Sale of the Property and March 25, 2018, as the case may be. The Debtor is under no obligation to earn interest on any Good Faith Deposit.

Forfeiture of Good Faith Deposit

If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtor shall have no obligation to return the Good Faith Deposit to such Successful Bidder, and such Good Faith Deposit shall irrevocably become property of the Debtor, notwithstanding the consummation of any sale transaction with another Qualified Bidder.

Reservation of Rights of the Debtor

Except as otherwise provided in the Bidding Procedures or the Bidding Procedures Order, the Debtor further reserves the right to: (a) determine which bidders are Qualified Bidders; (b) determine which bids are Qualified Bids; (c) determine which Qualified Bid is the highest or best proposal and which is the next highest or best proposal; (d) reject any Bid that is (1) inadequate or insufficient, (2) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code or (3) contrary to the best interests of the Debtor and its estate; (e) waive terms and conditions set forth herein with respect to all potential bidders; (f) impose additional terms and conditions with respect to all potential bidders; (g) extend the deadlines set forth herein; (h) continue or cancel the Auction and/or Sale Hearing in open court without further notice; and (i) modify the Bidding Procedures and implement additional procedural rules that the Debtor determines, in its reasonable business judgment, will better promote the goals of the bidding process and discharge the Debtor's fiduciary duties and are not inconsistent with any Bankruptcy Court order or these Bidding Procedures.

Exhibit 2

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
Greenbelt Division**

In re:

THE CONDOMINIUM ASSOCIATION OF
THE LYNNHILL CONDOMINIUM,

Debtor.¹

Case No. 18-10334

Chapter 11

NOTICE OF AUCTION

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On January 10, 2018, the above-captioned debtor and debtor in possession (the “Debtor”), filed a voluntary petition for relief under chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of Maryland (the “Bankruptcy Court”).

2. The Debtor is an unincorporated condominium association owning and controlling certain real estate, amenities and improvements (including residential units) located at 3103 and 3107 Good Hope Avenue, Temple Hills, Maryland 20748 (the “Property”).

3. On January 10, 2018, the Debtor filed a motion seeking entry of an order (the “Bidding Procedures Order”) (i) approving AHH16 Development, LLC (“AHH”) as “Stalking Horse” by approving the break-up fee and expense reimbursement agreed to by the Debtor, (ii) approving auction and bidding procedures (the “Bidding Procedures”) and (iii) granting related relief in connection with the sale of the Property.² Doc. ___.

4. On January [31], 2018, the Bankruptcy Court entered the Bidding Procedures Order. Doc. ___. Pursuant to the Bidding Procedures Order,³ the Debtor will commence an auction for the sale of the Property (the “Auction”) beginning on **February 19, 2018 at 10:00 a.m. (EST)** at the offices of Pillsbury Winthrop Shaw Pittman LLP, 1200 Seventeenth Street, NW Washington, DC 20036. Parties that submit a Qualified Bid in accordance with the Bidding Procedures Order by no later than **February 16, 2018 at 5:00 p.m. (EST)** (the “Bid Deadline”), and AHH (who is deemed a Qualified Bidder without submitting any new bid prior to the Bid Deadline) may participate at the Auction. Anyone (other than AHH and Dragone Realty LLC)

¹ The Debtor’s federal identification number is 52-0993760.

² To the extent that Local Rule 6004-1 applies to the sale of the Property, the Debtor notes that it listed the Property on Schedule A/B as having a value of \$0.00. Doc. 22. AHH, the stalking horse bidder, does not have any relationship with the Debtor or any other parties in interest in this case. AHH and the Debtor have agreed to a purchase price of \$13,450,000, minus (i) a credit for all amounts advanced and accrued under the postpetition loan to the Debtor and (ii) a \$1 million credit for satisfying life, health, and safety requirements of the County.

wishing to participate in this process and submit an offer for the Property must submit their competing bid prior to the Bid Deadline and in accordance with the Bidding Procedures.

5. A hearing to approve the sale of the Property to the successful bidder in accordance with the Debtor's chapter 11 plan will be held on **February 27, 2018 at 10:00 a.m. (EST)** (the "Confirmation Hearing"). The Confirmation Hearing will be held before the Honorable Wendelin I. Lipp, in the U.S. Bankruptcy Court for the District of Maryland, Courtroom 3-C, 6500 Cherrywood Lane, Greenbelt, MD 20770. The Confirmation Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Confirmation Hearing.

6. Objections, if any, to the sale of the Property, must: (a) be in writing; (b) comply with the Bankruptcy Rules and Local Bankruptcy Rules; and (c) be filed with the clerk of the Bankruptcy Court for the District of Maryland, Courtroom 3-C, 6500 Cherrywood Lane, Greenbelt, MD 20770, on or before **February 20, 2016 at 4:00 p.m. (prevailing Eastern time)**; and be served upon: (1) Debtor's counsel, Pillsbury Winthrop Shaw Pittman LLP, 1200 Seventeenth Street NW, Washington, DC 20036 (Attn: Patrick Potter, patrick.potter@pillsburylaw.com) and 324 Royal Palm Way, Suite 220, Palm Beach, FL 33480 (Attn: Dania Slim, dania.slim@pillsburylaw.com); (b) counsel to AHH, Shulman, Rogers, Gandal, Pordy & Ecker, P.A., 12505 Park Potomac Avenue, 6th Floor, Potomac, MD 20854 (Attn: Michael J. Lichtenstein, Esq., mlichtenstein@shulmanrogers.com); and (c) the Office of the U.S. Trustee for the District of Maryland, 6305 Ivy Lane, Suite 600, Greenbelt, MD 20770 (Attn: Jeanne M. Crouse, Esq., jeanne.m.crouse@usdoj.gov).

7. The dates relevant to the auction and sale include:

Date	Event/Deadline
February 16, 2018 at 5:00 p.m. EST	Deadline for Bids and Deposits (Bid Deadline)
February 19, 2018 at 10:00 a.m. EST	Auction
February 20, 2018 at 4:00 p.m. EST	Objection Deadline
February 27, 2018 at 10:00 a.m. EST	Approval of Sale Pursuant to Chapter 11 Plan

8. This Notice is subject to the fuller terms and conditions of the Bid Procedures and the Bidding Procedures Order, which shall control in the event of any conflict. The Debtor encourages parties in interest to review these and other pertinent documents in their entirety. Parties interested in receiving more information regarding the sale of the Property or copies of any related document, including the Purchase and Sale Agreement, the Bid Procedures, or the Bidding Procedures Order, may make a written request to counsel for the Debtor, Pillsbury Winthrop Shaw Pittman LLP, 1200 Seventeenth Street NW, Washington, DC 20036 (Attn: Patrick Potter, patrick.potter@pillsburylaw.com) and 324 Royal Palm Way, Suite 220, Palm Beach, FL 33480 (Attn: Dania Slim, dania.slim@pillsburylaw.com). In addition, copies of the Bid Procedures, the Bidding Procedures Order and this Notice can be found on

(i) www.kccllc.net/lynnhill; and (ii) are on file with the Clerk of the Bankruptcy Court at 6500 Cherrywood Lane, Greenbelt, Maryland 207701.

Dated: January 23, 2018

Respectfully submitted,

Pillsbury Winthrop Shaw Pittman LLP

/s/ Patrick Potter

Patrick J. Potter (Bar No. 08445)

1200 Seventeenth Street, NW

Washington, DC 20036

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Dania Slim (Bar No. 18050)

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Proposed Counsel for the Debtor

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
Greenbelt Division

In re:

THE CONDOMINIUM ASSOCIATION OF
THE LYNNHILL CONDOMINIUM,

Debtor.¹

Case No. 18-10334

Chapter 11

**NOTICE OF MOTION FOR AN ORDER (I) APPROVING
AHH16 DEVELOPMENT, LLC AS “STALKING HORSE” BY
APPROVING THE BREAK-UP FEE AND EXPENSE REIMBURSEMENT
(II) APPROVING AUCTION AND BIDDING PROCEDURES AND
(III) GRANTING OTHER RELATED RELIEF**

On January 22, 2018, the Condominium Association of the Lynnhill Condominium filed the *Motion for an Order (I) Approving AHH16 Development, LLC As “Stalking Horse” By Approving the Break-Up Fee and Expense Reimbursement (II) Approving Auction and Bidding Procedures and (III) Granting Other Related Relief* (the “Motion”).

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to grant the relief requested in the Motion, or if you want the Court to consider your views on the Motion then:

On or before **January 29, 2018 at 4:00 p.m. (EST)**, you or your attorney must file with the Court a written objection to the Motion with the Clerk of the Bankruptcy Court, 6500 Cherrywood Ln, Greenbelt, MD 20770. You may append affidavits and documents in support of your objection.

If you or your attorney mail your objection to the Court for filing, you must mail it early enough so the Court will receive it on or before the date stated above.

You or your attorney must also mail a copy of your objection to:

- (a) counsel to the Debtor, Pillsbury Winthrop Shaw Pittman LLP, 1200 Seventeenth Street NW, Washington, DC 20036 (Attn: Patrick Potter, patrick.potter@pillsburylaw.com) and 324 Royal Palm Way, Suite 220, Palm Beach, FL 33480 (Attn: Dania Slim, dania.slim@pillsburylaw.com);

¹ The Debtor’s federal identification number is 52-0993760.

- (b) counsel to AHH16 Development, LLC, Shulman, Rogers, Gandal, Pordy & Ecker, P.A., 12505 Park Potomac Avenue, 6th Floor, Potomac, MD 20854 (Attn: Michael J. Lichtenstein, Esq., mlichtenstein@shulmanrogers.com); and
- (c) the Office of the U.S. Trustee for Region 4, 6305 Ivy Lane, Suite 600, Greenbelt, MD 20770 (Attn: Jeanne M. Crouse, Esq., jeanne.m.crouse@usdoj.gov).

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting relief. The Court may grant the relief requested in the Motion without a hearing if the objection filed states inadequate grounds for denial of the relief sought in the Motion.

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held on **January 31, 2018 at 10:00 a.m.** in Courtroom 3-C, 6500 Cherrywood Lane, Greenbelt, MD 20770. Parties in interest with questions may contact the undersigned.

Dated: January 23, 2018

Respectfully submitted,

Pillsbury Winthrop Shaw Pittman LLP

/s/ Patrick J. Potter

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