

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

GRACIOUS HOME LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 16-13500 (MKV)

(Jointly Administered)

**ORDER (I) APPROVING THE BIDDING PROCEDURES FOR THE
SALE OF THE ASSETS; (II) ESTABLISHING THE NOTICE PROCEDURES
AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF; (III)
SCHEDULING A SALE HEARING; AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² dated May 23, 2017 of the above-captioned debtors (collectively, the “Debtors”) for among other things, entry of an order (the “Order”) (i) approving the proposed auction and bidding procedures (the “Bidding Procedures”), which are attached as **Schedule 1** hereto, for the sale of the Assets; (ii) approving the form and manner of notice of all procedures, protections, schedules, and agreements; (iii) scheduling a hearing (the “Sale Hearing”) to approve such sale (the “Sale Transaction”); and (iv) granting other related relief [ECF No. 295]; and no opposition to the Motion having been filed; and the Court having considered the Motion, and the arguments of counsel made at the hearing held on May 31, 2017 on the Motion (the “Bidding Procedures Hearing”); as more fully described in the Motion; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and all other interested parties; and upon the record of the Bidding Procedures Hearing and the

¹ The Debtors in these chapter 11 cases and the last four digits of their tax identification numbers are: Gracious Home LLC (6822); Gracious Home Holdings LLC (3251); Gracious Home Payroll LLC (3681); GH East Side LLC (3251); GH West Side LLC (3251); GH Chelsea LLC (3251) and Gracious (IP) LLC (3251). The latter four entities are disregarded for tax purposes and do not have their own tax identification numbers, but use that of Gracious Home Holdings LLC. The address of the Debtors’ corporate headquarters is 1210 Third Avenue, New York, New York 10021.

² Capitalized terms used but not defined herein shall have the same meaning ascribed to such terms in the Motion.

Chapter 11 Cases, and after due deliberation thereon, and good cause appearing therefor, it is hereby,

FOUND, CONCLUDED AND DETERMINED THAT:

A. The Court has jurisdiction to consider the Sale Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Sale Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409. The legal predicates for the relief requested in the Sale Motion are Bankruptcy Code sections 105, 363, and 365. Such relief is also warranted pursuant to Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014 and Local Bankruptcy Rules 6004-1 and 6006-1 and the Sale Guidelines.

B. The relief granted herein is in the best interests of the Debtors, their estates, and other parties in interest.

C. The Debtors have articulated good and sufficient business reasons for the Court to (i) approve the Bidding Procedures, (ii) approve the form and manner of notice of the Sale Motion, the Auction, and the Sale Hearing, and (iii) set the date of the Auction and the Sale Hearing.

D. Due, sufficient, and adequate notice of the Bidding Procedures Hearing, the relief requested in the Sale Motion, the relief granted herein, the Bidding Procedures, and the Auction has been given in light of the circumstances and the nature of the relief requested, and no other or further notice thereof is required.

E. The Bidding Procedures, substantially in the form attached hereto as **Schedule 1**, are fair, reasonable, and appropriate, and represent a reasonable exercise of the Debtors' business judgment regarding the best way to maximize the value of the Assets.

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED, as set forth herein.

2. The Bidding Procedures, as attached hereto as **Schedule 1**, are approved and incorporated into this Order by reference, as though fully set forth herein. Accordingly, the failure to recite or reference any particular provision of the Bidding Procedures shall not diminish the effectiveness of such provision, it being the intent of the Court that the Bidding Procedures be authorized and approved in their entirety. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures, including to provide the Bid Protections.

The Bid Deadline

3. Except as expressly set forth herein or in the Bidding Procedures, for a bid to be a Qualified Bid, the following parties must receive such bid in writing **on or before June 16, 2017 at 4:00 p.m. (prevailing Eastern Time)** or such earlier date as may be agreed to by the Debtors (the "**Bid Deadline**"): (a) the Debtors, 1210 Third Avenue, New York, New York Attn: Robert Morrison (rmorrison@gracioushome.com); (b) counsel for the Debtors, Trenk, DiPasquale, Della Fera & Sodono, P.C., 347 Mount Pleasant Ave., Suite 300, West Orange, New Jersey 07052, Attn: Joseph J. DiPasquale (jdipasquale@trenklawfirm.com) and Irena M. Goldstein (igoldstein@trenklawfirm.com); (c) financial advisor and investment banker to the Debtors, B. Riley & Co., 420 Lexington Avenue, Suite 3001, 420 Lexington Avenue, New York, New York 10022, Attn: Perry M. Mandarino (pmandarino@brileyco.com) and Adam M. Rosen (arosen@briley.com); (d) counsel for the Committee, Seward & Kissel LLP, One Battery Park Plaza, New York, New York 10004, Attn: John R. Ashmead (ashmead@sewkis.com) and Robert J. Gayda (gayda@sewkis.com); and (e) financial advisor to the Committee, Wyse Advisors LLC, 85 Broad Street, 18th Floor, New York, NY 10004, Attn: Mike Wyse, (mwyse@wyseadvisorsllc.com) (collectively, the "**Bid Notice Parties**"). If the DIP Lender does not submit a Bid, the Debtors will provide the DIP Lender with copies of all the Bids that they

receive for the Assets.

4. Notwithstanding anything herein to the contrary, the Stalking Horse Bidder, if any, is deemed a Qualified Bidder for all purposes, and the Stalking Horse Agreement is deemed a Qualified Bid for all purposes.

Notice of the Sale Transaction and the Sale Hearing

5. Within two (2) business days after the entry of this Order (the “Mailing Date”), the Debtors (or their agents) shall serve notice of the Sale Motion, this Order, and the Bidding Procedures by first-class mail, postage prepaid upon (a) the Office of the United States Trustee for the Southern District of New York; (b) the U.S. Attorney for the Southern District of New York; (c) counsel to the DIP Lender; (d) counsel to the Committee; (e) the Internal Revenue Service; (f) the Securities and Exchange Commission; (g) any party known to hold or assert any liens, hypothecations, encumbrances, claims, liabilities, security interests, interests, mortgages, pledges, restrictions or charges (including any conditional sale or other title retention agreement) (the “Encumbrances”) in any of the Assets; (h) all affected federal, state, and local regulatory, and taxing authorities; (i) all entities known to have expressed an interest in a transaction with respect to all or part of the Assets during the six (6) months preceding the date hereof; and (j) any such other party entitled to notice pursuant to Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York.

6. On the Mailing Date or as soon thereafter as practicable, the Debtors (or their agents) shall serve by first-class mail, postage prepaid, the Sale Notice upon all other known creditors and all other known creditors of the Debtors. The Debtors shall also post the Sale Notice on the website of the Debtors’ claims and noticing agent, available at <https://cases.primeclerk.com/GraciousHome>.

7. The Auction shall take place on **June 22, 2017 at 10:00 a.m. (Prevailing Eastern**

Time) at 45 Rockefeller Plaza, Suite 2000, New York, New York 10111, or such other location and time as the Debtors shall timely communicate to all parties entitled to attend the Auction, including all Qualified Bidders, any Stalking Horse Bidder and its counsel, the United States Trustee, the DIP Lender and counsel for the Committee.

8. The Debtors shall identify the Successful Bidder at the Auction and shall file, but not serve, a notice identifying any Successful Bidder and the date and time of the Sale Hearing. The Debtors shall also post the identity of the Successful Bidder on the website of the Debtors' claims and noticing agent, available at <https://cases.primeclerk.com/GraciousHome>.

9. Objections, if any, to the selection of the Successful Bidder or to the conduct of the Auction must be filed and served on the Bid Notice Parties by no later than **June 23, 2017 at 5:00 p.m. (Prevailing Eastern Time)** (the "Objection Deadline"). **If a party with an Encumbrance fails to object by the Objection Deadline, it will be deemed to consent to the Sale Transaction free and clear of Encumbrances (other than Assumed Liabilities) under Bankruptcy Code section 363(f)(2).**

10. The Sale Hearing to approve the sale of the Assets to the Successful Bidder shall be held on **June 27, 2017 at 10:00 a.m. (Prevailing Eastern Time)**.

11. The Debtors' proposed notice of (a) the Sale Motion, (b) the proposed Sale, (c) the Successful Bidder, and (d) the Bidding Procedures are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of each, and no further notice of, or hearing on, each is necessary or required.

12. Only the Debtors, the Committee, any Stalking Horse Bidder, the DIP Lender, and any other Qualified Bidder, in each case, along with their representatives and counsel, shall be entitled to attend and participate in the Auction (such attendance to be in person).

13. The Debtors and their professionals shall direct and preside over the Auction, and the Auction shall be transcribed. 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 the Bankruptcy Court.

Related Relief

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

15. This Order shall be binding on the Debtors, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

16. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

17. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: New York, New York
May 31, 2017

s/ Mary Kay Vyskocil
Honorable Mary Kay Vyskocil
United States Bankruptcy Judge

Schedule 1

Bidding Procedures

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

GRACIOUS HOME LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 16-13500 (MKV)

(Jointly Administered)

BIDDING PROCEDURES

The bidding procedures set forth below (the “Bidding Procedures”) detail the process by which Gracious Home LLC and certain of its affiliated debtors in the above-captioned chapter 11 cases, as the debtors and debtors in possession (collectively, the “Debtors”), are authorized to solicit bids for the right to purchase substantially all of the Debtors’ assets (subject to certain exclusions) (the “Assets”), free and clear of all liens, claims and encumbrances thereon (a “Sale”), pursuant to a duly authorized and executed purchase and sale agreement (an “APA”). A form of an APA (“Form APA”) acceptable to the Debtors, and which contains a description of the Assets subject to sale, is included with these Bidding Procedures.

These Bidding Procedures were approved by order of the Bankruptcy Court dated May 31, 2017 (the “Bidding Procedures Order”), pursuant to the motion of the Debtors for (I) an Order (A) Approving the Bidding Procedures for a Sale of the Assets, (B) Establishing the Notice Procedures, (C) Scheduling a Hearing on the Sale, and (D) Granting Related Relief and (II) an Order (A) Approving the Sale of the Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (B) Approving the Assumption and Assignment of Executory Contracts and Leases, and (C) Granting Related Relief (the “Motion”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed them in the Motion and/or the Bidding Procedures Order, as applicable. These documents can be found on the website of the Debtors’ claims and noticing agent, Prime Clerk, at <https://cases.primeclerk.com/GraciousHome>, or the Bankruptcy Court’s internet site <http://www.nysb.uscourts.gov>, or for a fee through an account obtained from the PACER website at <http://pacer.psc.uscourts.gov>. The documents may also be obtained by contacting counsel to the Debtors, Trenk, DiPasquale, Della Fera & Sodono, P.C., 347 Mt. Pleasant Ave., Suite 300, West Orange, New Jersey 07052, Attn: Joseph J. DiPasquale (jdipasquale@trenklawfirm.com) and Irena M. Goldstein (igoldstein@trenklawfirm.com).

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Bid Requirements

1. Access to Diligence; Due Diligence from Interested Parties

Upon execution of a confidentiality agreement, in form and substance satisfactory to the Debtors, a qualified party that wishes to conduct due diligence on any of the Assets may be granted access to information related thereto, subject to these Bidding Procedures and the Bidding Procedures Order. For a party to be considered a “qualified party” and provided diligence access, such party must demonstrate, in the Debtors’ judgment, in consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted), that such party has the ability to close promptly on the Sale following the Bankruptcy Court’s approval of such party’s Qualified Bid (as defined below). The information to be provided to such qualified parties will be information that the Debtors believe is appropriate in light of the Debtors’ need to protect their trade secrets and confidential research, development, and commercial information.

Each party expressing an interest in any of the Assets shall comply with all requests for additional information and due diligence access requested by the Debtors or their advisors (in consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted)) regarding such party and its ability to consummate its obligations under the APA. Failure by a party to comply with such requests for additional information and due diligence access may be a basis for the Debtors (in consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted)) to determine that such bidder is not a Qualified Bidder or that a bid made by such party is not a Qualified Bid.

By submitting a bid, each bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct due diligence on the Debtors prior to making its bid; that it has relied solely upon its own independent due diligence in making its bid; and that it did not rely upon any written or oral statement, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Debtors, or the completeness of any information provided in connection therewith.

2. Qualified Bids

A written offer by a potential bidder that is delivered so as to be received **by no later than June 16, 2017 at 4:00 p.m. Prevailing Eastern Time (the “Bid Deadline”)** by email to (a) the Debtors, 1210 Third Avenue, New York, New York Attn: Robert Morrison (rmorrison@gracioushome.com); (b) counsel for the Debtors, Trenk, DiPasquale, Della Fera & Sodono, P.C., 347 Mount Pleasant Ave., Suite 300, West Orange, New Jersey 07052, Attn: Joseph J. DiPasquale (jdipasquale@trenklawfirm.com) and Irena M. Goldstein (igoldstein@trenklawfirm.com); (c) financial advisor and investment banker to the Debtors, B. Riley & Co., 420 Lexington Avenue, Suite 3001, 420 Lexington Avenue, New York, New York 10022, Attn: Perry M. Mandarino (pmandarino@brileyco.com) and Adam M. Rosen

(arosen@briley.com); (d) counsel for the Committee, Seward & Kissel LLP, One Battery Park Plaza, New York, New York 10004, Attn: John R. Ashmead (ashmead@sewkis.com) and Robert J. Gayda (gayda@sewkis.com); and (e) financial advisor to the Committee, Wyse Advisors LLC, 85 Broad Street, 18th Floor, New York, NY 10004, Attn: Mike Wyse, (mwyse@wyseadvisorsllc.com), and that complies with all of the following requirements, as determined by the Debtors, shall constitute a “Qualified Bid” for the Assets:

- a) Assets: each Qualified Bid must identify which Assets are subject to the bid;
- b) Good Faith Deposit: each Qualified Bid must be accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors) or certified check payable to the order of the Gracious Home LLC (or such party as the Debtors may determine) or such other form acceptable to the Debtors, in an amount no less than 10% of the consideration of any such Qualified Bid. For the avoidance of doubt, this requirement shall apply to any party with a right to credit bid;
- c) Minimum Bid: each Qualified Bid must provide for consideration that is in an amount not less than the sum of the consideration set forth in the Form APA; *provided however*, if there is a Stalking Horse Bid (defined below) for the Assets designated prior to the Bid Deadline, the consideration must be in the amount of the Stalking Horse Overbid (as defined below);
- d) Irrevocable (Qualified Bids): each Qualified Bid must state that it is irrevocable until the conclusion of the Auction to the extent such bidder is not the Successful Bidder or the Backup Bidder (as defined below);
- e) Irrevocable (Successful Bid and Backup Bid): each Qualified Bid must state that in the event the relevant bidder is chosen as the Successful Bidder (as defined below) or the Backup Bidder, it shall remain irrevocable until the earlier of (x) the consummation of the Sale with a Successful Bidder and (y) forty-five (45) days after the Sale Hearing;
- f) Regulatory and Third-Party Approvals: each Qualified Bid shall set forth each regulatory and third-party approval required for the bidder to consummate the Sale and provide evidence satisfactory to the Debtors (in consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted)) that each such approval can be obtained on a timeframe acceptable to the Debtors;
- g) Corporate Approvals: each Qualified Bid shall include evidence satisfactory to the Debtors of authorization and approval from the bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery, and closing of the APA, financing agreements and any other ancillary documents or agreements;
- h) Form of Bid: each Qualified Bid shall include (a) an APA on substantially the terms of, or on terms that are more favorable to the Debtors than those set forth in any Stalking Horse Agreement (defined below), and if no Stalking Horse Agreement, than those set forth in the Form APA, which shall specify the amount of cash or other consideration offered by the bidder for the Assets, include all exhibits and schedules, and be signed by an authorized

representative of such bidder, and (b) a proposed Sale Order. The APA, together with its exhibits and schedules, and the proposed Sale Order shall be marked to show the required amendments and modifications to any Stalking Horse Agreement, or as applicable, the Form APA and the Sale Order; *provided however*, that a Bid submitted by the DIP Lender that contemplates it credit bidding the amount of its secured claim pursuant to Bankruptcy Code section 363(k) and which Bid has total consideration lower than the Purchase Price set forth in the Form APA shall be deemed a Qualified Bid if all other requirements herein are satisfied;

- i) Designation of Assumed Liabilities: each Qualified Bid shall identify all liabilities which the bidder proposes to assume;
- j) Due Diligence: each Qualified Bid shall include an acknowledgement and representation that the bidder has had an opportunity to conduct any and all required due diligence regarding the Assets prior to making its offer and shall not be subject to satisfaction of a due diligence condition;
- k) Privacy Policy: each Qualified Bid shall provide assurances that, if the Assets include a customer list or other personally identifiable information, the bidder will substantially follow the Debtors' current privacy policy;
- l) Fees: except for any Stalking Horse Bid, no Qualified Bid may request Bid Protection (defined below);
- m) Proof of Financial Ability to Perform: each Qualified Bid shall contain sufficient and adequate financial and other information to demonstrate, to the satisfaction of the Debtors (in consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted)), that the relevant bidder has the financial wherewithal and ability to purchase the Assets; *provided however*, that the DIP Lender (as defined in the Sale Motion) shall be deemed to have the financial ability to perform;
- n) Consent to Jurisdiction: each Qualified Bid shall state that the relevant bidder consents to the core jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Debtors and their Assets, and have waived any right to a jury trial in connection with any disputes relating to the Debtors, the Chapter 11 Cases, the Bidding Procedures, any Stalking Horse Agreement, the Auction, or the construction and enforcement of any Stalking Horse Agreement, an APA or any documents related thereto;
- o) No Collusion: each Qualified Bid shall confirm that the relevant bidder has not engaged in any collusion with respect to the bidding, the Auction or the Assets; and
- p) Other Information: each Qualified Bid shall contain such other information as the Debtors deem appropriate (in consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted)).

By submitting a bid, a bidder (other than any Stalking Horse Bidder) shall be deemed to waive the right to assert or seek payment of any “break-up” fee, expense reimbursement, or other post-filing claim, including administrative expense claims, and to the extent otherwise applicable, a substantial contribution claim under section 503 of the Bankruptcy Code, with respect to its bid or the marketing or auction process. The Stalking Horse Bidder, in its capacity as such, shall be deemed to waive the right to assert or seek payment of any post-filing claim, including administrative expense claims, and to the extent otherwise applicable, a substantial contribution claim under section 503 of the Bankruptcy Code, with respect to the Stalking Horse Agreement or the marketing or auction process, other than claims for any Bid Protections approved by the Court.

Each bidder who submits a Qualified Bid shall be a “Qualified Bidder.” Any Stalking Horse Bidder is deemed a Qualified Bidder and any Stalking Horse Agreement is deemed a Qualified Bid for all purposes in connection with the bidding process, the Auction, and the Sale of the Assets. Subject to the terms and conditions set forth herein, the Debtors, in their sole and absolute discretion in consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted), shall make a determination regarding whether a bid is a Qualified Bid and whether any of the above-listed requirements may be waived and notify all bidders before the Auction whether their bids have been determined to be Qualified Bids.

3. Modifications of Qualified Bids Prior to Auction

Between the date that the Debtors notify a bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the written consent of the Debtors (in consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted)), a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period of time such Qualified Bid remains binding as specified herein; provided that any Qualified Bid may be improved at the Auction as set forth herein.

4. Designation of Stalking Horse Bid

The Debtors may declare, in consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted), a Qualified Bid received prior to the Bid Deadline (which may have been modified pursuant to the paragraph above after the Bid Deadline) to be a “stalking horse bid” (any such bid, a “Stalking Horse Bid,” and the provider of such a bid, a “Stalking Horse Bidder”) at any time prior to seventy-two (72) hours prior to the Auction, which bid shall set the floor for all bids for a Sale at the Auction, and enter into an APA with the Stalking Horse Bidder memorializing the proposed Sale (the “Stalking Horse Agreement”).

Recognizing a Stalking Horse Bidder’s expenditure of time, energy and resources, and that a Stalking Horse Bid provides a floor bid with respect to the relevant Assets, the Debtors will provide the Stalking Horse Bidder with customary bid protections to be agreed upon. If the Stalking Horse Bidder attends the Auction with its Stalking Horse Bid in place, the Stalking Horse

Bidder is outbid, and the Successful Bidder is a party other than the Stalking Horse Bidder, the Stalking Horse Bidder shall be entitled to receive (i) a break-up fee not to exceed 3% of the total consideration of the Stalking Horse Bid (the “Break-Up Fee”); and (ii) the reimbursement of the Stalking Horse Bidder’s reasonable out-of-pocket expenses incurred in connection with the negotiation, execution and performance under the Stalking Horse Agreement and the transactions contemplated thereunder (including attorneys’ fees and expenses) (“Expense Reimbursement”, and together with the Break-Up Fee, the “Bid Protections”), the total of the Bid Protections, inclusive of the Expense Reimbursement shall not exceed \$150,000; *provided however* that a Stalking Horse Bidder that credit bids a portion of the purchase price for the Assets shall only be entitled to the Expense Reimbursement. The Debtors will announce the designation of the Stalking Horse Bidder(s), if one or more is selected, by filing a notice on the Bankruptcy Court’s docket (a “Stalking Horse Bid Notice”). A Stalking Horse Bid Notice shall:

- a) State the identity of the Stalking Horse;
- b) Attach the Stalking Horse Agreement; and
- c) Contain a statement setting forth the adjusted Minimum Bid (the Stalking Horse Overbid”), which amount shall equal the sum of (A) the value of the Stalking Horse Bid (calculated in the Debtors’ sole discretion (in consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted)), (B) the Bid Protections, and (C) \$150,000.

5. Auction Baseline Bid; No Qualified Bids

On or prior to 5:00 p.m. (prevailing Eastern Time) one (1) business day before the Auction, the Debtors shall provide each Qualified Bidder, including any Stalking Horse Bidder, the representatives and advisors for the Committee, with notice of the terms of the highest or otherwise best Qualified Bid or Qualified Bids received (such highest or otherwise best Qualified Bid, the “Auction Baseline Bid”).

If the Debtors do not receive any Qualified Bids other than a Stalking Horse Bid by the Bid Deadline, the Debtors will not hold an Auction, and any Stalking Horse Bidder will be named the Successful Bidder (as defined below) for the Assets. The Debtors shall promptly submit the Stalking Horse Bid to the Bankruptcy Court for approval at the Sale Hearing.

Auction

If the Debtors determine that they have received one (1) or more Qualified Bids (in addition to the Stalking Horse Bidder’s bid), the Debtors are authorized to conduct an Auction. Other than as expressly set forth herein, the Debtors may conduct an Auction in the manner they determine (in consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted)) will result in the highest or otherwise best offer for the Assets. If the Auction is held, it shall take place on **June 22, 2017 at 10:00 a.m. (Prevailing Eastern Time)** (the “Auction Date”) at 45 Rockefeller Plaza, Suite 2000, New York, New York 10111 or on such other date or at such other location as shall be timely communicated to all parties entitled to attend the Auction.

Auction Process

1. Auction Procedures

The Auction shall be conducted in accordance with the following procedures:

- a) Participation: only the Debtors, Qualified Bidder(s), the Committee and the DIP Lender, along with their respective representatives and advisors, may attend the Auction. The bidding shall commence and proceed as solely determined by the Debtors (in consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted)). Only Qualified Bidders will be entitled to make bids at the Auction;
- b) Bidding Increments: bidding at the Auction will begin with the Auction Baseline Bid and continue in bidding increments (each a “Subsequent Bid”) providing a net value to the estate (after taking into consideration any required Bid Protections) of at least an additional \$150,000 above the prior bid; *provided however*, that the Debtors may in their sole discretion (in consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted)) increase or decrease the amount of Subsequent Bids after the first round of bidding. After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the bid that they believe, in consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted), to be the highest or otherwise better offer (the “Leading Bid”);
- c) In-Person Bidding: the Qualified Bidder(s) shall appear in person at the Auction, through a duly authorized representative, or as otherwise agreed by the Debtors;
- d) No Collusion: each Qualified Bidder shall be required to represent that it has not been engaged in any collusion with respect to the bidding or the sale;
- e) Auction Record: the Auction will be transcribed or video recorded to ensure an accurate recording of the bidding at the Auction;
- f) Aggregation of Bids: the Debtors shall have the ability to decide, at any point (upon consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted)), that bids may be aggregated, joined, disjoined, or otherwise separated;
- g) Assets Sold: with the consent of the Stalking Horse Bidder, the Debtors shall have the ability to decide (in consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted)), at any point, that they are not selling any or all of the Assets, or that they are removing certain Assets from the Auction, and only selling others; and

- h) Conclusion of Auction: the Auction shall continue until the Debtors determine that a bid is the Successful Bid (as defined below).

2. Selection of Successful Bid

The Debtors will review and evaluate each Qualified Bid and determine, after consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted), which offer is the highest or otherwise best offer from among the Qualified Bids submitted at the auction (such bid, the "Successful Bid," and the Qualified Bidder submitting such Successful Bid, the "Successful Bidder"), which shall be subject to Bankruptcy Court approval. In selecting the Successful Bid, the Debtors may consider all factors, including the amount of the purchase price, the form and total amount of consideration being offered, the likelihood of each Qualified Bidder's ability to close a Sale and the timing thereof, the form and substance of the APA requested by each Qualified Bidder, and the net benefit to the Debtors' estates.

Promptly and no later than one (1) business day following the Debtors' selection of the Successful Bid and the conclusion of the Auction (if held), the Debtors shall announce the Successful Bid and Successful Bidder and shall file (but not serve) with the Bankruptcy Court and post on the Debtors' noticing agent's website <https://cases.primeclerk.com/GraciousHome> notice of the Successful Bid, the Successful Bidder and the APA(s) relevant thereto.

3. Backup Bidder

Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next highest or otherwise best bid at the Auction, as determined by the Debtors, after consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted), will be designated as the backup bidder (the "Backup Bidder"). For the avoidance of doubt, (a) in the event that the Stalking Horse Bidder is not the winning bidder at the Auction and (b) the Stalking Horse Bidder submits the second highest or second best bid at the Auction, the Stalking Horse Bidder shall have the right (in its sole discretion) but not the obligation to be the Backup Bidder. Subject to the other terms and conditions of these Bidding Procedures, the Backup Bidder shall be required to keep its bid (the "Backup Bid") open and irrevocable until the earlier of (x) the consummation of a sale with a Successful Bidder and (y) forty-five (45) days after the Sale Hearing; provided, however, that if the Stalking Horse Bidder is the Backup Bidder its Backup Bid shall be on the terms set forth in the Stalking Horse Agreement. If the Stalking Horse Bidder does not serve as the Backup Bidder, the Debtors, in consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted), shall have the right to select the next highest or otherwise best bidder after the Successful Bidder at the Auction (other than the Stalking Horse Bidder) as the Backup Bidder.

Following the Sale Hearing, if the Successful Bidder fails to consummate an approved Sale following the Sale Hearing because of a breach on the part of such Successful Bidder (which allows Debtors to terminate, and which results in a termination of such Sale), the Backup Bidder will be deemed to be the new Successful Bidder, and the Debtors will be authorized, but not required, to

consummate a Sale with the Backup Bidder without further order of the Bankruptcy Court. In such case, the defaulting Successful Bidder's deposit, if any, shall be forfeited to the Debtors' estates, and the Debtors specifically, reserve the right to seek all available damages from the defaulting Successful Bidder.

Sale Hearing

The Successful Bid will be subject to approval by the Bankruptcy Court. The Sale Hearing to approve the sale of the Assets to the Successful Bidder is scheduled to take place on **June 27, 2017 at 10:00 a.m. (Prevailing Eastern Time)** before the Honorable Mary Kay Vyskocil, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004, or at such times thereafter as counsel may be heard. The Sale Hearing may be adjourned from time to time by the Debtors (after consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted)) without further notice to any other party in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or a notice filed with the Bankruptcy Court.

Return of Good Faith Deposits

Except for the Backup Bidder, all deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder no later than five (5) business days following the conclusion of the Auction. The deposit of a Backup Bidder shall be held by the Debtors until the earliest of two (2) business days after (a) forty-five (45) days after the date of the Sale Hearing; and (b) the closing of the Successful Bid with the Successful Bidder provided, however, that if the Stalking Horse Bidder is the Backup Bidder, the Stalking Horse Bidder's deposit shall be held by the Debtors until the earliest of (a) the closing of the Successful Bid with the Successful Bidder and (b) forty-five (45) days after execution of the Stalking Horse Agreement.

Reservation of Rights

Subject to the Bidding Procedures Order, the Debtors reserve their rights, as they may determine to be in their best interests and in the exercise of their fiduciary obligations to, in consultation with the Committee and the DIP Lender (unless the DIP Lender has submitted a Bid, in which case it will not be consulted): (a) after consultation with any Stalking Horse Bidder, modify the Bidding Procedures or impose, at or prior to the Auction, different and/or additional terms and conditions or procedural rules on the sale of the Assets; (b) determine which bidders are Qualified Bidders; (c) determine which bids qualify as Qualified Bids; (d) determine whether to enter into or accept a Qualified Bid or Subsequent Bid; (e) determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (f) reject any Bid, even if such Bid is submitted by a Qualified Bidder, that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtors; (g) waive terms and conditions set forth herein with respect to all potential Bidders; and (h) extend the deadlines set forth herein; provided, however, that nothing in these Bidding Procedures shall,

or shall be construed to, in any way amend, impair, alter or otherwise modify the terms of any Stalking Horse Agreement or any Stalking Horse Bidder's rights thereunder.

Consent to Jurisdiction

Any Stalking Horse Bidder, all Qualified Bidders, and all participants at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Debtors or their Assets, and have waived any right to a jury trial in connection with any disputes relating to the Debtors, the Chapter 11 Cases, the Bidding Procedures, any Stalking Horse Agreement, the Auction, or the construction and enforcement of any Stalking Horse Agreement, APA or any documents related thereto.