

- i. Notice. Upon the filing of this Motion, the Debtors will provide notice of the Motion to, among others, each party listed in the Notice section contained herein, including the fifty (50) parties that executed confidentiality agreements in connection with Grubb & Ellis's marketing efforts to date (collectively, the "Notice Parties").
- ii. Bid Deadline. Any Notice Party, or any other party receiving notice of this Motion, shall deliver written or electronic notice of its competing bid (an "Overbid") to (i) the Debtors at Sidley Austin LLP, One South Dearborn, Chicago, Illinois 60603, Attn: Dennis M. Twomey and Matthew G. Martinez – [dtwomey@sidley.com](mailto:dtwomey@sidley.com) and [matthew.martinez@sidley.com](mailto:matthew.martinez@sidley.com); (ii) the Committee at Kramer Levin Naftalis & Frankel, LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Douglas H. Mannal and Jennifer Sharret – [dmannal@kramerlevin.com](mailto:dmannal@kramerlevin.com) and [jsharret@kramerlevin.com](mailto:jsharret@kramerlevin.com); and (iii) Western Realco at Snell & Wilmer L.L.P., 600 Anton Boulevard, Suite 1400, Costa Mesa, California 92626, Attn: Eric S. Pezold – [epetzold@swlaw.com](mailto:epetzold@swlaw.com) by June 29, 2009 at 4:00 p.m. ET (the "Overbid Deadline") for this Motion.
- iii. Qualified Bidder. A Qualified Bidder must: (1) furnish the Deposit (as defined below) in the manner described below; and (2) submit a Qualifying Bid (as defined below) by the Overbid Deadline.
  - a. Deposit. Any party submitting an Overbid shall tender to SSCE, at the time it submits its Overbid, a deposit of at least \$500,000.00 in immediately available funds (each, a "Deposit").
  - b. Qualified Bid. A qualified bid must be a written offer that meets the following requirements (a "Qualified Bid"):
    - (i) The value of the bid must be higher or otherwise better, as determined by the Debtors, than the sum of: (a) the Purchase Price; (b) a break-up fee in the amount of \$250,000 (the "Break-Up Fee"); plus (c) \$100,000;
    - (ii) The bid must be on terms that are not materially more burdensome to the Debtors than the terms of the Proposed Sale;
    - (iii) The bid must not be conditioned on obtaining financing or the outcome of any due diligence;
    - (iv) The bid must contain evidence that the Qualifying Bidder has received funding commitments or has financial resources readily available sufficient in the aggregate to consummate the sale of the Fullerton

Property, which evidence is reasonably satisfactory to the Debtors;

(v) The bid must confirm that the offer shall remain open and irrevocable until the entry of a final non-appealable order by the Bankruptcy Court approving the sale of the Fullerton Property to the Successful Bidder; and

(vi) The bid must not request or entitle the Qualified Bidder to any break-up fee, expense reimbursement, or similar type of payment.

c. Irrevocability of Qualified Bids. All Qualified Bids shall be irrevocable until 48 hours after the closing of the sale to the Successful Bidder (as defined below).

d. Western Realco shall be deemed to be a Qualified Bidder in the event the Debtors are required to conduct an Auction of the Fullerton Property.

iv. Consummation of Proposed Sale in Absence of Qualified Bidder.

If the Debtors do not receive notice of a Qualified Bid by a Qualified Bidder by the Overbid Deadline, the Debtors shall be authorized to finalize and consummate the Proposed Sale upon approval of this Motion by the Court. In the event that the Agreement with Western Realco is consummated, the Initial Deposit will be credited towards the Purchase Price of the Fullerton Property. In the event that Western Realco breaches the Agreement, the Initial Deposit shall be nonrefundable in accordance with the terms of the Agreement.

v. Conduct of Auction. In the event the Debtors timely receive one or more Qualified Bids from Qualified Bidders, other than from Western Realco, the Debtors shall conduct an auction (the "Auction") of the Fullerton Property on July 7, 2009 at 2:00 p.m. ET at the offices of Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17<sup>th</sup> Floor, Wilmington, DE, 19899. The Debtors will provide notice of any such Auction, along with a list of the Qualified Bidders that will be entitled to participate in such Auction, to the Notice Parties on or before July 1, 2009. The Debtors, in consultation with the Committee, shall also determine which Qualified Bid represents the then-highest bid (the "Initial Bid") and will distribute copies of the Initial Bid to each Qualified Bidder prior to the commencement of the Auction.

a. Only Qualified Bidders and Western Realco, who shall be deemed a Qualified Bidder, shall be entitled to make any subsequent bids at the Auction.

b. All Qualified Bidders, including Western Realco, shall have the right to submit additional bids at the Auction.

- c. The bidding at the Auction shall start at the Initial Bid, and then continue in value increments of at least \$100,000 greater than the Initial Bid; provided, however, that for purposes of comparing bids at the Auction, any bid by Western Realco shall be deemed increased by \$250,000 to account for the value to the Debtors of not having to pay the Break-Up Fee in the event Western Realco is the Successful Bidder (as defined below).
  - d. The Auction shall continue until there is only one offer that the Debtors, in consultation with the Committee, determine, subject to this Court's approval, is the highest or best from among the bids submitted during the Auction (the "Successful Overbid"). In making this decision, the Debtors shall consider, *inter alia*, the bid amount, the closing dates of bids, and evidence of the bidder's financial ability to consummate the transaction, including the amount of the Deposit the alternative bidder provides in connection with its Qualified Bid under Section 20(iii)(a) of these Bidding Procedures). The bidder submitting such Successful Overbid shall become the successful bidder (the "Successful Bidder").
  - e. The Debtors, in consultation with the Committee, also shall determine, subject to this Court's approval, the next highest or best bid submitted during the Auction (the "Back-Up Bid") by a party other than the Successful Bidder (the "Back-Up Bidder").
- vi. Sale to Successful Bidder or Back-Up Bidder. In the event that there is a Successful Overbid, SSCE shall be authorized to finalize and consummate the sale of the Fullerton Property per the terms of such Successful Overbid to the Successful Bidder. If the Successful Bidder fails to consummate the sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bid shall be deemed to be the Successful Overbid, and SSCE shall be authorized to finalize and consummate the sale of the Fullerton Property per the terms of the Back-Up Bid to the Back-Up Bidder, without further order of the Court upon at least 24 hours' notice to the U.S. Trustee, the Committee and Qualified Bidders.
- vii. Payment of Break-up Fee. In the event there is a Successful Overbid by a party other than Western Realco, the Debtors are required to pay Western Realco the Break-Up Fee within three (3) business days following the closing of the sale of the Fullerton Property to the Successful Bidder, without further order of this Court, and from the proceeds of the Successful Overbid.

- viii. Return of Initial Deposit and Deposits. The Debtors will refund the Initial Deposit, if Western Realco is neither the Successful Bidder nor the Back-Up Bidder, and Deposits of parties who make unsuccessful Overbids (other than Deposits of the Successful Bidder and the Back-Up Bidder) upon or within three (3) business days after the July 8, 2009 hearing. The Debtors will refund the Deposit of the Back-Up Bidder upon or within three (3) business days after the closing of the sale to the Successful Bidder. In the event that the agreement that is the subject of a Successful Overbid is finalized and consummated, the Deposit related to such Successful Overbid will be credited towards the purchase price of the Fullerton Property. In the event that the party submitting such Successful Overbid terminates the agreement that is the subject of such Successful Overbid, the Deposit related to such Successful Overbid shall be nonrefundable.