

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re:	:	Chapter 11
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FRANCESCA’S HOLDINGS CORPORATION,	:	Case No. 20-13076 (BLS)
<i>et al.</i> , ¹	:	
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Debtors.	:	Joint Administration Requested
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MOTION OF DEBTORS FOR ENTRY OF ORDERS (I)(A) APPROVING BIDDING PROCEDURES FOR SALE OF SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS, (B) APPROVING STALKING HORSE BID PROTECTIONS, (C) SCHEDULING AUCTION FOR, AND HEARING TO APPROVE, SALE OF SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS, (D) APPROVING FORM AND MANNER OF NOTICES OF SALE, AUCTION AND SALE HEARING, (E) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES AND (F) GRANTING RELATED RELIEF AND (II)(A) APPROVING SALE OF SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES, (B) APPROVING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (C) GRANTING RELATED RELIEF

Francesca’s Holdings Corporation (“FHC”) and its affiliated debtors and debtors in possession (collectively, the “Debtors”) hereby submit this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as Exhibit A (the “Bidding Procedures Order”), pursuant to sections 105, 363, 365, 503, and 507 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), (i) approving the proposed bidding procedures (the “Bidding Procedures”) pursuant to which the

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are Francesca’s Holdings Corporation (4704), Francesca’s LLC (2500), Francesca’s Collections, Inc. (4665), and Francesca’s Services Corporation (5988). The address of the Debtors’ corporate headquarters is 8760 Clay Road, Houston, Texas 77080.

Debtors will solicit and, in consultation with the Consultation Parties (as defined below), select the highest or otherwise best offer for the sale (the “**Sale**”) of substantially all of the Debtors’ assets (the “**Assets**”); (ii) approving the bid protections set forth in the Stalking Horse Agreement (as defined below); (iii) scheduling an auction (the “**Auction**”), if necessary; (iv) establishing the Assumption and Assignment Procedures (as defined below) for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale, including notice of proposed cure amounts; (v) scheduling a hearing (the “**Sale Hearing**”) to approve the Sale; and (vi) granting related relief. The Debtors further request that, at the Sale Hearing, this Court enter an order (the “**Sale Order**”), which will be filed with the Court prior to the Sale Hearing, (i) authorizing the sale of the Assets to the ultimate purchaser of such assets as determined in accordance with the Bidding Procedures (the “**Successful Bidder**”), free and clear of all liens, claims, interests and encumbrances, except certain permitted encumbrances as determined by the Debtors and the Successful Bidder; (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases; and (iii) granting related relief. In support of this Motion, the Debtors respectfully represent as follows:

Jurisdiction and Venue

1. The Court has jurisdiction over the Debtors, their estates, and this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.²

² Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order on this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

Background

2. On December 3, 2020, (the “**Petition Date**”), each of the Debtors filed a voluntary petition with this Court for relief under chapter 11 of title 11 of the Bankruptcy Code. The Debtors continue to manage and operate their business as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

3. Francesca’s is a specialty retailer that operates a nationwide-chain of boutiques providing a diverse assortment of apparel, jewelry, accessories, and gifts. As of December 1, 2020, the Debtors operate 558 boutiques in 45 states and the District of Columbia and also serve their customers through www.francescas.com, their e-commerce website, and their recently launched mobile app. Additional information on the Debtors’ business and capital structure, as well as a description of the reasons for filing these cases, is set forth in the Clarke Declaration.³

Relief Requested

4. By this Motion, pursuant to sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and Local Rule 6004-1, the Debtors request entry of the following:

- a. the Bidding Procedures Order,
 - i. authorizing and approving the Bidding Procedures in connection with the Sale;
 - ii. approving the Stalking Horse Bid Protections for the Stalking Horse Bidder in accordance with the terms and conditions set forth in the Stalking Horse Agreement;
 - iii. if necessary, scheduling an Auction for the Assets;
 - iv. scheduling the Sale Hearing to consider approval of the proposed Sale on or before January 19, 2021;

³ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Clarke Declaration, the Bidding Procedures, or the Bidding Procedures Order, as applicable.

- v. authorizing and approving the (A) notice of the Sale, the Bid Deadline (as defined below), the Auction and the Sale Hearing, substantially in the form attached to the Bidding Procedures Order as Exhibit 2 thereto (the “**Sale Notice**”), and (B) notice to each relevant non-Debtor counterparty (each, a “**Counterparty**”) to an executory contract or unexpired lease related to the Assets of the potential assumption and assignment of their executory contract or unexpired lease (the “**Contracts**” and “**Leases**”) and the calculation of the amount necessary to cure any monetary defaults thereunder (the “**Cure Amounts**”), substantially in the form attached to the Bidding Procedures Order as Exhibit 3 thereto (the “**Potential Assumption and Assignment Notice**”);
 - vi. authorizing and approving procedures for the assumption and assignment of the Contracts and Leases and the determination of Cure Amounts with respect thereto (collectively, the “**Assumption and Assignment Procedures**”); and
 - vii. granting related relief.
- b. the Sale Order, authorizing and approving the following:
- i. the sale of the Assets to the Successful Bidder free and clear of all liens, claims, interests and encumbrances, except certain permitted encumbrances as determined by the Debtors and the Successful Bidder;
 - ii. the assumption and assignment of certain Contracts and Leases in connection with the proposed Sale; and
 - iii. granting related relief.

Pre-Petition Marketing and Sale Process

5. As discussed in detail in the Clarke Declaration, the Debtors retained FTI Capital Advisors LLC (“**FTI**”) in August to assist with the evaluation and pursuit of available strategic alternatives. The Debtors, with FTI’s assistance, evaluated various alternatives to improve the Debtors’ liquidity and financial position, including further lease concessions and deferrals, further reductions of operating and capital expenditures, raising additional capital (including seeking a refinancing of the Debtors’ funded debt), and restructuring their debt and liabilities through a private restructuring or a restructuring under the protection of applicable bankruptcy laws. Once it

became apparent that additional financing sources might not be available and sufficient to meet the Debtors' needs, FTI's role was expanded in September to include coordinating a marketing process for a sale of all or a portion of the Debtors' business (each, a "**Potential Transaction**").

6. For over two months prior to the Petition Date, FTI, on behalf of the Debtors, conducted a broad outreach to potential strategic and financial buyers. FTI contacted approximately 139 potential acquirers (collectively, the "**Interested Parties**") to alert such parties of the Debtors' interest in pursuing a Potential Transaction and sent teasers and non-disclosure agreements to each of the parties. 37 Interested Parties executed non-disclosure agreements and were given the opportunity to access certain information in an electronic data room containing more extensive documentation regarding the Debtors' finances and asset holdings and were invited to submit initial, non-binding letters of intent ("**LOIs**"). As of December 3, 2020, the Debtors had received three LOIs outlining the terms of a stalking horse bid for substantially all of the Debtors' assets as a going concern.

7. On December 3, 2020, prior to the commencement of these chapter 11 cases, the Debtors' board of directors authorized the Debtors to enter into the letter of intent dated December 3, 2020 (the "**Stalking Horse LOI**") between FHC and TerraMar Capital LLC (the "**Stalking Horse Bidder**")⁴ with the Stalking Horse Bidder, which outlines the terms on which the Stalking Horse Bidder will acquire substantially all of the Debtors' assets (the "**Stalking Horse Bid**"). The Stalking Horse LOI contemplates execution of the an asset purchase agreement acceptable to the

⁴ The Stalking Horse LOI may be terminated at any time prior to execution of the Stalking Horse Agreement: (i) by mutual written consent of the Debtors and the Stalking Horse Bidder, (ii) by Stalking Horse Bidder, if it concludes, as a result of its business, financial, legal and accounting due diligence within 10 days of the Petition Date, or as a result of a Material Adverse Change, that it is not prepared in its sole judgment to proceed with the transaction, or (iii) by the Debtors in the event (x) termination would be required in its reasonable judgment in order to comply with fiduciary duties or (y) if the Stalking Horse Agreement has not been executed within 10 days of the Petition Date.

Debtors and the Stalking Horse Bidder (the “**Stalking Horse Agreement**”)⁵ within 10 days of the Petition Date, which would supersede the Stalking Horse LOI in all respects. Additionally, if executed the Stalking Horse Agreement will provide the Stalking Horse bidder with certain customary Stalking Horse Bid Protections (defined below) if the Stalking Horse Bidder is ultimately not the successful purchaser of the Debtors’ assets. The Debtors will file a copy of the Stalking Horse Agreement in advance of the Bid Procedures Hearing.

8. As the Debtors move forward with implementing the procedures outlined in this Motion, the Debtors will continue to market and solicit offers for the Assets to a wide range of potential purchasers and will work diligently with all parties that have expressed an interest in the Debtors’ Assets. In this way, the Debtors intend to maximize the number of participants in the sale process.

Need for a Timely Sale Process

9. The Debtors believe that the auction process and time periods set forth in the Bidding Procedures are reasonable and will provide parties with sufficient time and information necessary to formulate a bid to purchase the Assets. Given the Debtors’ extensive prepetition marketing efforts, the proposed timeline is more than sufficient to complete a fair and open sale process that will maximize the value received for the Assets. Moreover, the sale timeline outlined below was extensively negotiated with the DIP Lender and the DIP Agent, who made clear that an expedited process was an essential condition to their agreement to continue to fund the Debtors’ ongoing operations and allow the Debtors access to cash collateral. The Debtors are also confident that the proposed timeline will provide both Interested Parties with sufficient time to complete due

⁵ The Debtors will file a copy of the Stalking Horse Agreement as soon as practicable before the Bid Procedures Hearing.

diligence and engage with the Debtors on a possible bid, particularly since the majority of the Interested Parties have been in contact with FTI for several weeks.

Stalking Horse Bid Protections⁶

10. By this Motion, the Debtors request authority to, among other things, provide the Stalking Horse Bidder with standard stalking horse bid protections in the Stalking Horse Agreement, in particular the payment of (i) a break-up fee in the amount of \$693,000 (which represents 3.0% of the aggregate consideration proposed to be paid under the Stalking Horse LOI) (the “**Break-Up Fee**”) and (ii) reimbursement of the Stalking Horse Bidder’s expenses incurred in connection with the Stalking Horse Agreement, and the due diligence performed by the Stalking Horse Bidder, which collectively shall not exceed \$350,000 (the “**Expense Reimbursement**” and, together with the Break-Up Fee, the “**Stalking Horse Bid Protections**”). In addition, the Bidding Procedures and the Stalking Horse LOI provide for an initial overbid amount of \$250,000 over and above the aggregate of the Stalking Horse Purchase Price (as defined below) and the Stalking Horse Bid Protections (the “**Minimum Initial Overbid Amount**”), and minimum bid increments thereafter of \$100,000 (the “**Continuing Minimum Overbid Amount**”).

Summary of Stalking Horse Bid

11. The chart below summarizes the anticipated terms of the Stalking Horse Agreement, based on the Stalking Horse LOI.

⁶ The Debtors reserve the right to replace to Stalking Horse Bidder in the event that the conditions under the Stalking Horse LOI are not met or a Stalking Horse Agreement is not executed within 10 days of the Petition Date.

MATERIAL TERMS OF THE STALKING HORSE AGREEMENT	
Purchased Assets/Excluded Assets	<p>“Purchased Assets” will include substantially all of the Debtors’ assets, including purchased Avoidance Actions.</p> <p>The Purchased Assets will <u>not</u> include income tax refunds for periods prior to the Closing Date, Debtors’ cash and other customary excluded assets to be specified (the “Excluded Assets”).</p>
Purchased Avoidance Actions	Purchased Avoidance Actions include avoidance actions related to (i) any of the Purchased Assets, (ii) assumed executory contracts and unexpired leases, and (iii) vendors that the Stalking Horse Bidder expects to do business with post-closing.
Purchase Price	<p>The “Purchase Price” will be comprised of (a) \$17.0 million in cash which shall be (i) reduced by the Seller Cure Cost Responsibility (defined below) and (ii) adjusted downward by a working capital adjustment mechanism to be agreed upon with the target set forth below; plus (b) the assumption of (i) gift card liabilities in an amount not to exceed \$3.123 million and (ii) payroll taxes deferred through December 2020 under the CARES Act up to \$3.0 million. For the avoidance of doubt, before any adjustments as described in clauses (a)(i) and (a)(ii), the Purchase Price shall be \$23.123 million.</p> <p>“Seller Cure Cost Responsibility” shall mean (a) the first \$1.5 million of aggregate cure costs under assumed executory contracts and unexpired leases (“Cure Costs”), plus (b) 50% of any total Cure Costs between \$3.0 million and \$5.8 million.</p> <p>“Purchaser Cure Cost Responsibility” shall mean (a) 100% of Cure Costs between \$1.5 million to \$3.0 million in Costs, plus (b) 50% of any Cure Costs between \$3.0 million and \$5.8 million, plus (c) 100% of any Cure Costs above \$5.8 million.</p> <p>The target working capital shall be \$1,927,761 of accounts receivable, \$25,011,312 of inventory, \$425,000 of freight, and \$4,989,000 of prepaid maintenance, inventory and supplies. The Purchase Price will be adjusted downward on a dollar-for-dollar basis, measured individually for each item, if the delivered amount at Closing is less than these target numbers.</p>
Contract Designation Rights	<p>Within three (3) days of the Closing Date, the Successful Bidder will designate all executory contracts and unexpired leases as either “Assumed,” “Rejected,” or “Designated.”</p> <ul style="list-style-type: none"> • Assumed contracts/leases shall be assumed by the Debtors and assigned to the Successful Bidder as of the Closing. • Rejected contracts/leases shall be rejected by the Debtors as of the Closing. • Designated contracts shall be maintained by the Debtors for seventy-five (75) days after the Closing Date (which may be extended with the consent of the Debtors, which consent will not be withheld or conditioned by the Debtors if such extension is for up to one hundred fifty (150) days after the Closing Date, does not increase administrative expenses for the Debtors’ estates, and does not extend the designation

	<p>rights period after the date the Bankruptcy Court enters an order confirming a chapter 11 plan) with the Successful Bidder to receive the benefits of such Designated contracts/leases and be responsible for the obligations under such contracts/leases from the Closing Date until the Successful Bidder designates such Designated contracts/leases as “Assumed” or “Rejected,” at which time the Debtors shall use their best efforts to effectuate such determination.</p>
<p>Provisions Providing Bid Protections to “Stalking Horse” or Initial Bidder Local Rule 6004-1(c)(i)(C)</p>	<p>Break Up Fee: \$693,000</p> <p>Expense Reimbursement: Capped at \$350,000</p>
<p>Private Sale/No Competitive Bidding and Interim Arrangements with Stalking Horse Bidder Local Rule 6004-1(b)(iv)(D); Local Rule 6004-1(b)(iv)(G)</p>	<p>This Motion contemplates an auction.</p> <p>The Stalking Horse LOI provides that after entry into the Stalking Horse Agreement and before the entry of the Bid Procedures Order, the Debtors will not, and they will cause their agents, representatives, professionals, advisors, consultants, accountants, attorneys, employees, directors, officers, stockholders, and affiliates to not, directly or indirectly, solicit or entertain offers from, negotiate with, or in any manner encourage, discuss, accept, or consider any proposal, agreements, or arrangements with any Interested Party that could or would serve as a “stalking horse” or actually replace the Stalking Horse Bidder as the “stalking horse” for the Debtors’ assets, until the date the Bankruptcy Court enters the Bidding Procedures Order, <u>provided</u> that the Debtors will be able to negotiate non-disclosure agreement with and provide data room access to Interested Parties prior to entry of the Bidding Procedures Order.</p> <p>As part of the Sale, the Debtors and the Stalking Horse Bidder are not entering into any interim arrangements or arrangements in connection with the Stalking Horse Bid or pursuant to the Stalking Horse Agreement.</p>
<p>Privacy Ombudsman Local Rule 6004-1(b)(iii)</p>	<p>The Debtors expect that the Stalking Horse Bidder or another Successful Bidder will agree that any personally identifiable information will be transferred subject to the Debtors' current privacy policy, which authorizes the Debtors to transfer such information in the context of the sale contemplated by this Motion. If the Stalking Horse Bidder or another Successful Bidder seeks a transfer of such property in a manner that is contrary to such policy or otherwise requires the appointment of a consumer privacy ombudsman, the Debtors will seek such relief expeditiously, if necessary to comply with applicable law.</p>
<p>Sale to Insider Local Rule 6004-1(b)(iv)(A)</p>	<p>The Stalking Horse Bidder is not an insider, as defined in Bankruptcy Code section 101(31).</p>
<p>Agreements With Management Local Rule 6004-1(b)(iv)(B)</p>	<p>The Stalking Horse Bidder has not entered into any agreements with management or key employees regarding the terms of future employment.</p>
<p>Releases Local Rule 6004-1(b)(iv)(B)</p>	<p>The Debtors anticipate that the Stalking Horse Agreement will include customary mutual release provisions.</p>
<p>Good Faith Deposit Local Rule 6004-1(b)(iv)(G)</p>	<p>The Debtors and the Stalking Horse Bidder are currently negotiating the amount of the good faith deposit that will be required to be paid under the Stalking Horse Agreement.</p>
<p>Tax Exemption Local Rule 6004-1(b)(iv)(I)</p>	<p>To be updated upon execution of the Stalking Horse Agreement.</p>
<p>Record Retention Local Rule 6004-1(b)(iv)(J)</p>	<p>Under the Sale Order, the Debtors will retain reasonable access to books and records to facilitate an orderly administration of these chapter 11 cases.</p>

Requested Findings as to Successor Liability Local Rule 6004-1(b)(iv)(L)	The Debtors seek to sell the Purchased Assets to a Successful Bidder free and clear of all charges, mortgages, pledges, security interests, hypothecation, restrictions, claims, secured debts, unsecured debts, liens or encumbrances, except for those expressly described in the purchase agreement with the Successful Bidder, pursuant to Section 363(f) of the Bankruptcy Code.
Credit Bid Local Rule 6004-1(b)(iv)(N)	The Bidding Procedures do not seek to disallow or affect in any manner credit bidding pursuant to section 363(k) of the Bankruptcy Code.
Relief from Bankruptcy Rule 6004(h) Local Rule 6004-1(b)(iv)(O)	It is anticipated that the proposed Sale Order will seek relief from the fourteen-day stay imposed by Bankruptcy Rule 6004(h).

12. The negotiations between the Debtors and the Stalking Horse Bidder are still ongoing and, therefore, the above summary does not include certain of the terms of the Stalking Horse Agreement that are to be disclosed in accordance with Local Rule 6004-1. Upon execution of the Stalking Horse Agreement, the Debtors will file a copy of the Stalking Horse Agreement with the Court and supplement the above summary of the material terms.

Bidding Procedures

A. Overview

13. The Bidding Procedures are designed to promote a competitive, fair, and expedient sale process that seeks to maximize the value of the Debtors' estates. If approved, the Bidding Procedures will allow the Debtors to solicit and identify bids from potential buyers that constitute the highest or otherwise best offer for the Assets on a schedule consistent with the milestones detailed in the DIP Motion, the Stalking Horse LOI, and the Debtors' chapter 11 objectives.

14. As the Bidding Procedures are attached to the Bidding Procedures Order, they are not restated in their entirety herein. Pursuant to Local Rule 6004-1, certain of the key terms of the Bidding Procedures are highlighted in the chart below.⁷

⁷ To the extent that there is any inconsistency between the terms of the Bidding Procedures and the summary of such terms in this Motion, the terms of the Bidding Procedures shall control. Capitalized terms used but not otherwise defined in this summary shall have the meanings ascribed to such terms in the Bidding Procedures.

MATERIAL TERMS OF THE BIDDING PROCEDURES AND ORDER	
<p>Qualification of Bidders Local Rule 6004-1(c)(i)(A)</p>	<p>Prior to the Bid Deadline, each party, other than the Stalking Horse Bidder, who wishes to participate in the bidding process (a “Potential Bidder”) must deliver the following to the Notice Parties:</p> <ul style="list-style-type: none"> i. a written disclosure of the identity of each entity that will be bidding for the Assets or otherwise participating in connection with such bid; and ii. an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors to a Potential Bidder) in form and substance satisfactory to the Debtors. <p>A Potential Bidder that delivers the documents and information above or that the Debtors to determine, in consultation with (i) the DIP Agent, and (ii) the official committee of unsecured creditors, if any, appointed in these chapter 11 cases (the “Consultation Parties”) ⁸, is likely (based on availability of financing, experience and other consideration) to be able to consummate the Sale, and whose Qualified Bid is received by Debtors no later than Bid Deadline (as defined below) is deemed qualified (a “Qualified Bidder”).</p> <p><i>See Bidding Procedures at p. 1.</i></p> <p>The Debtors reserve the right to accept any bid that, based on reasonable business judgment, is in the best interest of the Debtors. The Debtors reserve the right to modify the Bidding Procedures in their business judgment provided that such modifications do not materially alter the Bidding Procedures.</p>
<p>Qualified Bids Local Rule 6004-1(c)(i)(B)</p>	<p>Bid Deadline: January 13, 2021 at 5:00 p.m. (prevailing Eastern Time)</p> <p>A Bid will be considered a “Qualified Bid” only if the bid is submitted by a Qualified Bidder and the Debtors determine, after consultation with the Consultation Parties, that the bid complies with all of the following:</p> <ul style="list-style-type: none"> i. it is received by the Notice Parties prior to the Bid Deadline; ii. it states that the applicable Qualified Bidder offers to purchase, in cash, or, if applicable, through a credit bid, either (i) all of the Assets upon the terms and conditions that the Debtors reasonably determine are no less favorable to the Debtors than those set forth in the Stalking Horse Agreement or (ii) certain of the Assets of the Debtors, provided that the Debtors reserve the right to determine that several Qualified Bids in the aggregate represent the highest and best offer for the Debtors’ assets; iii. it includes a signed writing stating that the Qualified Bidder’s offer is irrevocable until the selection of the Successful Bidder, provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder its offer shall remain

⁸ The Debtors (i) understand that Greenberg Traurig LLP will be serving as counsel to both the DIP Agent/DIP Lender and a separate Interested Party in connection with the Sale Process, and (ii) have been advised that Greenberg has established an ethical wall and implemented other internal policies to facilitate its representation of both parties.

	<p>irrevocable until the later of (a) the closing of the Sale to the Successful Bidder or the Back-Up Bidder, and (b) the date that is 45 days after the Sale Hearing;</p> <p>iv. it includes confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the submission of the Bid;</p> <p>v. it contains no due diligence or financing contingencies of any kind;</p> <p>vi. it is based on the Stalking Horse Agreement and includes a duly authorized and executed copy of an asset purchase agreement, which specifies the purchase price for the Assets expressed in U.S. Dollars (the "Purchase Price"), together with all exhibits and schedules thereto and a copy marked to show any amendments and modifications to the Stalking Horse Agreement (an "Asset Purchase Agreement");</p> <p style="padding-left: 40px;">a. Each Bid shall also include a copy of the Asset Purchase Agreement marked against the Stalking Horse Agreement to show all changes requested by the Qualified Bidder;</p> <p>vii. it includes financial statements or other written evidence, including (if applicable) a firm, irrevocable commitment for financing, establishing the ability of the Qualified Bidder to consummate the proposed Sale and pay the Purchase Price in cash, such as will allow the Debtors to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Asset Purchase Agreement;</p> <p>viii. it has a value to the Debtors, determined in the Debtors' reasonable business judgment after consultation with the Consultation Parties, that is greater than or equal to the sum of the value offered under the Stalking Horse Agreement, <u>plus</u> the Stalking Horse Bid Protections <u>plus</u> \$250,000;</p> <p>ix. it identifies with particularity which Contracts and Leases the Qualified Bidder wishes to assume and provides details of the Qualified Bidder's proposal for the treatment of related Cure Amounts and the provision of adequate assurance of future performance to the counterparties to such Contracts and Leases;</p> <p>x. it includes an acknowledgement and representation that the bidder: (a) has had an opportunity to conduct any and all required due diligence regarding the Assets prior to making its offer; (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its bid; (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Assets or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in the Asset Purchase Agreement; and (d) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid;</p> <p>xi. it includes evidence, in form and substance reasonably satisfactory to the Debtors, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery, and closing of the Asset Purchase Agreement;</p> <p>xii. it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to 5% of the Purchase Price (a "Good Faith Deposit");</p> <p style="padding-left: 40px;">a. All Good Faith Deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder or the Back-Up Bidder no later than three Business Days following entry of the Sale Order.</p> <p>xiii. it states that the bidder consents to the jurisdiction of the Bankruptcy Court; and</p> <p>xiv. it contains such other information as may be reasonably requested by the Debtors, in consultation with the Consultation Parties.</p>
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	<p><i>See</i> Bidding Procedures at pp. 2–3.</p> <p>The Stalking Horse Agreement will be deemed a Qualified Bid. <i>See</i> Bidding Procedures Order, at ¶ 4.</p>
Credit Bidding Local Rule 6004-1(b)(iv)(N)	The Bidding Procedures do not seek to allow, disallow or affect in any manner credit bidding pursuant to section 363(k) of the Bankruptcy Code.
No-Shop or No-Solicitation Provisions Local Rule 6004-1(c)(i)(C)(1)	The Bidding Procedures Order and Bidding Procedures do not limit the Debtors’ ability or right to solicit higher or otherwise better bids. The Sale contemplated by this Motion, the Bidding Procedures, and the Bidding Procedures Order calls for a fair and open bidding and auction process.
Break-Up Fee and Expense Reimbursement Local Rule 6004-1(c)(i)(C)(2)	The Bidding Procedures Order approves and authorizes the Break-Up Fee and Expense Reimbursement for the Stalking Horse Bidder pursuant to the amounts and conditions set forth in the Stalking Horse LOI and the Bidding Procedures. <i>See</i> Bidding Procedures Order at ¶ 17.
Initial Overbid and Bidding Increments Local Rule 6004-1(c)(i)(C)(3)	The Bidding Procedures, as approved and incorporated by the Bidding Procedures Order, provide for a Minimum Initial Overbid Amount of \$250,000 over and above the aggregate of the Stalking Horse Purchase Price plus the Stalking Horse Bidder’s Break-Up Fee and Expense Reimbursement. The minimum bid increments thereafter shall be \$100,000. <i>See</i> Bidding Procedures at pp. 3, 6.
Modification of Bidding and Auction Procedures Local Rule 6004-1(c)(i)(D)	The Debtors may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, <u>provided</u> that such rules (i) are not materially inconsistent with the Bidding Procedures, the Bankruptcy Code, or any order of the Court entered in connection herewith; (ii) do not purport to abrogate or modify the Stalking Horse Bid Protections; and (iii) are disclosed to each Qualified Bidder attending the Auction. <i>See</i> Bidding Procedures at p. 6.
Closing with Alternative Back-Up Bidders Local Rule 6004-1(c)(i)(E)	The Qualified Bidder(s) with the next highest or otherwise best Qualified Bid, as determined by the Debtors, will be required to serve as a back-up bidder (the “ Back-Up Bidder ” and such Bid, the “ Back-Up Bid ”) and keep its bid open and irrevocable until the later to occur of 45 days after the Sale Hearing and closing on the Successful Bid with the Successful Bidder. If the Successful Bidder fails to consummate the Sale, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtors will be authorized and directed to consummate the Sale with the Back-Up Bidder without further order of the Court. <i>See</i> Bidding Procedures at p. 7.

B. Key Dates and Deadlines

15. The Debtors propose the below key dates and deadlines for the sale process, certain of which dates and deadlines may be subject to extension in accordance with the Bidding Procedures.⁹ The proposed dates and deadlines adhere to the milestones set forth in the DIP Facility.

⁹ The Debtors, in consultation with the Consultation Parties, reserve the right to change the proposed sale-related deadlines at any time prior to the hearing to consider approval of the Bidding Procedures.

December 21, 2020, at 4:00 p.m. (prevailing Eastern Time)	Deadline to object to entry of the Bidding Procedures Order
December [28], 2020, at [] a/p.m. (prevailing Eastern Time)	Hearing to consider approval of the Bidding Procedures and entry of the Bidding Procedures Order (the “ Bid Procedures Hearing ”)
January 9, 2021	Target date to file proposed Sale Order
January 13, 2021, at 5:00 p.m. (prevailing Eastern Time)	Bid Deadline
January 14, 2021, at 4:00 p.m. (prevailing Eastern Time)	Deadline for Debtors to notify Potential Bidders of their status as Qualified Bidders
January 15, 2021, at 10:00 a.m. (prevailing Eastern Time)	Auction Date
January 16, 2021	Target date for the Debtors to file with the Court the Notice of Auction Results
January [19], 2021, at [] a/p.m. (prevailing Eastern Time)	Proposed date of the Sale Hearing to consider approval of Sale and entry of Sale Order
January 20, 2021	Target Closing Date

16. The Debtors propose a date for the hearing to consider approval of the Bidding Procedures and entry of the Bidding Procedures Order that allows for regular notice before the holidays, subject to the Court’s availability.

C. Noticing Procedures

17. The Bidding Procedures provide the following “**Noticing Procedures**”:

- a. **Sale Notice and Publication.** Within two (2) Business Days after entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter, the Debtors shall serve the Sale Notice by first-class mail upon: (i) the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”); (ii) counsel for the official committee of unsecured creditors (the “**Committee**”), if any; (iii) all known creditors of the Debtors; (iv) counsel to the Stalking Horse Bidder; (v) Counterparties to the Contracts and Leases; (vi) counsel to the DIP Lenders; (vii) the Internal Revenue Service; (viii) all applicable state and local taxing authorities; (ix) the Federal Trade Commission; (x) the Securities & Exchange Commission; (xi) the Office of the United States Attorney for the District of Delaware; (xii) the United States Attorney General/Antitrust Division of the Department of Justice; (xiii) the offices of the attorneys general for the states in which the Debtors operate; (xiv) all potential buyers previously identified or solicited by the Debtors and any additional parties who have previously expressed an interest to the Debtors or their advisors in potentially acquiring the Debtors’ assets; and (xv) all such other entities as

may be required by applicable Bankruptcy Rules or applicable Local Rules or as may be reasonably requested by the Stalking Horse Bidder (collectively, the “**Sale Notice Parties**”). Within five business days of entry of the Bidding Procedures Order, or as soon as practicable thereafter, the Debtors will publish the Sale Notice, with such modifications as may be appropriate for purposes of publication, once in the National Edition of the USA Today and, to the extent the Debtors deem appropriate, in any other local or regional publications.

- b. **Notice of Determination of Qualified Bids**. The Debtors, in consultation with the Consultation Parties, will make a determination regarding which Bids qualify as a Qualified Bid and will notify Potential Bidders whether they have been selected as Qualified Bidders by no later than **January 14, at 4:00 p.m. (prevailing Eastern Time)**.
 - i. At least one (1) business day prior to the Auction, the Debtors will provide all Qualified Bidders with one (1) copy of the Qualified Bid that the Debtors, in consultation with the Consultation Parties, believe is the highest or otherwise best offer for the Assets.
- c. **Notice of Hearing if Auction Not Held**. With respect to the Assets, if no Qualified Bid other than the Stalking Horse Bid is received by the Bid Deadline, the Debtors will not conduct the Auction for the Assets and will file with the Court, serve on the Sale Notice Parties and cause to be published on the Debtors’ case information website (located at <https://cases.stretto.com/francescas>) (the “**Case Information Website**”) a notice (i) indicating that the Auction for the Assets has been canceled, (ii) indicating that the Stalking Horse Bidder is the Successful Bidder with respect to the Assets and (iii) setting forth the date and time of the Sale Hearing.
- d. **Notice of Auction Results**. If an Auction is held, promptly following the selection of the Successful Bid(s) and Back-Up Bid(s), if any, the Debtors shall file a notice of the Successful Bid(s) and Back-Up Bid(s), if any (the “**Notice of Auction Results**”), with the Court and cause the Notice of Auction Results to be published on the Case Information Website.

18. The Noticing Procedures constitute adequate and reasonable notice of the key dates and deadlines for the sale process, including, the dates and deadlines identified in paragraph 17 above. Accordingly, the Debtors request that the Court find that the Noticing Procedures are adequate and appropriate under the circumstances and comply with the requirements of Bankruptcy Rule 2002 and Local Rule 2002-1.

Assumption and Assignment Procedures

19. In connection with the Sale, the Debtors anticipate that they will assume and assign to the Successful Bidder (or its designated assignee(s)) certain of the Contracts and Leases set forth on the schedule of assumed contracts (the “**Contracts Schedule**”), as they may be modified or supplemented, pursuant to section 365(b) of the Bankruptcy Code. Accordingly, the Debtors hereby seek approval of the proposed Assumption and Assignment Procedures set forth below, which are designed to, among other things, (a) outline the process by which the Debtors will serve notice to all Counterparties regarding the proposed assumption and assignment, related Cure Amounts, if any, and information regarding the Stalking Horse Bidder’s or such other Successful Bidder’s adequate assurance of future performance and (b) establish objection and other relevant deadlines and the manner for resolving disputes relating to assumption and assignment of the Contracts and Leases. Specifically, the Assumption and Assignment Procedures are as follows:

- a. **Contracts Schedule**. As soon as reasonably practicable, the Debtors shall file with the Court, and cause to be published on the Case Information Website, the Potential Assumption and Assignment Notice that specifies (i) each of the Contracts and Leases that may be assumed and assigned in connection with the Sale, including the name of each Counterparty and (ii) the proposed Cure Amount with respect to each of the Contracts and Leases. The Potential Assumption and Assignment Notice shall also be served on each Counterparty listed on the Contracts Schedule via first class mail. For any Contract or Lease that is not listed in the Contracts Schedule, the Successful Bidder may decide to (i) reject the Contracts and Leases or (ii) include the Contracts and Leases as designated contracts and receive the benefits of such Contracts and Leases for a period of time until the Successful Bidder determines whether such Contract or Lease should be assumed or rejected.
- i. **Successful Bidder’s Commitment to Cure Amounts**. The Cure Amount shall be paid by the Successful Bidder, in each case as and when finally determined by the Bankruptcy Court pursuant to the procedures set forth in the Sale Order and the Successful Bidder’s Asset Purchase Agreement.

b. **Assumption and Assignment Objections.**

- i. **Objection Deadlines.** Any Counterparty may object to the proposed assumption or assignment of its Contract or Lease, the Debtors' proposed Cure Amounts, if any, or the ability of the Stalking Horse Bidder to provide adequate assurance of future performance (an "**Assumption and Assignment Objection**"). All Assumption and Assignment Objections must (A) be in writing, (B) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (C) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Amounts the Counterparty believes are required to cure defaults under the relevant Contracts and Leases, (D) be filed by no later than **at 4:00 p.m. (prevailing Eastern Time) fourteen (14) days after filing and service of the Potential Assumption and Assignment Notice** and (E) be served on: (1) proposed co-counsel to the Debtors O'Melveny & Myers, LLP, 7 Times Square, New York, New York 10036, Attn: Maria DiConza (mdiconza@omm.com) and Diana Perez (dperez@omm.com); (2) proposed co-counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Mark D. Collins, Esq. (collins@rlf.com), Michael J. Merchant, Esq. (merchant@rlf.com), and Jason M. Madron, Esq. (madron@rlf.com), (3) counsel to the Stalking Horse Bidder, McDonald Hopkins LLC, 300 North LaSalle Street, Suite 1400, Chicago, IL 60654, Attn: Marc Carmel (mcarmel@mcdonaldhopkins.com); (4) counsel for the DIP Agent, Greenberg Traurig LLP, (i) 1007 North Orange Street, Suite 1200, Wilmington, DE 19801, Attn: Dennis A. Meloro (melorod@gtlaw.com), (ii) MetLife Building, 200 Park Avenue, New York, NY 10166, Attn: Jeffrey M. Wolf (WolfJe@gtlaw.com), Nathan A. Haynes (HaynesN@gtlaw.com), and Leo Muchnik (MuchnikL@gtlaw.com); (5) counsel to the Committee, if any, and (6) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801, Attn: Linda Casey (Linda.Casey@usdoj.gov) (collectively, the "**Assumption and Assignment Objection Notice Parties**").
- ii. **Resolution of Assumption and Assignment Objections.** If a Counterparty files a timely Assumption and Assignment Objection, such objection shall be heard at the Sale Hearing or such later date that the Debtors, in consultation with the Successful Bidder, shall determine in their discretion (subject to the Court's calendar).
- iii. **Failure to File Timely Assumption and Assignment Objection.** If a Counterparty fails to file with the Court and serve on the Assumption and Assignment Objection Notice Parties a timely Assumption and Assignment Objection, the Counterparty shall be

forever barred from asserting any such objection with regard to the assumption or assignment of its Contract or Lease, and notwithstanding anything to the contrary in the Contract or Lease, or any other document, the Cure Amounts set forth in the Potential Assumption and Assignment Notice or the Supplemental Assumption and Assignment Notice (as defined below) shall be controlling and will be the only amount necessary to cure outstanding defaults under the applicable Contract or Lease under section 365(b) of the Bankruptcy Code arising out of or related to the Contract or Lease following the assumption and assignment thereof, whether known or unknown, due or to become due, accrued, absolute, contingent or otherwise, and the Counterparty shall be forever barred from asserting any additional cure or other amounts with respect to such Contract or Lease against the Debtors, the Successful Bidder or the property of any of them.

c. **Modification of Contracts Schedule.**

- i. Unless otherwise provided in the Successful Bidder's Asset Purchase Agreement, at any time prior to three (3) Business Days prior to Closing, the Successful Bidder may elect to amend the Contracts Schedule. Any Contract or Lease that remains on the Contracts Schedule as of such date, shall be assumed by the Debtors and assigned to the Successful Bidder as part of the Sale, subject to the resolution of any Assumption and Assignment Objection with respect to such contract or lease. Subject to the description set forth in paragraph 19(f) below, any Contracts or Leases not listed in the Contracts Schedule will either be listed as rejected or as a designated contract.
- ii. In the event that any Contract or Lease is added to the Contracts Schedule or previously-stated Cure Amounts are modified, in accordance with the Stalking Horse Agreement, the Successful Bidder's Asset Purchase Agreement or the Assumption and Assignment Procedures set forth in the Bidding Procedures Order, the Debtors will promptly serve a supplemental assumption and assignment notice, by overnight mail and, if known, e-mail, on the applicable Counterparty (each, a "**Supplemental Assumption and Assignment Notice**"). Each Supplemental Assumption and Assignment Notice will include the same information with respect to the applicable Contract or Lease as is required to be included in the Potential Assumption and Assignment Notice.
- iii. Any Counterparty listed on a Supplemental Assumption and Assignment Notice whose Contract or Lease is proposed to be assumed and assigned and was not included in the Potential Assumption and Assignment Notice may object to the proposed

assumption or assignment of its Contract or Lease, the Debtors' proposed Cure Amounts, if any, or the ability of the Successful Bidder to provide adequate assurance of future performance (a "**Supplemental Assumption and Assignment Objection**"). All Supplemental Assumption and Assignment Objections must (A) be in writing, (B) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (C) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Amounts the Counterparty believes is required to cure defaults under the relevant Contract or Lease, (D) be filed by no later than **ten (10) calendar days from the date of service of such Supplemental Assumption and Assignment Notice** and (E) be served on the Assumption and Assignment Objection Notice Parties. Each Supplemental Assumption and Assignment Objection, if any, shall be resolved in the same manner as an Assumption and Assignment Objection. For the avoidance of doubt, if a Counterparty was listed in the Potential Assumption and Assignment Notice and the previously-stated Cure Amount is modified in the Supplemental Assumption and Assignment Notice, such Counterparty may file a Supplemental Assumption and Assignment Objection only if such objection is to the modified Cure Amount.

- d. **Post-Auction Objection.** If, following the Auction, the Stalking Horse Bidder is not the Successful Bidder, then the Debtors shall serve the Notice of Auction Results on each Counterparty that received a Potential Assumption and Assignment Notice and any Supplemental Assumption and Assignment Notice as soon as practicable following the conclusion of the Auction. Objections of any Counterparty related solely to the identity of and adequate assurance of future performance provided by the Successful Bidder may be raised at the Sale Hearing.
- e. **Reservation of Rights.** The inclusion of a Contract or Lease, or Cure Amounts with respect thereto on a Potential Assumption and Assignment Notice, the Contracts Schedule or a Supplemental Assumption and Assignment Notice shall not constitute or be deemed a determination or admission by the Debtors, the Successful Bidder(s) or any other party in interest that such Contract or Lease is an executory contract or unexpired lease of the Debtors within the meaning of the Bankruptcy Code. The Debtors reserve all of their rights, claims and causes of action with respect to each Contract and Lease listed on the Potential Assumption and Assignment Notice, Supplemental Assumption and Assignment Notice and Contracts Schedule. The Debtors' inclusion of any Contract or Lease on the Potential Assumption and Assignment Notice, Supplemental Assumption and Assignment Notice and Contracts Schedule shall not be a guarantee that such Contract or Lease ultimately will be assumed or assumed and assigned.

- f. **Post-Closing Designation Rights.** The Stalking Horse LOI contemplates that the Stalking Horse Bidder will be permitted to designate executory contracts and unexpired leases as assumed or rejected for a limited period after the Closing Date. The Stalking Horse Bidder or the Successful Bidder may decide to (i) reject any executory contracts and Leases not included in the Contracts Schedule or (ii) designate any of the Contracts and Leases not included in the Contracts Schedule and receive the benefits of such Contracts and Leases for a period of time until the Successful Bidder determines whether such Contract or Lease should be assumed or rejected.

Approval of the Relief Requested Is Warranted and in the Best Interests of the Debtors and Their Economic Stakeholders

A. The Proposed Bidding Procedures Are Fair, Appropriate and Should Be Approved

20. The Bidding Procedures are specifically designed to promote what courts have deemed to be the paramount goal of any proposed sale of property of a debtor's estate: maximizing the value of sale proceeds received by the estate. *See Burtch v. Ganz (In re Mushroom Co.)*, 382 F.3d 325, 339 (3d Cir. 2004) (finding that a debtor had a fiduciary duty to maximize and protect the value of the estate's assets); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (recognizing that main goal of any proposed sale of property of a debtor's estate is to maximize value). Courts uniformly recognize that procedures established for the purpose of enhancing competitive bidding are consistent with the fundamental goal of maximizing the value of a debtor's estate. *See Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 537 (3d Cir. 1999) (noting that bidding procedures that promote competitive bidding provide a benefit to a debtor's estate); *Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (observing that sale procedures "encourage bidding and . . . maximize the value of the debtor's assets").

21. The Bidding Procedures provide for an orderly, uniform and appropriately competitive process through which interested parties may submit offers to purchase the Assets. Given the case timeline negotiated with the DIP Agent and the DIP Lender, and taking into

consideration the extensive prepetition marketing process, the Debtors have structured the Bidding Procedures to promote active bidding by interested parties and to confirm the highest or otherwise best offer reasonably available for the Assets. Additionally, the Bidding Procedures will allow the Debtors to conduct the Auction in a fair and transparent manner that will encourage participation by financially capable bidders with demonstrated ability to consummate a timely Sale. The Bidding Procedures also allow the Debtors to determine that a single Qualified Bid or several Qualified Bids in the aggregate represent the highest and best offer for the Debtors' assets. Accordingly, the Bidding Procedures should be approved because, under the circumstances, they are reasonable, appropriate and in the best interests of the Debtors, their estates and all parties in interest.

B. The Break-Up Fee Amount and Expense Reimbursement Have Sound Business Purposes and Should Be Approved

22. The Stalking Horse Agreement provides for a Break-Up Fee in an amount equal to 3.0% of the Purchase Price and an Expense Reimbursement in an amount up to \$350,000. The Debtors believe that the Stalking Horse Bid Protections are an essential prerequisite for the Stalking Horse Bidder to enter into the Stalking Horse Agreement. In addition, the Debtors believe that the presence of the Stalking Horse Bidder will set a floor for the value of the Assets and attract other potential buyers to bid for such assets, thereby maximizing the realizable value of the Assets for the benefit of the Debtors' estates, their creditors and all other parties in interest.

23. Approval of the Stalking Horse Bid Protections is governed by standards for determining the appropriateness of bid protections in the bankruptcy context. Courts have identified at least two instances in which bid protections may benefit the estate. *First*, a break-up fee may be necessary to preserve the value of a debtor's estate if assurance of the fee "promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and

without which bidding would have been limited.” *In re O’Brien Envtl. Energy, Inc.*, 181 F.3d at 533. *Second*, if the availability of a break-up fee was to induce a bidder to research the value of the debtor and convert the value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth. *See id.*; *see also In re Reliant Energy Channel View LP*, 594 F.3d 200, 206-08 (3d Cir. 2010) (reasoning that a break-up fee should be approved if it is necessary to entice a party to make the first bid or if it would induce a stalking horse bidder to remain committed to a purchase).

24. In *O’Brien*, the Third Circuit reviewed the following nine factors set forth by the lower court as relevant in deciding whether to award a break-up fee:

- a. the presence of self-dealing or manipulation in negotiating the break-up fee;
- b. whether the fee harms, rather than encourages, bidding;
- c. the reasonableness of the break-up fee relative to the purchase price;
- d. whether the unsuccessful bidder placed the estate property in a “sale configuration mode” to attract other bidders to the auction;
- e. the ability of the request for a break-up fee to serve to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders or attract additional bidders;
- f. the correlation of the fee to a maximum value of the debtor’s estate;
- g. the support of the principal secured creditors and creditors’ committees of the break-up fee;
- h. the benefits of the safeguards to the debtor’s estate; and
- i. the substantial adverse impact of the break-up fee on unsecured creditors, where such creditors are in opposition to the break-up fee.

See In re O’Brien Envtl. Energy, Inc., 181 F.3d at 536.

25. While none of the factors are dispositive, an application of the facts to several of such factors supports the approval of the Stalking Horse Bid Protections. In particular, the Stalking

Horse Bid Protections are necessary to preserve the value of the Debtors' estates because they will enable the Debtors to secure an adequate floor for the Assets—a clear benefit to the Debtors' estates. Moreover, there has been no showing of any self-dealing or manipulation of any kind in the negotiation of the Stalking Horse Bid Protections. Rather, the Stalking Horse Bid Protections were the result of good faith, arm's-length negotiations between the Debtors and the Stalking Horse Bidder. Further, the Stalking Horse Bidder would not agree to act as a stalking horse without the Stalking Horse Bid Protections given the substantial time and expense that would be incurred in connection with entering into definitive documentation and the risk that it will be outbid at the Auction. Without the Stalking Horse Bid Protections, the Debtors might lose the opportunity to obtain the highest or otherwise best offer for the Assets and would certainly lose the downside protection that will be afforded by the existence of the Stalking Horse Bidder. Additionally, without the floor established by the Stalking Horse Bidder, the bids received at auction for the Assets could be substantially lower than the bid offered by the Stalking Horse Bidder.

26. “The usual rule is that if break-up fees encourage bidding, they are enforceable; if they stifle bidding, they are not enforceable.” *In re Integrated Res., Inc.*, 147 B.R. at 660. The Debtors do not believe that the Stalking Horse Bid Protections will stifle bidding. To the contrary, the Debtors believe that, should the Auction be held, such bid protections will encourage bidding by serving “any of three possible useful functions: (1) to attract or retain a potentially successful bid; (2) to establish a bid standard or minimum for other bidders to follow; or (3) to attract additional bidders.” *Id.* at 662.

27. Here, the bid of the Stalking Horse Bidder serves all three functions. *First*, the Stalking Horse Bidder would not enter into the Stalking Horse Agreement without the Stalking Horse Bid Protections. *Second*, pursuant to the Bidding Procedures, any bidder that wishes to

participate in the Auction must submit an offer that is higher or otherwise better than the bid of the Stalking Horse Bidder. *Third*, the bid of the Stalking Horse Bidder attracts additional bidders because, among other things, additional bidders will be able to save considerable time and expense because they can use many of the documents that the Stalking Horse Bidder heavily negotiated, including, among other things, the Stalking Horse Agreement and the schedules thereto, in making their bid. In sum, if the Assets are sold to a Successful Bidder other than the Stalking Horse Bidder, the Sale likely will be the result of the Stalking Horse Bidder's crucial role as an initial bidder generating interest in the Assets and establishing a minimum acceptable price and offer against which other parties can bid.

28. In addition, “[a] break-up fee should constitute a fair and reasonable percentage of the proposed purchase price, and should be reasonably related to the risk, effort, and expenses of the prospective purchaser. When reasonable in relation to the bidder’s efforts and to the magnitude of the transaction, break-up fees are generally permissible.” *Id.*

29. Here, the Break-Up Fee is an amount equal to 3.0% of the Purchase Price and the Expense Reimbursement is capped at \$350,000. This amount is consistent with, if not below, the range of bid protections typically paid in sale transactions that have been approved by this Court.¹⁰

¹⁰ See, e.g., *In re Brooks Bros. Grp., Inc.*, Case No. 20-11785 (CSS) Bankr. D. Del. Aug. 3, 2020) [D.I. 285] (authorizing a break-up fee of 3% of the purchase price and an expense reimbursement capped at \$1 million); *In re Lucky Brand Dungarees, LLC*, Case No. 20-11768 (CSS) (Bankr. D. Del. July 30, 2020) [D.I. 251] (authorizing break-up fee (defined in Stalking Horse Purchase Agreement at D.I. 349-1) equal to 3% of sum of purchase price, credit bid, value of standby letters of credit, and \$7 million in respect of assumed liabilities, and an expense reimbursement capped at \$1 million); *In re Templar Energy LLC*, Case No. 20-11441 (BLS) (Bankr. D. Del. June 29, 2020) [D.I. 130] (authorizing break-up fee of 3% of the cash component of the stalking horse purchase price and expense reimbursement up to \$350,000); *In re Lucky’s Market Parent Co., LLC*, Case No. 20-10166 (JTD) (Bankr. D. Del. Feb. 26, 2020) [D.I. 282] (authorizing a break-up fee of 3% of the purchase price, an expense reimbursement of \$250,000, and a perpetual topping fee of \$250,000 at each bid increment); *In re Celadon Grp., Inc.*, Case No. 19-12606 (KBO) (Bankr. D. Del. Jan. 6, 2020) [D.I. 219] (authorizing a break-up fee of up to 3% of the purchase price plus an expense reimbursement of 1.5% of the purchase price); *In re Bumblebee Parent Inc.*, Case No. 19-12502 (LSS) (Bankr. D. Del. Dec. 19, 2019) [D.I. 171] (approving a break-up fee of up to \$23,125,000 (approximately 2.5%), plus a separate expense reimbursement in the maximum amount of \$2.5 million).

Given the size of the Stalking Horse Purchase Price, the Debtors believe that the amount of the Stalking Horse Bid Protections is appropriate.

C. The Proposed Sale Satisfies the Requirements of Section 363 of the Bankruptcy Code

30. Ample authority exists for approval of the Sale contemplated by this Motion. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of a debtor’s estate, courts have approved the authorization of a sale of a debtor’s assets if such sale is based upon the sound business judgment of the debtor. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513 (7th Cir. 1991)); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *Stephen Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983).

31. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was provided to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith. *See In re Decora Indus., Inc.*, No. 00-4459 (JJF), 2002 WL 32332749, at *2 (D. Del. May 20, 2002) (citing *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)). Where a debtor demonstrates a valid business justification for a decision, it is presumed that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. at 656.

1. The Debtors Have Demonstrated a Sound Business Justification for the Proposed Sale

32. A sound business purpose for the sale of a debtor's assets outside the ordinary course of business exists where such sale is necessary to preserve the value of the estate for the benefit of creditors and interest holders. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d at 1063; *In re Food Barn Stores, Inc.*, 107 F.3d at 564-65 (recognizing the paramount goal of any proposed sale of property of estate is to maximize value).

33. As set forth above, a strong business justification exists for the sale of the Assets as described herein. An orderly and expeditious sale of the Assets is critical to maximizing the value of the Debtors' estates and recoveries for the Debtors' economic stakeholders.

2. The Noticing Procedures Are Reasonable and Appropriate

34. The Noticing Procedures described above are reasonably calculated to provide all of the Debtors' known creditors and all other parties in interest with adequate and timely notice of, among other things, the proposed Sale, the Bidding Procedures, the Auction and the Sale Hearing.

3. The Proposed Sale Will Produce a Fair and Reasonable Purchase Price for the Assets

35. As set forth above, the Debtors believe that the proposed sale process will produce a fair and reasonable purchase price for the Assets. The Stalking Horse Bid is an offer to purchase the Assets for a price that the Debtors, with the advice of the Debtors' advisors, already have determined to be fair and reasonable. Given the extensive prepetition marketing process and that the Stalking Horse Bid will serve as a floor for Qualified Bids for the Assets, the Debtors are confident that the post-petition sale process will culminate in the Debtors obtaining the highest or otherwise best offer for such assets. The Debtors also have reserved the right in the Bidding

Procedures to determine either that a single Qualified Bid for all of the Assets or several Qualified Bids in the aggregate for different Assets represent the highest and best offer received by the Debtors.

4. The Successful Bidder Should Be Entitled to the Protections of Section 363(m) of the Bankruptcy Code

36. Section 363(m) of the Bankruptcy Code protects a good faith purchaser's interest in property purchased from a debtor notwithstanding that the sale conducted under section 363(b) is later reversed or modified on appeal. Specifically, section 363(m) of the Bankruptcy Code states the following:

The reversal or modification on appeal of an authorization under [section 363(b) of the Bankruptcy Code] . . . does not affect the validity of a sale . . . to an entity that purchased . . . such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale . . . were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) of the Bankruptcy Code fosters the “policy of not only affording finality to the judgment of the [B]ankruptcy [C]ourt, but particularly to give finality to those orders and judgments upon which third parties rely.” *In re Abbotts Dairies*, 788 F.2d at 147; *see also Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994) (“Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal.”).

37. While the Bankruptcy Code does not define “good faith,” the Third Circuit has held that “the phrase encompasses one who purchases in ‘good faith’ and for ‘value.’” *In re Abbotts Dairies*, 788 F.2d at 147 (to constitute lack of good faith, a party's conduct in connection with the sale must usually amount to fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders); *see also In re Bedford Springs*

Hotel, Inc., 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); *In re Perona Bros., Inc.*, 186 B.R. 833, 839 (D.N.J. 1995).

38. In other words, a party would have to show fraud or collusion between the buyer and the debtor in possession, the trustee or other bidders to demonstrate a lack of good faith. *See Kabro Assocs. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997) (“[t]ypically, the misconduct that would destroy a [buyer]’s good faith status at a judicial sale involves fraud, collusion between the [buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders”). Due to the absence of a bright-line test for good faith, the determination is based on the facts of each case, with a focus on the “integrity of [a bidder]’s conduct in the course of the sale proceedings.” *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1998 (7th Cir. 1978)).

39. The Debtors submit that the Stalking Horse Bidder is a “good faith purchaser” within the meaning of section 363(m) of the Bankruptcy Code. The Debtors and the Stalking Horse Bidder have entered into an LOI and are working toward a signed Stalking Horse Agreement without collusion, in good faith and through extensive arm’s-length negotiations. The Stalking Horse Bidder has engaged separate counsel and other professional advisors to represent their respective interests in the negotiation of the Stalking Horse Agreement and in the sale process generally. To the best of the Debtors’ knowledge, information and belief, no party has engaged in any conduct that would cause or permit the Stalking Horse Agreement to be set aside under section 363(m) of the Bankruptcy Code.

40. Further, as set forth above, the Bidding Procedures are designed to produce a fair and transparent competitive bidding process. Each Qualified Bidder participating in the Auction

must confirm that it has not engaged in any collusion with respect to the bidding or the sale of any of the Assets. Any asset purchase agreement with a Successful Bidder executed by the Debtors will be negotiated at arm's-length and in good faith. Accordingly, the Debtors seek a finding that any Successful Bidder (including the Stalking Horse Bidder) is a good faith purchaser and is entitled to the full protections afforded by section 363(m) of the Bankruptcy Code.

41. Based on the foregoing, the Debtors submit that they have demonstrated that the proposed Sale is a sound exercise of the Debtors' business judgment and should be approved as a good faith transaction.

D. The Assets Should Be Sold Free and Clear of Liens, Claims, Interests and Encumbrances Under Section 363(f) of the Bankruptcy Code

42. In the interest of attracting the best offers, the Assets should be sold free and clear of any and all liens, claims, interests and other encumbrances, in accordance with section 363(f) of the Bankruptcy Code, with any such liens, claims, interests and encumbrances attaching to the proceeds of the applicable sale. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests and encumbrances if any one of the following conditions is satisfied:

- a. applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- b. such entity consents;
- c. such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
- d. such interest is in bona fide dispute; or
- e. such entity could be compelled, in legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *see also In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions

are met, the debtor has the authority to conduct the sale free and clear of all liens.”); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same).

43. Section 363(f) of the Bankruptcy Code is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a); *see also Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (“Authority to conduct such sales [free and clear of claims] is within the court’s equitable powers when necessary to carry out the provisions of [the Bankruptcy Code].”). The Debtors submit, and to the extent necessary will demonstrate at the Sale Hearing, that the sale of the Assets free and clear of all liens, claims, interests and encumbrances will satisfy one or more of the requirements under section 363(f) of the Bankruptcy Code. As an example, the Interim DIP Order requires that all prepetition and post-petition amounts be paid in full in connection with any Sale unless the DIP Lender otherwise consents to any Sale. *See* Interim DIP Order, ¶ 27. Moreover, the Debtors will send the Sale Notice to any other purported prepetition lienholders. If such lienholders do not object to the proposed Sale, then their consent should reasonably be presumed. Accordingly, the Debtors request that, unless a party asserting a prepetition lien, claim or encumbrance on any of the Assets timely objects to this Motion, such party shall be deemed to have consented to any Sale approved at the Sale Hearing. *See Hargave v. Twp. of Pemberton*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to a sale motion, a creditor is deemed to consent to the relief requested therein). Accordingly, the Debtors request that the Court authorize the sale of the Assets free and clear of any liens, claims, interests and encumbrances, in accordance with section 363(f) of the Bankruptcy

Code, subject to such liens, claims, interests and encumbrances attaching to the proceed thereof in the same order of relative priority, with the same validity, force and effect as prior to such.

E. Assumption and Assignment of Executory Contracts and Unexpired Leases Should Be Authorized

44. Section 365(a) of the Bankruptcy Code provides that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Courts employ the business judgment standard in determining whether to approve a debtor’s decision to assume or reject an executory contract or unexpired lease. *See, e.g., In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (assumption or rejection of lease “will be a matter of business judgment by the bankruptcy court”); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that a debtor’s decision to assume or reject executory contract is governed by business judgment standard and may only be overturned if decision is product of bad faith, whim, or caprice). The “business judgment” test in this context only requires that a debtor demonstrate that assumption or rejection of an executory contract or unexpired lease benefits the estate. *See Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989).

45. Any assumption of the Contracts and Leases is an exercise of the Debtors’ sound business judgment because the transfer of such Contracts and Leases is necessary to the Debtors’ ability to obtain the best value for the Assets. Given that consummation of the Sale is critical to the Debtors’ efforts to maximize value for their estates and stakeholders, the Debtors’ assumption of Contracts and Leases is an exercise of sound business judgment and, therefore, should be approved.

46. The consummation of any Sale involving the assignment of Contracts and Leases will be contingent upon the Debtors’ compliance with the applicable requirements of section 365

of the Bankruptcy Code. Section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Contracts and Leases to be assumed be cured or that the Debtors provide adequate assurance that such defaults will be promptly cured. The Debtors' assumption and assignment of the Contracts and Leases will be contingent upon payment of the Cure Amounts and effective only upon the closing of an applicable Sale or any later applicable date of assumption and assignment of such Contracts and Leases. As set forth above, the Debtors propose to file with the Court and serve on each Counterparty a Potential Assumption and Assignment Notice, which will set forth the Debtors' good faith calculations of Cure Amounts with respect to each of the Contracts and Leases listed on such Potential Assumption and Assignment Notice. Counterparties will have a meaningful opportunity to raise any objections to the proposed assumption of their respective Contracts and Leases in advance of the Sale Hearing.

47. Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign an executory contract if "adequate assurance of future performance by the assignee of such contract or lease is provided." 11 U.S.C. § 365(f)(2). The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." See *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (citation omitted); see also *In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean an absolute assurance that debtor will thrive and pay rent); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (finding that, "[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance"). Among other things, adequate assurance may be provided by evidencing the assignee's financial health and experience in managing the type of enterprise or property assigned. See *In re Bygaph*,

Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when the prospective assignee of a lease has financial resources and has expressed willingness to devote sufficient funding to the business to give it a strong likelihood of succeeding).

48. As set forth above and in the Bidding Procedures, for a bid to qualify as a Qualified Bid, a Potential Bidder must include with its bid information regarding its ability (and the ability of its designated assignee, if applicable) to perform under the Contracts and Leases that it wishes for the Debtors to assume and assign. Each affected Counterparty will have an opportunity to object to the ability of the Successful Bidder to provide adequate assurance as provided in the Bidding Procedures Order. To the extent necessary, the Debtors will present facts at the Sale Hearing to show the financial wherewithal, willingness and ability of the Successful Bidder to perform under the Contracts and Leases that it wishes for the Debtors to assume and assign.

49. In addition, to facilitate the assumption and assignment of the Contracts and Leases, the Debtors further request that the Court find that all anti-assignment provisions contained therein, whether such provisions expressly prohibit or have the effect of restricting or limiting assignment of such Contracts and Leases, to be unenforceable and prohibited pursuant to section 365(f) of the Bankruptcy Code.¹¹

F. The Designation Rights Are Appropriate

50. For any Contracts and Leases that the Successful Bidder has not included in the Contracts Schedule, the Successful Bidder can decide to designate any such Contract or Leases as

¹¹ Section 365(f)(1) of the Bankruptcy Code provides in part that, “notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease” 11 U.S.C. § 365(f)(1). Section 365(f)(3) of the Bankruptcy Code further provides that “[n]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee.” 11 U.S.C. § 365(f)(3).

set forth in paragraph 19(f) above. The designation rights allow the Successful Bidder to receive the benefits of certain Contracts and Leases while it considers whether to have the Contracts and Leases assumed and assigned or rejected. Under the designation rights, the counterparties will be compensated pursuant to the terms of their Contracts and Leases. The Stalking Horse Bidder has required this concept as an essential condition of the Stalking Horse Agreement but the designation rights under the Sale Order will be available to any Successful Bidder.

51. The designation rights will provide the Successful Bidder and the counterparties to Contracts and Leases with an opportunity to negotiate the Contracts and Leases prior to a decision regarding whether to assume and assign or reject the Contracts and Leases. Ultimately, this is expected to result in the Successful Bidder continuing business relationships with more counterparties to Contracts and Leases than if all decisions related to Contracts and Leases were forced to be made on or before the Closing.

52. Bankruptcy courts in this District and other jurisdictions have approved similar designation rights. *See, e.g., In re Alpha Entm't LLC*, Case No. 20-10940 (LSS) (Bankr. D. Del. Aug. 7, 2020) (designation rights period extending through the earlier of (a) plan confirmation occurring no earlier than 70 days after closing date, or (b) 90 days from and after closing date); *In re Brooks Bros. Grp., Inc.*, Case No. 20-11785 (CSS) (Bankr. D. Del. Aug. 3, 2020) (designation rights period extending post-closing until the later of plan confirmation or Dec. 31, 2020); *In re PQ New York, Inc.*, Case No. 20-11266 (JTD) (Bankr. D. Del. June 29, 2020) (post-closing date designation deadline 10 days following entry of sale order); *In re Sugarfina, Inc.*, Case No. 19-11973 (MFW) (Bankr. D. Del. Oct. 15, 2019) (designation rights period extending 90 days from and after closing date); *In re RM Holdco LLC*, Case No. 18-11795 (MFW) (Bankr. D. Del. Sept. 6, 2018) (same).

G. The Court Should Find That Any Sale of the Assets Does Not Require the Appointment of a Consumer Privacy Ombudsman

53. Section 363(b)(1) of the Bankruptcy Code provides that a debtor may not sell or release personally identifiable information about individuals unless such sale or lease is consistent with its policies or upon appointment of a consumer privacy ombudsman pursuant to section 332 of the Bankruptcy Code. Any sale or use of customer information will only be used in accordance with the Debtors' privacy policy. Therefore, appointment of a consumer privacy ombudsman is unnecessary.

Waiver of Bankruptcy Rules 6004(a), 6004(h) and 6006(d)

54. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). Bankruptcy Rule 6006(d) further provides that an "order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6006(d).

55. The Debtors believe that any Sale should be consummated as soon as practicable to preserve and maximize value. Accordingly, the Debtors request that any Sale Order approving the sale of the Assets and the assumption and assignment of the Contracts and Leases be effective immediately upon entry of such order and that the fourteen-day stay under Bankruptcy Rules 6004(h) and 6006(d) be waived.

Notice

56. Notice of this Motion shall be provided to: (a) the Office of the U.S. Trustee for the District of Delaware, (b) the parties listed on the Debtors' consolidated list of the top thirty (30) largest unsecured creditors, (c) counsel to the DIP Lenders, (d) counsel to the Stalking Horse

Bidder, (e) counsel for the Committee, if any, (f) the Internal Revenue Service, (g) all applicable state and local taxing authorities, (h) the United States Attorney's Office for the District of Delaware, (i) the offices of the attorneys general for the states in which the Debtors operate, (j) the Federal Trade Commission, (k) the Securities & Exchange Commission, (l) the United States Attorney General/Antitrust Division of the Department of Justice, (m) all potential buyers previously identified or solicited by the Debtors or their advisors and any additional parties who have previously expressed an interest to the Debtors or their advisors in potentially acquiring the Debtors' assets, (n) all other known parties with any interest in the Assets, and (o) and those parties entitled to receive notice pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that no further notice of this Motion is required.

No Previous Request

57. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request that the Court enter the Bidding Procedures Order, substantially in the form attached hereto as Exhibit A, and, after the Sale Hearing, the Sale Order, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

[Remainder of page intentionally left blank.]

Dated: December 4, 2020
Wilmington, Delaware

/s/ Sarah E. Silveira

RICHARDS, LAYTON & FINGER, P.A.

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*Proposed Attorneys for the
Debtors and Debtors in Possession*

Exhibit A

Bidding Procedures Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
	:	
FRANCESCA’S HOLDINGS CORPORATION, <i>et al.</i> , ¹	:	Case No. 20-13076 (BLS)
	:	
Debtors.	:	Joint Administration Requested
	:	

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**ORDER (I) (A) APPROVING BIDDING PROCEDURES FOR SALE OF
SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS, (B) APPROVING STALKING
HORSE BID PROTECTIONS, (C) SCHEDULING AUCTION FOR, AND HEARING TO
APPROVE, SALE OF SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS,
(D) APPROVING FORM AND MANNER OF NOTICES OF SALE, AUCTION AND
SALE HEARING, (E) APPROVING ASSUMPTION AND ASSIGNMENT
PROCEDURES AND (F) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of Francesca’s Holdings Corporation and its affiliated debtors and debtors in possession (collectively, the “**Debtors**”), for entry of an order (this “**Order**”), pursuant to sections 105, 363, 365, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 6006, and Local Rule 6004-1, (i) approving the bidding procedures (the “**Bidding Procedures**”), attached hereto as Exhibit 1, pursuant to which the Debtors will solicit and, in consultation with the Consultation Parties, select the highest or otherwise best offer for the sale (the “**Sale**”) of substantially all of the Debtors’ assets (the “**Assets**”); (ii) approving the Stalking Horse Bid Protections provided by the Debtors to the Stalking Horse Bidder; (iii) scheduling an auction (the “**Auction**”), if necessary; (iv) establishing procedures for the

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are Francesca’s Holdings Corporation (4704), Francesca’s LLC (2500), Francesca’s Collections, Inc. (4665), and Francesca’s Services Corporation (5988). The address of the Debtors’ corporate headquarters is 8760 Clay Road, Houston, Texas 77080.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Stalking Horse Agreement, as applicable.

assumption and assignment of executory contracts and unexpired leases in connection with the Sale, including notice of proposed Cure Amounts (the “**Assumption and Assignment Procedures**”); (v) scheduling a hearing (the “**Sale Hearing**”) to approve the Sale; and (vi) granting related relief, all as more fully described in the Motion; and the Court having reviewed and considered the Motion; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, and to the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue of the chapter 11 cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

C. The Debtors’ proposed notice of the Motion and the hearing thereon, including the Bidding Procedures and the proposed entry of this Order is (i) appropriate and reasonably calculated to provide all interested parties with timely and proper notice, (ii) in compliance with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules and (iii) adequate and sufficient under the circumstances of these chapter 11 cases, and no other or further notice is required. A reasonable opportunity to object or be heard regarding the relief requested in the Motion (including, without limitation, with respect to the Bidding Procedures and

payment of the Stalking Horse Bid Protections) has been afforded to all interested persons and entities, including, but not limited to, the Notice Parties.

D. The Bidding Procedures in the form attached hereto as Exhibit 1 are fair, reasonable and appropriate and are designed to maximize creditor recoveries from a sale of the Assets.

E. The Bidding Procedures and the Stalking Horse Agreement were each negotiated in good faith and at arm's-length among the Debtors and the Stalking Horse Bidder. The Stalking Horse Agreement represents the highest or otherwise best offer that the Debtors have received to date for the Assets. The process for selecting the Stalking Horse Bidder was fair and appropriate under the circumstances and in the best interests of the Debtors' estates.

F. The Debtors have demonstrated a compelling and sound business justification for the Court to enter this Order and, thereby: (i) approve the Bidding Procedures as contemplated by the Stalking Horse Agreement and the Motion; (ii) authorize the Break-Up Fee and Expense Reimbursement, under the terms and conditions set forth in the Stalking Horse Agreement and the Bidding Procedures; (iii) set the dates of the Bid Deadline, Auction (if needed), Sale Hearing and other deadlines set forth in the Motion and the Bidding Procedures; (iv) approve the Noticing Procedures and the forms of notice; and (v) approve the Assumption and Assignment Procedures and the forms of relevant notice. Such compelling and sound business justification, which was set forth in the Motion, are incorporated herein by reference and, among other things, form the basis for the findings of fact and conclusions of law set forth herein.

G. The Break-Up Fee and Expense Reimbursement, as approved by this Order, are fair and reasonable and provides a benefit to the Debtors' estates and stakeholders. If triggered in accordance with the terms of the Stalking Horse Agreement, the payment of the Break-Up Fee and Expense Reimbursement, under this Order and upon the conditions set forth in the Stalking Horse

Agreement and the Bidding Procedures, is (i) an actual and necessary cost of preserving the Debtors' estates, within the meaning of sections 503(b) and 507(a) of the Bankruptcy Code, (ii) reasonably tailored to encourage, rather than hamper, bidding for the Assets, by providing a baseline of value, increasing the likelihood of competitive bidding at the Auction, and facilitating participation of other bidders in the sale process, thereby increasing the likelihood that the Debtors will receive the best possible price and terms for the Assets, (iii) of substantial benefit to the Debtors' estates and stakeholders and all parties in interest herein, (iv) reasonable and appropriate, (v) a material inducement for, and condition necessary to, ensure that the Stalking Horse Bidder will continue to pursue its proposed agreement to purchase the Assets and (vi) reasonable in relation to the Stalking Horse Bidder's efforts and to the magnitude of the Sale and the Stalking Horse Bidder's lost opportunities resulting from the time spent pursuing such transaction.

H. The legal and factual bases set forth in the Motion establish just cause for the relief granted herein. Entry of this Order is in the best interests of the Debtors and their estates, creditors, interest holders and all other parties in interest.

I. The form and manner of notice to be delivered pursuant to the Noticing Procedures and the Assumption and Assignment Procedures (including the Sale Notice attached hereto as Exhibit 2 and the Potential Assumption and Assignment Notice attached hereto as Exhibit 3) are reasonably calculated to provide each Counterparty to the Contracts and Leases with proper notice of the potential assumption and assignment of such Contracts and Leases by the Successful Bidder(s) or any of their known proposed assignees (if different from the Successful Bidder) and the requirement that each such Counterparty assert any objection to the proposed Cure Amount or otherwise be barred from asserting claims arising out of or related to the Contracts and Leases following the assumption and assignment thereof.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. Any objections to the Motion or the relief requested therein that have not been adjourned, withdrawn or resolved are overruled in all respects on the merits.
3. The Bidding Procedures, in substantially the form attached hereto as Exhibit 1, are approved and fully incorporated into this Order and the Debtors are authorized, but not directed, to act in accordance therewith. The failure to specifically include a reference to any particular provision of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such provision.
4. The Stalking Horse Bidder is deemed a Qualified Bidder for all purposes, and the Stalking Horse Bid will be deemed a Qualified Bid upon execution of a Stalking Horse Agreement.
5. Subject to final Court approval at the Sale Hearing, the Debtors are authorized to enter into the Stalking Horse Agreement with the Stalking Horse Bidder. In the event that the conditions under the Stalking Horse LOI are not met, the Debtors reserve their right to replace the Stalking Horse Bidder.
6. Bid Deadline. As further described in the Bidding Procedures, the Bid Deadline shall be at **5:00 p.m. (prevailing Eastern Time) on January 14, 2021**. The Bid Deadline may be extended by the Debtors in consultation with the Consultation Parties. The Debtors shall notify Potential Bidders of their status as Qualified Bidders no later than **4:00 p.m. (prevailing Eastern Time) on January 15, 2021**. If the Debtors, in consultation with the Consultation Parties, extend the Bid Deadline, then the Debtors shall notify Potential Bidders of their status as Qualified Bidders as soon as practicable after the expiration of such extended deadline.
7. Auction. In the event the Debtors receive, on or before the Bid Deadline, one or more Qualified Bids in addition to the Stalking Horse Bid, an Auction shall be conducted at **10:00**

a.m. (prevailing Eastern Time) on January 15, 2021 virtually through Zoom, GoToMeeting, WebEx or similar platform that allows parties to participate remotely, or such other date, time or location as the Debtors shall notify all Qualified Bidders (including the Stalking Horse Bidder). The Debtors are authorized to conduct the Auction in accordance with the Bidding Procedures.

8. If no Qualified Bids with respect to the Assets other than the Stalking Horse Bid are received on or before the Bid Deadline, the Debtors shall not conduct the Auction with respect to the Assets, and instead shall seek approval of the sale of the Assets pursuant to the Stalking Horse Agreement at the Sale Hearing.

9. The form of Sale Notice attached hereto as Exhibit 2 is hereby approved.

10. Within two (2) Business Days after entry of this Order, or as soon as reasonably practicable thereafter, the Debtors shall serve the Sale Notice by first-class mail upon the following: (i) the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”); (ii) counsel for the official committee of unsecured creditors (the “**Committee**”), if any; (iii) all known creditors of the Debtors; (iv) counsel to the Stalking Horse Bidder, counsel to the Stalking Horse Bidder, McDonald Hopkins LLC, 300 North LaSalle Street, Suite 1400, Chicago, IL 60654, Attn: Marc Carmel (mcarmel@mcdonaldhopkins.com); (v) Counterparties to the Contracts and Leases; (vi) counsel for the DIP Agent, Greenberg Traurig LLP, (A) 1007 North Orange Street, Suite 1200, Wilmington, DE 19801, Attn: Dennis A. Meloro (melorod@gtlaw.com), (B) MetLife Building, 200 Park Avenue, New York, NY 10166, Attn: Jeffrey M. Wolf (WolfJe@gtlaw.com), Nathan A. Haynes (HaynesN@gtlaw.com), and Leo Muchnik (MuchnikL@gtlaw.com); (vii) the Internal Revenue Service; (viii) all applicable state and local taxing authorities; (ix) the Federal Trade Commission; (x) the Securities & Exchange Commission; (xi) the Office of the United States Attorney for the District of Delaware; (xii) the

United States Attorney General/Antitrust Division of the Department of Justice; (xiii) the offices of the attorneys general for the states in which the Debtors operate; (xiv) all potential buyers previously identified or solicited by the Debtors and any additional parties who have previously expressed an interest to the Debtors or their advisors in potentially acquiring the Assets; and (xv) all such other entities as may be required by applicable Bankruptcy Rules or applicable Local Rules or as may be reasonably requested by the Stalking Horse Bidder (collectively, the “**Sale Notice Parties**”). Within five business days of entry of the Bidding Procedures Order or as soon as practicable thereafter, the Debtors shall publish the Sale Notice, with such modifications as may be appropriate for purposes of publication, once in the National Edition of *USA Today* and, to the extent the Debtors deem appropriate, in any other local or regional publications.

11. Service of the Sale Notice on the Sale Notice Parties in the manner described in this Order constitutes good and sufficient notice of the Auction and the Sale Hearing. No other or further notice is required.

12. Promptly after the conclusion of the Auction, if any, and the selection of the Successful Bid(s) and Back-Up Bid(s), the Debtors shall file with the Court and post on the Case Information Website the Notice of Auction Results, which shall identify such Successful Bid(s) and Back-Up Bid(s).

13. Sale Objections. Objections to the Sale Order, the Stalking Horse Bidder, or the Sale with the Stalking Horse Bidder must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) be filed with the Court by no later than **4:00 p.m. (prevailing Eastern Time) on [●]** (the “**Sale Objection Deadline**”), and (d) be served on (i) proposed co-counsel to the Debtors, O’Melveny & Myers, LLP, 7 Times Square, New York, New York, Attn: Maria DiConza (mdiconza@omm.com) and Diana Perez (dperez@omm.com); (ii) proposed co-counsel

for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Mark D. Collins, Esq. (collins@rlf.com), Michael J. Merchant, Esq. (merchant@rlf.com), and Jason M. Madron, Esq. (madron@rlf.com), (iii) counsel to the Stalking Horse Bidder, counsel to the Stalking Horse Bidder, McDonald Hopkins LLC, 300 North LaSalle Street, Suite 1400, Chicago, IL 60654, Attn: Marc Carmel (mcarmel@mcdonaldhopkins.com); (iv) counsel for the DIP Agent, Greenberg Traurig LLP, (A) 1007 North Orange Street, Suite 1200, Wilmington, DE 19801, Attn: Dennis A. Meloro (melorod@gtlaw.com), (B) MetLife Building, 200 Park Avenue, New York, NY 10166, Attn: Jeffrey M. Wolf (WolfJe@gtlaw.com), Nathan A. Haynes (HaynesN@gtlaw.com), and Leo Muchnik (MuchnikL@gtlaw.com); (v) counsel to the Committee, if any; and (vi) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801, Attn: Linda Casey (Linda.Casey@usdoj.gov) (the “**Objection Notice Parties**”).

14. Auction Objections. Objections to the conduct of the Auction, the Successful Bidder, or the Sale with the Successful Bidder (other than the Stalking Horse Bidder) must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) be filed with the Court by no later than **4:00 p.m. (prevailing Eastern Time) on [●]**, and (d) be served on (i) the Objection Notice Parties and (ii) counsel for the Successful Bidder.

15. Sale Hearing. The Sale Hearing shall be held in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom 1, Wilmington, Delaware 19801, on **January [19], 2021, at [●] (prevailing Eastern Time)** or such other date and time that the Court may later direct; *provided, however*, that the Sale 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 or on the Court’s docket.

16. The Debtors shall file a form of order approving the Sale no later than [ten] calendar days before the Sale Hearing.

17. Stalking Horse Bid Protections. Pursuant to sections 105, 363, 364, 503 and 507 of the Bankruptcy Code, the Debtors are hereby authorized and directed to pay the Break-Up Fee and Expense Reimbursement to the Stalking Horse Bidder in accordance with the terms of the Stalking Horse Agreement without further order of this Court. The Break-Up Fee and Expense Reimbursement shall only be payable if the conditions to payment of such amounts set forth in the Stalking Horse Agreement have been satisfied. Upon execution of the Stalking Horse Agreement, the obligations of Debtors to pay the Stalking Horse Bid Protections (i) shall be entitled to administrative expense claim status under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code, (ii) shall not be subordinate to any other administrative expense claim against the Debtors, other than as provided in any adequate protection order in existence at the time of entry of this Order, and (iii) shall survive the termination of the Stalking Horse Agreement.

18. Assumption and Assignment Procedures. The Assumption and Assignment Procedures set forth in the Motion and herein are hereby approved.

19. As soon as reasonably practicable, the Debtors shall file with the Court, and cause to be published on the Case Information Website, the Potential Assumption and Assignment Notice and Contracts Schedule that specifies (a) each of the Contracts and Leases that may be assumed and assigned in connection with the Stalking Horse Bid, including the name of each Counterparty and (b) the proposed Cure Amounts with respect to each of the Contracts and Leases. The potential Assumption and Assignment Notice and Contracts Schedules shall also be served on each Counterparty listed on the Contracts Schedule via first class mail.

20. For any Contract or Lease not assumed to the Successful Bidder in connection with the Closing (whether listed on the Contracts Schedule or otherwise), the Successful Bidder may decide to (i) reject such Contract or Lease as of the Closing Date, or (ii) within three days of the Closing Date, designate such Contract or Lease as a “Designated Contract” or a “Designated Lease.” Designated Contracts and Leases shall be maintained by the Debtors for seventy-five (75) days after the Closing Date (which may be extended with the consent of the Debtors, which consent will not be withheld or conditioned by the Debtors if such extension is for up to one hundred fifty (150) days after the Closing Date, does not increase administrative expenses for the Debtors’ estates, and does not extend the designation rights period after the date the Bankruptcy Court enters an order confirming a chapter 11 plan). The Successful Bidder shall receive the benefits of such Designated Contracts and Leases and be responsible for the obligations under such Contracts and Leases from the Closing Date until the Successful Bidder designates such Designated Contracts and Leases as assumed or rejected, at which time the Debtors shall use their best efforts to effectuate such determination.

21. Objection Deadlines. Any Counterparty may object to the proposed assumption or assignment of its Contract or Lease, the Debtors’ proposed Cure Amounts, if any, or the ability of the Stalking Horse Bidder to provide adequate assurance of future performance (an “**Assumption and Assignment Objection**”). All Assumption and Assignment Objections must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Amount the Counterparty believes is required to cure defaults under the relevant Contract or Lease, (d) be filed by no later than **4:00 p.m. (prevailing Eastern Time) fourteen (14) days** after filing and service of the Potential Assumption and Assignment Notice and (e) be served on (i) proposed co-counsel

to the Debtors, O'Melveny & Myers, LLP, 7 Times Square, New York, New York, Attn: Maria DiConza (mdiconza@omm.com) and Diana Perez (dperez@omm.com); (ii) proposed co-counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Mark D. Collins, Esq. (collins@rlf.com), Michael J. Merchant, Esq. (merchant@rlf.com), and Jason M. Madron, Esq. (madron@rlf.com), (iii) counsel to the Stalking Horse Bidder, counsel to the Stalking Horse Bidder, McDonald Hopkins LLC, 300 North LaSalle Street, Suite 1400, Chicago, IL 60654, Attn: Marc Carmel (mcarmel@mcdonaldhopkins.com); (iv) counsel for the DIP Agent, Greenberg Traurig LLP, (A) 1007 North Orange Street, Suite 1200, Wilmington, DE 19801, Attn: Dennis A. Meloro (melorod@gtlaw.com), (B) MetLife Building, 200 Park Avenue, New York, NY 10166, Attn: Jeffrey M. Wolf (WolfJe@gtlaw.com), Nathan A. Haynes (HaynesN@gtlaw.com), and Leo Muchnik (MuchnikL@gtlaw.com); (v) counsel to the Committee, if any, and (vi) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801, Attn: Linda Casey (Linda.Casey@usdoj.gov) (collectively, the “**Assumption and Assignment Objection Notice Parties**”).

22. Resolution of Assumption and Assignment Objections. If a Counterparty files a timely Assumption and Assignment Objection, the Court will hear and determine such objection at the Sale Hearing or such other date that the Debtors, in consultation with the Successful Bidder, shall determine in their discretion (subject to the Court's calendar).

23. Failure to File Timely Assumption and Assignment Objection. If a Counterparty fails to file with the Court and serve on the Assumption and Assignment Objection Notice Parties a timely Assumption and Assignment Objection, the Counterparty shall be forever barred from asserting any such objection with regard to the assumption or assignment of its Contract or Lease,

and notwithstanding anything to the contrary in the Contract or Lease, or any other document, the Cure Amounts set forth in the Potential Assumption and Assignment Notice or the Supplemental Assumption and Assignment Notice (as defined below) shall be controlling and will be the only amount necessary to cure outstanding defaults under the applicable Contract or Lease under section 365(b) of the Bankruptcy Code arising out of or related to the Contract or Lease following the assumption and assignment thereof, whether known or unknown, due or to become due, accrued, absolute, contingent or otherwise, and the Counterparty shall be forever barred from asserting any additional cure or other pre-assignment amounts with respect to such Contract or Lease against the Debtors, the Successful Bidder or the property of any of them.

24. All Contracts and Leases that remains on the schedule of assumed contracts (the “**Contracts Schedule**”) as of such date shall be assumed by the Debtors and assigned to the Successful Bidder as part of the Sale, subject to the resolution of any Assumption and Assignment Objection with respect to such Contract or Lease and as such schedule may be amended pursuant to Section [●] of the Stalking Horse Agreement or the Successful Bidder’s Asset Purchase Agreement.

25. In the event that any Contract or Lease is added to the Contracts Schedule or previously-stated Cure Amounts are modified, in accordance with the Stalking Horse Agreement, the Successful Bidder’s Asset Purchase Agreement or the Assumption and Assignment Procedures, the Debtors will promptly serve a supplemental assumption and assignment notice, by overnight mail and, if known, e-mail, on the applicable Counterparty (each, a “**Supplemental Assumption and Assignment Notice**”). Each Supplemental Assumption and Assignment Notice will include the same information with respect to the applicable Contract or Lease as is required to be included in the Potential Assumption and Assignment Notice.

26. Any Counterparty listed on a Supplemental Assumption and Assignment Notice whose Contract or Lease is proposed to be assumed and assigned and was not included in the Potential Assumption and Assignment Notice may object to the proposed assumption or assignment of its Contract or Lease, the Debtors' proposed Cure Amounts, if any, or the ability of the Successful Bidder to provide adequate assurance of future performance (a "**Supplemental Assumption and Assignment Objection**"). All Supplemental Assumption and Assignment Objections must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Amounts the Counterparty believes is required to cure defaults under the relevant Contract or Lease, (d) be filed by no later than ten (10) calendar days from the date of service of such Supplemental Assumption and Assignment Notice and (e) be served on the Assumption and Assignment Objection Notice Parties. Each Supplemental Assumption and Assignment Objection, if any, shall be resolved in the same manner as an Assumption and Assignment Objection. For the avoidance of doubt, if a Counterparty was listed in the Potential Assumption and Assignment Notice and the previously-stated Cure Amount is modified in the Supplemental Assumption and Assignment Notice, such Counterparty may file a Supplemental Assumption and Assignment Objection only if such objection is to the modified Cure Amount.

27. If, following the Auction, the Stalking Horse Bidder is not selected by the Debtors as the Successful Bidder, then the Debtors shall, as soon as practicable following the conclusion of the Auction, serve the Notice of Auction Results by email, or by overnight mail for those Counterparties for which the Debtors or their agents do not have an email address, on each Counterparty that received a Potential Assumption and Assignment Notice and any Supplemental Assumption and Assignment Notice. Objections of any Counterparty related solely to the identity

of and adequate assurance of future performance provided by the Successful Bidder (other than the Stalking Horse Bidder) may be raised at the Sale Hearing.

28. 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.

29. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

30. To the extent any provisions of this Order are inconsistent with the Motion, the terms of this Order shall control. To the extent any provisions of this Order are inconsistent with the Bidding Procedures, the terms of this Order shall control.

31. Notwithstanding any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(h), 6006(d), 7062 or 9014) or Local Rule that might otherwise delay the effectiveness of this Order, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

32. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

33. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Exhibit 1

Bidding Procedures

BIDDING PROCEDURES

Set forth below are the bidding procedures (the “**Bidding Procedures**”) to be employed in connection with the proposed sale of substantially all of the assets (collectively, the “**Assets**”) owned by Francesca’s Holdings Corporation (“**FHC**”) and its affiliated debtors and debtors in possession (collectively, the “**Debtors**”), in connection with the Debtors’ jointly administered chapter 11 cases pending in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), lead case number 20-13076 (BLS).

By the motion (the “**Motion**”) dated December 4, 2020, the Debtors sought, among other things, approval of the Bidding Procedures for soliciting bids for, conducting an auction (the “**Auction**”) of, and consummating a sale of all or substantially all of the Debtors’ Assets (the “**Sale**”). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Stalking Horse Agreement or the Motion, as applicable.

THE BID PROCEDURES

In order to ensure that the Debtors receive the maximum value for the Assets, the Stalking Horse Agreement is subject to higher or better offers, and, as such, the Stalking Horse Agreement will serve as the “stalking-horse” bid for the Acquired Assets set forth therein.

Provisions Governing Qualifications of Bidders

Unless otherwise ordered by the Bankruptcy Court, in order to participate in the bidding process, prior to the Bid Deadline (defined below), each person other than the Stalking Horse Bidder, who wishes to participate in the bidding process (a “**Potential Bidder**”) must deliver the following to the Notice Parties (as defined below):

- (i) a written disclosure of the identity of each entity that will be bidding for the all or certain of the Assets or otherwise participating in connection with such bid; and
- (ii) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Seller Parties to a Potential Bidder) in form and substance satisfactory to the Debtors, without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions.

A Potential Bidder that delivers the documents and information described above or that the Debtors determine, in consultation with (i) the DIP Agent, and (ii) the official committee of unsecured creditors, if any appointed in these chapter 11 cases (the “**Consultation Parties**”), is likely (based on availability of financing, experience and other considerations) to be able to consummate the Sale, and whose Qualified Bid is received by Debtors no later than the Bid Deadline (as defined below) is deemed qualified (a “**Qualified Bidder**”).

Due Diligence

The Debtors will provide any Potential Bidder such due diligence access or additional information as the Debtors deem appropriate, which may include differentiations between the diligence provided to strategic and financial bidders, as appropriate, and contractual obligations to limit access to certain proprietary information. The due diligence period will extend through and including the Bid Deadline. Additional due diligence will not be provided after the Bid Deadline, unless otherwise deemed reasonably appropriate by the Debtors.

Provisions Governing Qualified Bids

A bid will be considered a “**Qualified Bid**” only if the bid is submitted by a Qualified Bidder and the Debtors determine, after consultation with the Consultation Parties, that the bid complies with all of the following:

- a. it is received by the Notice Parties prior to the Bid Deadline;
- b. it states that the applicable Qualified Bidder offers to purchase, in cash or, if applicable, through a credit bid, all or certain of the Assets upon the terms and conditions that the Debtors reasonably determine are no less favorable to the Debtors than those set forth in the Stalking Horse Agreement;
- c. it includes a signed writing stating that the Qualified Bidder’s offer is irrevocable until the selection of the Successful Bidder, provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder (each, as defined below), its offer shall remain irrevocable until the later of (i) the closing of the Sale to the Successful Bidder or the Backup Bidder, and (ii) the date that is 45 days after the Sale Hearing;
- d. it includes confirmation that there are no conditions precedent to the Qualified Bidder’s ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the submission of the Bid;
- e. it contains no due diligence or financing contingencies of any kind;
- f. it includes a duly authorized and executed copy of an asset purchase agreement, including the purchase price for the Assets to be acquired expressed in U.S. Dollars (the “**Purchase Price**”), together with all exhibits and schedules thereto, together with copies marked to show any amendments and modifications to the Stalking Horse Agreement (an “**Asset Purchase Agreement**”);

- g. it includes financial statements or other written evidence, including (if applicable) a firm, irrevocable commitment for financing, establishing the ability of the Qualified Bidder to consummate the proposed Sale and pay the Purchase Price in cash, such as will allow the Debtors to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Asset Purchase Agreement;
- h. it has a value to the Debtors, determined in the Debtors' reasonable business judgment after consultation with the Consultation Parties, that is greater than or equal to the sum of the value offered under the Stalking Horse Agreement, plus (a) the Stalking Horse Bid Protections (as defined herein) plus (b) \$250,000 (the "**Minimum Initial Overbid Amount**");
- i. it identifies with particularity which Contracts and Leases the Qualified Bidder wishes to assume and provides details of the Qualified Bidder's proposal for the treatment of related Cure Amounts and the provision of adequate assurance of future performance (the "**Adequate Assurance Information**") to the counterparties to such Contracts and Leases;
- j. it includes an acknowledgement and representation that the bidder: (i) has had an opportunity to conduct any and all required due diligence regarding the Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Assets or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in the Asset Purchase Agreement; and (iv) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid;
- k. it includes evidence, in form and substance reasonably satisfactory to the Debtors, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Asset Purchase Agreement;
- l. it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to 5% of the Purchase Price (a "**Good Faith Deposit**");
- m. it states that the bidder consents to the jurisdiction of the Bankruptcy Court; and
- n. it contains such other information as may be reasonably requested by the Debtors, in consultation with the Consultation Parties.

Notwithstanding the foregoing, the Stalking Horse Bidder shall be deemed a Qualified Bidder and the Stalking Horse Agreement will be deemed a Qualified Bid.

The Debtors shall notify the Consultation Parties and all Qualified Bidders in writing as to whether or not any bids (other than the Stalking Horse Agreement) constitute Qualified Bids, and will notify each Qualified Bidder that has submitted a bid (other than the Stalking Horse Bidder), whether such Qualified Bidder's bid constitutes a Qualified Bid promptly after such determination has been made; *provided* such notification shall not be given later than two (2) days following the expiration of the Bid Deadline.

Bid Deadline

A Qualified Bidder that desires to make a bid will deliver written copies of its bid to the following parties (collectively, the "**Notice Parties**"): (1) proposed co-counsel to the Debtors O'Melveny & Myers, LLP, 7 Times Square, New York, New York, Attn: Maria DiConza (mdiconza@omm.com) and Diana Perez (dperez@omm.com); (2) proposed co-counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Mark D. Collins, Esq. (collins@rlf.com), Michael J. Merchant, Esq. (merchant@rlf.com), and Jason M. Madron, Esq. (madron@rlf.com), (3) counsel to the Stalking Horse Bidder, counsel to the Stalking Horse Bidder, McDonald Hopkins LLC, 300 North LaSalle Street, Suite 1400, Chicago, IL 60654, Attn: Marc Carmel (mccarmel@mcdonaldhopkins.com); (4) counsel for the DIP Agent, Greenberg Traurig LLP, (i) 1007 North Orange Street, Suite 1200, Wilmington, DE 19801, Attn: Dennis A. Meloro (melorod@gtlaw.com), (ii) MetLife Building, 200 Park Avenue, New York, NY 10166, Attn: Jeffrey M. Wolf (WolfJe@gtlaw.com), Nathan A. Haynes (HaynesN@gtlaw.com), and Leo Muchnik (MuchnikL@gtlaw.com); (5) counsel to the Committee, if any, and (6) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801, Attn: Linda Casey (Linda.Casey@usdoj.gov); so as to be received by the foregoing parties no later than **5:00 p.m. prevailing Eastern time on January 13, 2021** (the "**Bid Deadline**"). The Bid Deadline may be extended by the Debtors in consultation with the Consultation Parties.

Evaluation of Competing Bids

A Qualified Bid will be valued by the Debtors based upon several factors including, without limitation, (1) the amount of the Purchase Price provided by such bid, (2) the Assets to be acquired, (3) the nature of the consideration provided by such bid, (4) the risks and timing associated with consummating such bid, (5) any proposed revisions to the Stalking Horse Agreement, (6) the ability of the Qualified Bidder to obtain appropriate regulatory approvals, (7) whether any Qualified Bid contains a sufficient cash component to ensure that the Debtors' estates are not rendered administratively insolvent, and (8) any other factors deemed relevant by the Debtors.

No Qualified Bids

If the Debtors do not receive any Qualified Bids other than the Stalking Horse Bid, the Debtors will not conduct an auction for the Assets and the Stalking Horse Bidder will be named the Successful Bidder upon the expiration of the Bid Deadline. The Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Debtors' case information website (located at <https://cases.stretto.com/francescas>) (the "**Case Information Website**") a notice (i) indicating that the Auction for the Assets has been canceled, (ii) indicating that the Stalking Horse Bidder is the Successful Bidder with respect to the Assets and (iii) setting forth the date and time of the Sale Hearing.

Auction Process

If the Debtors receive one or more Qualified Bids in addition to the Stalking Horse Agreement, the Debtors will conduct the Auction, which shall take place on **January 15, 2021 at 10:00 a.m. (prevailing Eastern Time)**, virtually through Zoom, GoToMeeting, WebEx or similar platform that allows parties to participate remotely, or such other date, time and location as shall be timely communicated to all entities entitled to attend the Auction. The Auction, which shall be recorded and transcribed, shall run in accordance with the following procedures:

- a. only the Debtors, the Stalking Horse Bidder, any other Qualified Bidder that has timely submitted a Qualified Bid, the Consultation Parties, and the advisors to each of the foregoing shall attend the Auction in person; *provided, however*, that any party in interest may attend (but not participate in) the Auction if any such party in interest provides the Debtors with written notice of its intention to attend the Auction on or before one (1) Business Day prior to the Auction, which written notice shall be sent to counsel for the Debtors via electronic mail, to (1) O'Melveny & Myers, LLP, Attn: Maria DiConza (mdiconza@omm.com) and Diana Perez (dperez@omm.com); and (2) Richards, Layton & Finger, P.A., Michael J. Merchant, Esq. (merchant@rlf.com), and Jason M. Madron, Esq. (madron@rlf.com);
- b. only the Stalking Horse Bidder and such other Qualified Bidders who have timely submitted Qualified Bids will be entitled to make any subsequent bids at the Auction;
- c. each Qualified Bidder shall be required to confirm that it has not engaged in any collusion, within the meaning of section 363(n) of the Bankruptcy Code with respect to any bids submitted or not submitted in connection with the Sale;

- d. at least one (1) Business Day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction and all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder in attendance at the Auction in person; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the selection of the Successful Bidder and Back-Up Bidder at the conclusion of the Auction. At least one (1) Business Day prior to the Auction, the Debtors will provide copies of the Qualified Bid, which the Debtors believe, after consultation with the Consultation Parties, is the highest or otherwise best offer for the Assets (the "**Starting Bid**") to the Stalking Horse Bidder and all other Qualified Bidders who have timely submitted Qualified Bids;
- e. all Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (as defined below) at the Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the Auction;
- f. the Debtors may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, provided that such rules (i) are not materially inconsistent with the Bidding Procedures, the Bankruptcy Code, or any order of the Court entered in connection herewith; (ii) do not purport to abrogate or modify the Stalking Horse Bid Protections; and (iii) are disclosed to each Qualified Bidder attending the Auction;
- g. bidding at the Auction will begin with the Starting Bid and continue in bidding increments (each, a "**Subsequent Bid**") providing a net value to the Debtors' estates of at least \$100,000 above the prior bid (the "**Continuing Minimum Overbid Amount**"). After the first round of bidding and between each subsequent round of bidding, the Debtors, after consultation with the Consultation Parties, shall announce the bid (and the value of such bid) that they believe to be the highest or otherwise best bid (each, the "**Leading Bid**");
- h. a round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid; and
- i. except as specifically set forth herein, for the purpose of evaluating the value of the Purchase Price provided by each Subsequent Bid (including any Subsequent Bid by the Stalking Horse Bidder), the Debtors shall give effect to the Stalking Horse Bid Protections as well as any additional liabilities to be assumed by a Qualified Bidder, and any additional costs which may be imposed on the Debtors.

Selection of Successful Bid

At least prior to the conclusion of the Auction, the Debtors will review and evaluate each Qualified Bid submitted at the Auction (including by the Stalking Horse Bidder) in accordance with the procedures set forth herein and determine which offer is the highest or otherwise best offer (one or more such bids, collectively the “**Successful Bid**” and the bidder(s) making such bid(s), collectively, the “**Successful Bidder**”), and communicate to the Stalking Horse Bidder and the other Auction participants the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Debtors, in consultation with the Consultation Parties, at the conclusion of the Auction shall be final, subject only to approval by the Bankruptcy Court. For the avoidance of doubt, the Debtors reserve the right to determine either that a single Qualified Bid for all of the Assets or several Qualified Bids in the aggregate for different assets represents the Successful Bid.

The Qualified Bidder(s) with the next highest or otherwise best Qualified Bid, as determined by the Debtors, will be required to serve as a back-up bidder (the “**Back-Up Bidder**” and such Bid, the “**Back-Up Bid**”) and keep its bid open and irrevocable until the later to occur of 45 days after the Sale Hearing and closing on the Successful Bid with the Successful Bidder. If the Successful Bidder fails to consummate the Sale, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtors will be authorized and directed to consummate the Sale with the Back-Up Bidder without further order of the Bankruptcy Court.

Within one (1) Business Day after conclusion of the Auction, the Successful Bidder shall complete and execute all agreements, contracts, instruments and other documents necessary to consummate the Successful Bid. Within one (1) Business Day after conclusion of the Auction, the Debtors shall file a notice with the Bankruptcy Court identifying the Successful Bidder and the Back-Up Bidder.

The Debtors will sell the Assets to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Bankruptcy Court at the Sale Hearing.

Return of Deposits

All Good Faith Deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder or the Back-Up Bidder (as defined below) no later than three Business Days following the entry of the Sale Order.

THE STALKING HORSE BID PROTECTIONS

In recognition of its expenditure of time, energy, and resources, the Debtors have agreed, subject to execution of the Stalking Horse Agreement, that if the Stalking Horse Bidder is not the Successful Bidder, the Debtors will pay, subject to the Bidding Procedures Order and the Stalking Horse Agreement, to the Stalking Horse Bidder a break-up fee equal to \$693,000 (the “**Break-Up Fee**”) and reimbursement of the Stalking Horse Bidder’s expenses incurred in connection with the Stalking Horse Agreement, the due diligence performed by the Stalking Horse Bidder, not to exceed \$350,000 (the “**Expense Reimbursement**” and, together with the Break-Up Fee, the “**Stalking Horse Bid Protections**”). The Stalking Horse Bid Protections shall be payable as provided for pursuant to the terms of the Bidding Procedures Order and the Stalking Horse Agreement.

The Debtors have agreed that their obligation to pay the Stalking Horse Bid Protections pursuant to the Stalking Horse Agreement shall survive termination of the Stalking Horse Agreement but is subject to the Bidding Procedures Order.

SALE HEARING

The Debtors will seek entry of an order from the Bankruptcy Court at a hearing (the “**Sale Hearing**”) to begin on or before **January [19], 2021, at [●] a/p.m. (prevailing Eastern Time)**, subject to the availability of the Bankruptcy Court, to approve and authorize the Sale to the Successful Bidder. The Debtors reserve the right to change the date and/or time of the Sale Hearing (or any other dates related to the Sale) in order to achieve the maximum value for the Assets.

Exhibit 2

Form of Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
	:	
FRANCESCA’S HOLDINGS CORPORATION, <i>et al.</i> , ¹	:	Case No. 20-13076 (BLS)
	:	
Debtors.	:	Joint Administration Requested
	:	

----- x

**NOTICE OF SALE, BIDDING PROCEDURES,
AUCTION, AND SALE HEARING**

PLEASE TAKE NOTICE that the above-captioned debtors (collectively, the “**Debtors**”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the “**Court**”) on December 3, 2020 (the “**Petition Date**”).

PLEASE TAKE FURTHER NOTICE that, on the Petition Date, the Debtors filed a motion (the “**Bidding Procedures Motion**”)² with the Court seeking entry of an order, among other things, (a) approving the Bidding Procedures pursuant to which the Debtors will solicit and select the highest and otherwise best offer for the sale (the “**Sale**”) of substantially all of the Debtors’ assets (the “**Assets**”), (b) scheduling and conducting an auction (the “**Auction**”), if necessary, (c) establishing procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale, including notice of proposed cure amounts (the “**Assumption and Assignment Procedures**”) and (d) scheduling a hearing (the “**Sale Hearing**”) to approve the Sale.

PLEASE TAKE FURTHER NOTICE that, on [_____], 2020, the Court entered an order (the “**Bidding Procedures Order**”) approving, among other things, the Bidding Procedures, which establish the key dates and times related to the Sale and the Auction. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.³

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are Francesca’s Holdings Corporation (4704), Francesca’s LLC (2500), Francesca’s Collections, Inc. (4665), and Francesca’s Services Corporation (5988). The address of the Debtors’ corporate headquarters is 8760 Clay Road, Houston, Texas 77080.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Motion.

³ To the extent of any inconsistencies between the Bidding Procedures and the summary descriptions of the Bidding Procedures in this notice, the terms of the Bidding Procedures shall control in all respects.

Contact Person for Parties Interested in Submitting a Bid

The Bidding Procedures set forth the requirements for becoming a Qualified Bidder and submitting a Qualified Bid, and any party interested in making an offer to purchase all or certain of the Assets must comply strictly with the Bidding Procedures. Only Qualified Bids will be considered by the Debtors, in accordance with the Bidding Procedures.

Any interested bidder should contact, as soon as possible:

FTI Capital Advisors
Attn: Shane Campbell (Shane.Campbell@fticapitaladvisors.com)

Obtaining Additional Information

Copies of the Bidding Procedures Motion, the Bidding Procedures and the Bidding Procedures Order, as well as all related exhibits, including the Stalking Horse Agreement and all other documents filed with the Court, are available free of charge on the Debtors' case information website at <https://cases.stretto.com/francescas> or can be requested by e-mail at teamfrancescas@stretto.com.

Important Dates and Deadlines

1. **Bid Deadline.** The deadline to submit a Qualified Bid is **January 13, 2021, at 5:00 p.m. (prevailing Eastern Time)**.
2. **Auction.** In the event that the Debtors timely receive a Qualified Bid in addition to the Qualified Bid of the Stalking Horse Bidder and subject to the satisfaction of any further conditions set forth in the Bidding Procedures, the Debtors intend to conduct an Auction for the Assets. The Auction, if one is held, will commence on **January 15, 2021, at [] a/p.m. (prevailing Eastern Time)** virtually through Zoom, GoToMeeting, WebEx or similar platform that allows parties to participate remotely, or such other date, time, and location as shall be timely communicated to all parties entitled to attend the Auction.
3. **Auction Objection and Sale Objection Deadlines.** The deadline to file an objection with the Court to the Sale Order, the Stalking Horse Bidder, or the Sale with the Stalking Horse Bidder (collectively, the "**Sale Objections**") is **[•], at 4:00 pm. (prevailing Eastern Time)** (the "**Sale Objection Deadline**"). If the Auction is held, any objection to the conduct of the Auction, the Successful Bidder, or the Sale with the Successful Bidder, (collectively, the "**Auction Objections**") may be raised at the Sale Hearing.
4. **Sale Hearing.** A hearing (the "**Sale Hearing**") to approve and authorize the Sale to the Successful Bidder will be held before the Court on or before **January [19], 2021, at [] a/p.m. (prevailing Eastern Time)** or such other date as determined by the Court.

Filing Objections

Sale Objections and Auction Objections, if any, must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) be filed with the Court by no later than **the Sale**

Objection Deadline or Auction Objection Deadline, as applicable, and (d) be served on (i) proposed co-counsel to the Debtors O'Melveny & Myers, LLP, 7 Times Square, New York, New York, Attn: Maria DiConza (mdiconza@omm.com) and Diana Perez (dperez@omm.com); (ii) proposed co-counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Mark D. Collins, Esq. (collins@rlf.com), Michael J. Merchant, Esq. (merchant@rlf.com), and Jason M. Madron, Esq. (madron@rlf.com), (iii) counsel to the Stalking Horse Bidder, counsel to the Stalking Horse Bidder, McDonald Hopkins LLC, 300 North LaSalle Street, Suite 1400, Chicago, IL 60654, Attn: Marc Carmel (mccarmel@mcdonaldhopkins.com); (iv) counsel for the DIP Agent, Greenberg Traurig LLP, (A) 1007 North Orange Street, Suite 1200, Wilmington, DE 19801, Attn: Dennis A. Meloro (melorod@gtlaw.com), (B) MetLife Building, 200 Park Avenue, New York, NY 10166, Attn: Jeffrey M. Wolf (WolfJe@gtlaw.com), Nathan A. Haynes (HaynesN@gtlaw.com), and Leo Muchnik (MuchnikL@gtlaw.com); (v) counsel to the Committee, if any; and (vi) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801, Attn: Linda Casey (Linda.Casey@usdoj.gov). Auction Objections must also be served on counsel for the Successful Bidder.

CONSEQUENCES OF FAILING TO TIMELY ASSERT AN OBJECTION

Any party who fails to make a timely Sale Objection on or before the Sale Objection Deadline in accordance with the Bidding Procedures Order and this Notice shall be forever barred from asserting any Sale Objection, including with respect to the transfer of the Assets free and clear of all liens, claims, encumbrances and other interests.

Any party who fails to make a timely Auction Objection on or before the Auction Objection Deadline in accordance with the Bidding Procedures Order and this Notice shall be forever barred from asserting any Auction Objection, including with respect to the transfer of the Assets free and clear of all liens, claims, encumbrances and other interests.

NO SUCCESSOR LIABILITY

The Sale will be free and clear of, among other things, any claim arising from any conduct of the Debtors prior to the closing of the Sale, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent or otherwise, so long as such claim arises out of or relates to events occurring prior to the closing of the Sale. Accordingly, as a result of the Sale, the Successful Bidder will not be a successor to any of the Debtors by reason of any theory of law or equity, and the Successful Bidder will have no liability, except as expressly provided in the Successful Bidder's Asset Purchase Agreement, for any liens, claims, encumbrances and other interests against or in any of the Debtors under any theory of law, including successor liability theories.

Dated: [____], 2020
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.

Mark D. Collins (No. 2981)
Michael J. Merchant (No. 3854)
Jason M. Madron (No. 4431)
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701

- and -

O'MELVENY & MYERS LLP

Maria DiConza (*pro hac vice* admission pending)
Joseph Zujkowski (*pro hac vice* admission pending)
Diana M. Perez (*pro hac vice* admission pending)
Times Square Tower
Seven Times Square
New York, New York 10036
Telephone: (212) 326-2000
Facsimile: (212) 326-2061

*Proposed Attorneys for the
Debtors and Debtors in Possession*

Exhibit 3

Form of Potential Assumption and Assignment Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
	:	
FRANCESCA’S HOLDINGS CORPORATION, <i>et al.</i> , ¹	:	Case No. 20-13076 (BLS)
	:	
Debtors.	:	Joint Administration Requested
	:	

----- x

**NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS OR UNEXPIRED LEASES AND CURE AMOUNTS**

PLEASE TAKE NOTICE THAT:

1. The above-captioned debtors (collectively, the “**Debtors**”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Court**”) on December 3, 2020 (the “**Petition Date**”).

2. On the Petition Date, the Debtors filed a motion (the “**Bidding Procedures Motion**”)² with the Court seeking entry of the Bidding Procedures Order. On December [], 2020, the Court entered the Bidding Procedures Order that, among other things, approved (a) the Bidding Procedures pursuant to which the Debtors will solicit and select the highest and otherwise best offer for the sale (the “**Sale**”) of substantially all of the Debtors’ assets (the “**Assets**”), (b) the form and manner of notice related to the Sale, (c) the procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale, including notice of proposed cure amounts (the “**Assumption and Assignment Procedures**”) and (d) scheduled the hearing (the “**Sale Hearing**”) to enter an order approving the Sale to the Stalking Horse Bidder or such other Successful Bidder (the “**Sale Order**”) for **January [19], 2021, at [] a/p.m. (prevailing Eastern Time)**.

3. Upon the closing of the Sale, the Debtors intend to assume and assign to the Successful Bidder certain Contracts and Leases. A schedule listing the Contracts and Leases that may potentially be assumed and assigned as part of the Sale is attached hereto as Exhibit 1 (the “**Contracts Schedule**”) and may also be viewed free of charge on the Debtors’ case information website, located at <https://cases.stretto.com/francescas> (the “**Case Management Website**”), or

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are Francesca’s Holdings Corporation (4704), Francesca’s LLC (2500), Francesca’s Collections, Inc. (4665), and Francesca’s Services Corporation (5988). The address of the Debtors’ corporate headquarters is 8760 Clay Road, Houston, Texas 77080.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Motion.

can be requested by e-mail at teamfrancescas@stretto.com. In addition, the Cure Amounts, if any, necessary for the assumption and assignment of such Contracts and Leases are also set forth on the Contracts Schedule. *Each Cure Amount listed on the Contracts Schedule represents all liabilities of any nature of the Debtors arising under a Contract or Lease prior to the closing of the Sale or other applicable effective date of the assumption and assignment of such Contract or Lease, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent or otherwise, so long as such liabilities arise out of or relate to events occurring prior to the closing of the Sale or other applicable effective date of the assumption and assignment of such Contract or Lease.* For any Contract or Lease that is not listed in the Contracts Schedule, the Successful Bidder may decide to (i) reject the Contracts and Leases or (ii) include the Contracts and Leases for a period of time until the Successful Bidder determines whether such Contract or Lease should be assumed or rejected.

4. **YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A COUNTERPARTY TO A CONTRACT OR LEASE THAT MAY BE ASSUMED AND ASSIGNED AS PART OF THE SALE.** Under the terms of the Assumption and Assignment Procedures, unless otherwise provided in the Successful Bidder's Asset Purchase Agreement (as defined in the Bidding Procedures), at any time prior to the date of closing of the Sale, the Debtors may (a) remove a Contract or Lease from the Contracts Schedule or (b) modify the previously-stated Cure Amount associated with any Contract or Lease. The Successful Bidder may also amend the Contracts Schedule pursuant to Section [] of the Asset Purchase Agreement. *The presence of a Contract or Lease listed on Exhibit 1 attached hereto does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease or that such Contract or Lease will be assumed and assigned as part of the Sale. The Debtors reserve all of their rights, claims and causes of action with respect to the Contracts and Leases listed on Exhibit 1 attached hereto.* Subject to the description set forth in paragraph 19(f) of the Motion, any Contracts or Leases not listed in the Contracts Schedule will either be listed as rejected or as a designated contract.

5. Pursuant to the Assumption and Assignment Procedures, objections to the proposed assumption and assignment of a Contract or Lease (an "**Assumption and Assignment Objection**"), including any objection relating to the Cure Amount or adequate assurance of the Stalking Horse Bidder's future ability to perform, must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Amount that the Counterparty believes is required to cure defaults under the relevant Contract or Lease, (d) be filed by no later than **4:00 p.m. (prevailing Eastern Time) fourteen (14) days after filing and service of the Potential Assumption and Assignment Notice** and (e) be served on (i) proposed co-counsel to the Debtors O'Melveny & Myers, LLP, 7 Times Square, New York, New York, Attn: Maria DiConza (mdiconza@omm.com) and Diana Perez (dperez@omm.com); (ii) proposed co-counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Mark D. Collins, Esq. (collins@rlf.com), Michael J. Merchant, Esq. (merchant@rlf.com), and Jason M. Madron, Esq. (madron@rlf.com), (iii) counsel to the Stalking Horse Bidder, counsel to the Stalking Horse Bidder, McDonald Hopkins LLC, 300 North LaSalle Street, Suite 1400, Chicago, IL 60654, Attn: Marc Carmel (mcarmel@mcdonaldhopkins.com); (iv) counsel for the DIP Agent, Greenberg Traurig LLP, (A) 1007 North Orange Street, Suite 1200, Wilmington, DE 19801, Attn: Dennis A. Meloro

(melorod@gtlaw.com), (B) MetLife Building, 200 Park Avenue, New York, NY 10166, Attn: Jeffrey M. Wolf (WolfJe@gtlaw.com), Nathan A. Haynes (HaynesN@gtlaw.com), and Leo Muchnik (MuchnikL@gtlaw.com); (v) counsel to the Committee, if any, and (vi) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801, Attn: Linda Casey (Linda.Casey@usdoj.gov) (collectively, the “**Assumption and Assignment Objection Notice Parties**”). In the event that any previously-stated Cure Amount are modified, the Debtors will promptly serve a Supplemental Assumption and Assignment Notice, by overnight mail and, if known, e-mail, on the applicable Counterparty.

6. Adequate assurance of future performance information for the Stalking Horse Bidder is available by contacting counsel to the Stalking Horse Bidder using the contact information set forth in paragraph 5 above.

7. If, following the Auction, the Stalking Horse Bidder is not the Successful Bidder, then the Debtors will (a) file the Notice of Auction Results, which will, among other things, include the identity of the Successful Bidder, (b) post such notice on the Case Management Website, and (c) serve such notice on each Counterparty then identified on the Contracts Schedule. Each such Counterparty will then have an opportunity to object to the ability of such Successful Bidder to provide adequate assurance of future performance with respect to such Counterparty’s Contract or Lease (a “**Post-Auction Objection**”). Any Post-Auction Objection may be raised at the Sale Hearing.

8. The Court will hear and determine any Assumption and Assignment Objections and Post-Auction Objections at the Sale Hearing or such other date that the Debtors, in consultation with the Successful Bidder, shall determine in their discretion (subject to the Court’s calendar).

CONSEQUENCES OF FAILING TO TIMELY ASSERT AN OBJECTION

UNLESS YOU FILE AN OBJECTION TO THE CURE AMOUNT AND/OR THE ASSUMPTION OR ASSIGNMENT OF YOUR CONTRACT OR LEASE IN ACCORDANCE WITH THE INSTRUCTIONS AND DEADLINES SET FORTH HEREIN, YOU SHALL BE (A) BARRED FROM OBJECTING TO THE CURE AMOUNT SET FORTH ON EXHIBIT 1, (B) ESTOPPED FROM ASSERTING OR CLAIMING ANY CURE AMOUNT AGAINST THE DEBTORS, THE STALKING HORSE BIDDER OR SUCH OTHER SUCCESSFUL BIDDER THAT IS GREATER THAN THE CURE AMOUNT SET FORTH ON EXHIBIT 1 AND (C) DEEMED TO HAVE CONSENTED TO THE ASSUMPTION AND/OR ASSIGNMENT OF YOUR CONTRACT OR LEASE.

OBTAINING ADDITIONAL INFORMATION

Copies of the Bidding Procedures Motion, the Bidding Procedures and the Bidding Procedures Order, as well as all related exhibits, including the Stalking Horse Agreement and all other documents filed with the Court, are available free of charge on the Case Management Website at <https://cases.stretto.com/francescas> or can be requested by e-mail teamfrancescas@stretto.com.

Dated: [____], 2020
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.

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