

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
WASHINGTON PRIME GROUP INC., <i>et al.</i> , ¹	)	Case No. 21-31948 (MI)
Debtors.	)	(Joint Administration Requested)

**DEBTORS’ MOTION FOR ENTRY OF AN ORDER
(I) ESTABLISHING BIDDING PROCEDURES, (II) SCHEDULING
CERTAIN DATES WITH RESPECT THERETO, (III) APPROVING THE FORM
AND MANNER OF NOTICE THEREOF, AND (IV) GRANTING RELATED RELIEF**

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a separate response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

Represented parties should act through their attorney.

The above-captioned debtors and debtors in possession (collectively, the “Debtors” or the “Company”) state as follows in support of this motion:²

¹ A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://cases.primeclerk.com/washingtonprime>. The Debtors’ service address is 180 East Broad Street, Columbus, Ohio 43215.

² The facts and circumstances supporting this motion are set forth in the *Declaration of Mark E. Yale, Executive Vice President and Chief Financial Officer of Washington Prime Group Inc., in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith and incorporated by reference herein. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Day Declaration or the Bidding Procedures (as defined herein), as applicable.

Preliminary Statement

1. On June 11, 2021, after extensive hard-fought, arm's-length negotiations, the Debtors entered in a restructuring support agreement (as may be further amended, supplemented, or modified from time to time, the "Restructuring Support Agreement") with SVPGlobal and its affiliated funds, in their capacity as holders of 2015 Credit Facility Claims, 2018 Credit Facility Claims, Weberstown Term Loan Facility Claims, and Unsecured Notes Claims (collectively, the "Plan Sponsor") and an ad hoc group of holders of 2015 Credit Facility Claims, 2018 Credit Facility Claims, and Weberstown Term Loan Facility Claims (the "Ad Hoc Lender Group"). The transactions contemplated in the Restructuring Support Agreement, and that will be embodied in a forthcoming plan of reorganization (the "Plan"), provide two paths to a comprehensive restructuring: (a) an equitization restructuring (the "Equitization Restructuring") or (b) an alternative value-maximizing transaction (the "Toggle Restructuring").

2. Pursuant to the Restructuring Support Agreement, the Equitization Restructuring provides for a full equitization of the Unsecured Notes, unimpaired treatment for all General Unsecured Claims, a \$1.2 billion take-back exit term loan facility (together with a revolving credit facility, if necessary), and a fully backstopped \$325 million equity rights offering to pay off the \$100 million new-money debtor-in-possession term loan (the "DIP Facility") and fund other costs attendant to the Debtors' emergence from chapter 11. Importantly, the Equitization Restructuring will deliver value to holders of the Debtors' Existing Equity Interests in the form of \$40 million in Cash or 6.125% of new equity in the reorganized Debtors (subject to dilution). In the context of the bidding procedures discussed herein, the Equitization Restructuring serves as a baseline restructuring proposal against which any alternative transaction will be compared.

3. Another key component of the Restructuring Support Agreement and Plan is a “toggle” feature, contemplating either the aforementioned Equitization Restructuring or the potential sale of all or a portion of the assets and/or equity interests of the Debtors and the Debtors’ non-Debtor subsidiaries (collectively, the “Assets”) through the Plan or an alternate value-maximizing restructuring transaction (in either case, a “Transaction”). The “toggle” feature, in conjunction with the bidding procedures set forth herein (the “Bidding Procedures”), will allow the Debtors to run a comprehensive marketing process to assess any bids that may exceed the value provided by the Equitization Restructuring, thereby maximizing the value of their estates for the benefit of all parties-in-interest, especially holders of the Debtors’ Existing Equity Interests. Under the Restructuring Support Agreement and the Bidding Procedures, the Debtors seek bids or proposals that provide for the payment in full in Cash of the Debtors’ secured and unsecured bank debt, unsecured notes, administrative claims (including professional fees of Debtor advisors and advisors to the Plan Sponsor and the *Ad Hoc* Lender Group), the DIP Facility, general unsecured claims, and the Backstop Base Premium, plus a recovery for the Debtors’ Existing Equity Interests in excess of what is provided for under the Equitization Restructuring (any such Transaction, an “Acceptable Alternative Restructuring Proposal”).³ With this framework in place, the Debtors will only pursue an Acceptable Alternative Restructuring Proposal pursuant to the Toggle Restructuring if the proposed transaction will improve recoveries as compared with the Equitization Restructuring.

4. To ensure a robust marketing process on the timeline contemplated herein, the Debtors, with the assistance of their proposed investment banker, Guggenheim Securities, LLC

³ To the extent the definition of “Acceptable Alternative Restructuring Proposal” conflicts with the definition in the Restructuring Support Agreement (including the Term Sheet), the Restructuring Support Agreement shall govern in all respects.

(“Guggenheim Securities”), and other advisors, commenced a prepetition marketing process to engage with certain potential bidders on a sale or other value-maximizing transaction with respect to the Assets. The Debtors have invested substantial time and effort into the prepetition marketing process, including outreach to a broad universe of relevant strategic and financial parties. Specifically, the Debtors, with the assistance of Guggenheim Securities, contacted 19 parties, 13 of which executed confidentiality agreements and were provided with access to a virtual dataroom that contained confidential evaluation materials and six of which have since provided preliminary indications of interest and/or proposals. These preliminary indications of interest and/or proposals range from pieces of the Debtors’ property portfolio to the entire company, and Guggenheim Securities and the Debtors remain in active discussions with such parties with respect to any potential value-maximizing Transactions.

5. Although the marketing process remains ongoing, the Debtors ultimately determined in their business judgment and as a result of the extensive hard-fought, arm’s-length negotiations with the Plan Sponsor and the *Ad Hoc* Lender Group that it was in the best interests of their stakeholders to commence these chapter 11 cases and effectuate either the Equitization Restructuring or the Toggle Restructuring. That decision, however, was premised on the Debtors’ ability to continue the marketing process on a postpetition basis under the supervision of the Court pursuant to the Bidding Procedures. This in-court marketing process will cement the Debtors’ ability to fulfill their fiduciary duties, as it will serve as a market check on the value being provided to the Debtors’ Equity Interests under the Equitization Restructuring.

6. If the marketing process results in an Acceptable Alternative Restructuring Proposal, it will be consummated on a schedule substantially similar to that of the Equitization Restructuring pursuant to the milestones set forth in the Restructuring Support Agreement. The

proposed timeline for the postpetition marketing process, though expedient, proposes a reasonable schedule that provides sufficient time to continue canvassing the market for potential bidders or plan sponsors, especially in light of the Debtors' prepetition and ongoing marketing process, and is appropriate under the circumstances. Given, among other things, that the timeline and procedures contemplated herein were heavily negotiated with the Plan Sponsor and *Ad Hoc* Lender Group as part of the Equitization Restructuring, and that the Debtors will accrue considerable expenses the longer these chapter 11 cases remain open, it is essential that the Debtors consummate a value-maximizing restructuring transaction and an expeditious exit from chapter 11.

7. By this motion, the Debtors seek approval of the Bidding Procedures to ensure that the Debtors obtain the highest or otherwise best offer or combination of offers for the Assets, have sufficient time to receive and evaluate bids, hold an Auction, if necessary, and prepare documentation to effectuate a Toggle Restructuring, among other tasks and requirements, while remaining in compliance with the milestones provided in the Restructuring Support Agreement.

8. As set forth in further detail below, the Bidding Procedures and relief requested in this motion are in the best interests of the Debtors' estates and their stakeholders. Accordingly, the Debtors request that the Court grant the relief requested herein.

Relief Requested

9. By this motion, the Debtors seek entry of an order, substantially in the form attached hereto (the "Bidding Procedures Order"), (a) authorizing and approving Bidding Procedures, attached to the Bidding Procedures Order as Exhibit 1, by which the Debtors will solicit and select the highest or otherwise best offer(s) for all of the Assets, potentially at an auction if needed, (b) scheduling certain dates with respect thereto, (c) approving the form and manner of the notice thereof, and (d) granting related relief.

Jurisdiction and Venue

10. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court.

11. Venue is permissible pursuant to 28 U.S.C. §§ 1408 and 1409.

12. The bases for the relief requested herein are sections 105(a) and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) and Bankruptcy Rules 2002 and 6004, and Local Rule 9013-1.

Background

13. Washington Prime Group Inc. (“WPG Inc.”) is a fully integrated, self-administered, and self-managed real estate investment trust under the Internal Revenue Code and is a recognized leader in the ownership, management, acquisition, and development of retail properties. WPG Inc. is the sole general partner of and holds an approximately 98.2 percent⁴ controlling interest in Washington Prime Group, L.P. (“WPG LP”), a limited partnership based in Indianapolis, Indiana.⁵ WPG Inc. and WPG LP have the same management team and are consolidated for financial reporting purposes. WPG LP owns, develops, and manages, through its affiliates, all of WPG Inc.’s real estate properties and other assets. Specifically, certain affiliates, including the Debtors,

⁴ WPG Inc.’s ownership interest is as of April 26, 2021.

⁵ The remaining partnership interests are owned by various limited partners.

directly own the properties and manage the operations related to their respective properties.⁶ As of the date hereof (the “Petition Date”), WPG Inc. and its affiliates have material interests in 102 shopping centers across the United States, consisting of open-air properties and enclosed retail properties and comprising approximately 53 million square feet of managed gross leasable area.

14. On the Petition Date, each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors have filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committees have been appointed or designated.

The Bidding Procedures

I. The Proposed Schedule.

15. The Debtors believe a prompt schedule is in the best interests of all stakeholders in these chapter 11 cases. Among other reasons, it is critical for the Debtors to execute on any proposed Transaction within the timeframe contemplated by the milestones in the Restructuring Support Agreement. Accordingly, the Debtors propose the following timeline for the marketing and bidding process, as provided for in the Bidding Procedures:

Date and Time (all times in Central Time)	Event or Deadline
August 4, 2021, at 4:00 p.m.	Bid Deadline
August 5, 2021, at 4:00 p.m.	Deadline to notify all Qualified Bidders of the highest or otherwise best Qualified Bid and provide copies of the

⁶ There are certain affiliates that directly own their properties but have another WPG affiliate perform management functions for such properties. This arrangement is unique to properties that are subject to a joint venture agreement between third parties and certain WPG affiliates, which are not Debtors in these chapter 11 cases.

	documents supporting such Bid to all Qualified Bidders and the Consultation Parties.
August 6, 2021, at 9:00 a.m.	Auction (if required)
August 9, 2021, at 4:00 p.m.	Deadline for objections to approval of any Bid (including any credit bid), including objections based on the manner in which the Auction was conducted and the identity of the Winning Bidder, whether submitted prior to, on, or after the Bid Deadline.
August 12, 2021	Confirmation Hearing ⁷
August 27, 2021	Effective Date ⁸

16. The Debtors believe that this timeline provides them with an opportunity to conduct a fulsome marketing process for the Assets while still proceeding expeditiously towards confirmation of the Equitization Restructuring absent an Acceptable Alternative Restructuring Proposal. In addition to the Debtors' marketing efforts thus far, the Debtors will utilize the time prior to and following entry of the Bidding Procedures Order to actively market the Assets in an attempt to solicit higher or otherwise better bids in advance of the Bid Deadline. The Debtors believe the proposed schedule is in the best interests of their creditors, other stakeholders, and all other parties-in-interest, and should be approved.

II. The Bidding Procedures.

17. To optimally and expeditiously solicit, receive, and evaluate bids in a fair and accessible manner, the Debtors have developed the Bidding Procedures, attached as Exhibit 1 to

⁷ Pursuant to the Restructuring Support Agreement, if a Qualified Bid (as defined below) is received pursuant to these Bidding Procedures, the Debtors may elect a two-week extension of the confirmation milestone set forth in the Restructuring Support Agreement, which such extension shall be valid for so long as the Debtors are pursuing confirmation of such Qualified Bid.

⁸ Pursuant to the Restructuring Support Agreement, the Effective Date must occur no later than 15 calendar days after the entry of the Confirmation Order.

the Bidding Procedures Order. The following describes certain material points of the Bidding Procedures:⁹

Requirement	Description
Participation Requirements	<p>To receive due diligence information, including full access to the Debtors’ electronic data room and additional non-public information regarding the Debtors, a party interested in consummating a Transaction (a “<u>Potential Bidder</u>”) should deliver (or have delivered) an executed confidentiality agreement (a “<u>Confidentiality Agreement</u>”), to the extent not already executed, to the Debtors’ Advisors.</p> <p>Promptly after a Potential Bidder delivers an executed Confidentiality Agreement to the Debtors’ Advisors, such Potential Bidder may submit a Bid. Except as otherwise determined in the Debtors’ business judgment, only those Potential Bidders that have delivered executed Confidentiality Agreements (each, an “<u>Acceptable Bidder</u>”)¹⁰ may submit Bids.</p>
Bid Deadline	<p>An Acceptable Bidder that desires to make a proposal, solicitation, or offer (each, a “<u>Bid</u>”) shall transmit such proposal, solicitation, or offer via email (in .pdf or similar format) so as to be actually received on or before August 4, 2021, at 4:00 p.m. (prevailing Central Time) (the “<u>Bid Deadline</u>”) to the Debtors’ Advisors.</p>
Bid Requirements <i>Each Bid by an Acceptable Bidder must be submitted in writing and satisfy the following requirements (collectively, the “<u>Bid Requirements</u>”).</i>	<ul style="list-style-type: none"> • <u>Assets</u>. Each Acceptable Bidder must identify with reasonable specificity which Assets the Acceptable Bidder is interested in acquiring. • <u>Purchase Price</u>. Each Bid must clearly set forth the purchase price for each individual Asset in the proposed Asset package that the Acceptable Bidder is interested in acquiring, including and identifying separately any Cash and non-Cash components (the “<u>Purchase Price</u>”).¹¹ • <u>Deposit</u>. Each Bid must be accompanied by a Cash deposit in the amount equal to 5% of the aggregate Purchase Price to be held in one or more escrow accounts on terms acceptable to the Debtors (the “<u>Deposit</u>”).

⁹ This summary is qualified in its entirety by the Bidding Procedures attached as Exhibit 1 to the Bidding Procedures Order. All capitalized terms that are used in this summary but not otherwise defined herein shall have the meanings given to such terms in the Bidding Procedures. To the extent there are any conflicts between this summary and the Bidding Procedures, the terms of the Bidding Procedures shall govern.

¹⁰ For the avoidance of doubt, the Plan Sponsor is deemed an Acceptable Bidder.

¹¹ The Purchase Price must consist of sufficient Cash consideration to satisfy the Qualified Bid requirements set forth below.

- **Transaction Documents.** Each Bid must be accompanied by executed Transaction documents, including a draft purchase agreement, the form of which will be provided to any Acceptable Bidder by the Debtors prior to the Bid Deadline, including the exhibits, schedules, and ancillary agreements related thereto and any other related material documents integral to such Bid pursuant to which the Acceptable Bidder proposes to effectuate the proposed Transaction, along with copies that are marked to reflect any amendments and modifications from the form purchase agreement provided to such Acceptable Bidder, which amendments and modifications may not be materially more burdensome or otherwise inconsistent with these Bidding Procedures. The Debtors, in their reasonable business judgment, after consultation with the Consultation Parties, will determine whether any such amendments and modifications are materially more burdensome.
- **Proof of Financial Ability to Perform.** A Bid must include written evidence that the Debtors reasonably conclude, in consultation with the Consultation Parties, demonstrates that the Acceptable Bidder has the necessary financial ability to close the Transaction. Such information must include, *inter alia*, the following:
 - contact names and telephone numbers for verification of financing sources;
 - evidence of the Acceptable Bidder's internal resources and proof of unconditional debt funding commitments from a recognized financial institution and, if applicable, equity commitments in an aggregate amount equal to the Cash portion of such Bid (including, if applicable, the Acceptable Bidder's payment of cure amounts), or the posting of an irrevocable letter of credit from a recognized banking institution issued in favor of the Debtors in such amount, in each case, as are needed to close the Transaction;
 - the Acceptable Bidder's current financial statements (audited if they exist) or other similar financial information reasonably acceptable to the Debtors;
 - a description of the Acceptable Bidder's pro forma capital structure; and
 - any such other form of financial disclosure or credit-quality support information or enhancement reasonably requested by the Debtors demonstrating that such Acceptable Bidder has the ability to close the Transaction.
- **Contingencies; No Financing or Diligence Outs.** A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence.

- **Identity.** Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Acceptable Bidder if such Acceptable Bidder is an entity formed for the purpose of consummating the proposed Transaction contemplated by such Bid), and the complete terms of any such participation. Each Bid should also include contact information for the specific person(s) and counsel whom the Debtors (and their advisors) should contact regarding such Bid.
- **Regulatory and Third-Party Approvals.** A Bid must set forth each regulatory and third-party approval required for the Acceptable Bidder to consummate the Transaction, if any, and the time period within which the Acceptable Bidder expects to receive such regulatory and third-party approvals (which date shall be no later than the Confirmation Hearing), and those actions the Acceptable Bidder will take to ensure receipt of such approval(s) as promptly as possible.
- **Authorization.** Each Bid must contain evidence acceptable to the Debtors that the Acceptable Bidder has obtained authorization or approval from its board of directors (or a comparable governing body) with respect to the submission of its Bid and the consummation of the Transaction contemplated in such Bid.
- **Management and Employee Obligations.** Indicate whether the Acceptable Bidder intends to hire all or some of the employees who are primarily employed in connection with the Assets included in such proposal.
- **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the Acceptable Bidder: (a) has had an opportunity to conduct any and all due diligence regarding the Transaction prior to making its offer; (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents in making its Bid; (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, by the Debtors or their advisors or other representatives regarding the Transaction or the completeness of any information provided in connection therewith or the Auction; and (d) the Acceptable Bidder did not engage in any collusive conduct and acted in good faith in submitting its Bid.
- **No Break-Up Fee.** Each Bid shall indicate that such Acceptable Bidder will not seek any transaction break-up fee, expense reimbursement, or similar type of payment.

	<p>By submitting its Bid, each Acceptable Bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of the Bidding Procedures and to refrain from submitting a Bid, or seeking to reopen the Auction, after conclusion of the Auction. The submission of a Bid shall constitute a binding and irrevocable offer to consummate the Transaction reflected in such Bid.</p>
<p>Designation of Qualified Bidders</p>	<p>A Bid will be considered a “<u>Qualified Bid</u>,” and each Acceptable Bidder that submits a Qualified Bid will be considered a “<u>Qualified Bidder</u>,”¹² if the Debtors, after consultation with the Consultation Parties, determine that such Bid:</p> <ul style="list-style-type: none"> • satisfies the Bid Requirements set forth above; • is reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Winning Bid, no later than September 10, 2021; and • provides for a Transaction value accounting for: <ul style="list-style-type: none"> ○ payment in full in Cash of at least approximately \$2.3 billion¹³ in respect of the following obligations; <ul style="list-style-type: none"> ▪ all allowed DIP Claims outstanding on the Effective Date, including any accrued but unpaid interest; <i>plus</i> ▪ all allowed 2018 Credit Facility Claims outstanding on the Effective Date, including outstanding principal in the amount of approximately \$997 million and any accrued but unpaid interest (including any prepetition and postpetition interest at the default contract rate, as applicable); <i>plus</i> ▪ all allowed 2015 Credit Facility Claims outstanding on the Effective Date, including outstanding principal in the amount of approximately \$340 million and any accrued but unpaid interest (including any prepetition and postpetition interest at the default contract rate, as applicable); <i>plus</i> ▪ all allowed Weberstown Term Loan Facility Claims outstanding on the Effective Date, including outstanding principal in the amount of approximately \$65 million and any accrued but unpaid interest (including any prepetition and postpetition interest at the

¹² For the avoidance of doubt, the Plan Sponsor is deemed a Qualified Bidder, and the Equitization Restructuring shall be a Qualified Bid and entitled to participate in the Auction, if any, notwithstanding the requirements of Section C of the Bidding and Auction Process in the Bidding Procedures or any deadline to submit a Qualified Bid.

¹³ This figure is subject to material change as a result of the inputs provided below, certain of which are subject to a budget and/or can only be estimated at this time.

	<p>default contract rate, as applicable); plus</p> <ul style="list-style-type: none"> ▪ all administrative, priority, and secured claims (other than the DIP Claims), including professional fees of the Debtor’s professionals and professional fees of advisors to the Plan Sponsor and the <i>Ad Hoc</i> Lender Group, priority tax claims specified in section 507(a)(8) of the Bankruptcy Code,¹⁴ and secured tax claims;¹⁵ plus ▪ all allowed Unsecured Notes Claims outstanding on the Effective Date, including outstanding principal in the amount of approximately \$720.9 million and any accrued but unpaid interest (including any postpetition interest at the default contract rate); plus ▪ the Backstop Base Premium (as defined in the Backstop Commitment Agreement) of \$27,500,000; <ul style="list-style-type: none"> ○ payment in full in Cash or the assumption or reinstatement of other liabilities, including for the following obligations; <ul style="list-style-type: none"> ▪ any or all non-Debtor Assets and liabilities, including property-level mortgage indebtedness; plus ▪ all General Unsecured Claims (as defined in the Plan), arising in the Debtors’ chapter 11 cases through the Effective Date; ○ additional value in an amount not less than the value of either Cash or New Common Equity provided to Holders of Existing Equity Interests under the Equitization Restructuring, as compared to Cash or non-Cash consideration provided to Holders of Existing Equity Interests under the Bid; <i>provided</i> that the Debtors shall have the right to assess the value of New Common Equity or non-Cash consideration, as applicable, in their sole discretion; <i>provided, however</i>, that if the Debtors so elect to assess the value of non-Cash consideration, they shall do so with respect to each of the proposed Bid and the Equitization Restructuring; and ○ an initial Overbid (as defined below) providing incremental value in Cash or non-Cash consideration of at least \$2,500,000.
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¹⁴ Unless otherwise agreed to by the holder of such tax claim or if the Debtors or reorganized Debtors elect to treat such claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code.

¹⁵ For the avoidance of doubt, the Winning Bidder shall be responsible for any taxes that arise due to the consummation of the Transaction.

	<p>Within one business day after the Bid Deadline, the Debtors will notify each Acceptable Bidder whether such party is a Qualified Bidder and shall provide the Consultation Parties a copy of each Qualified Bid.</p> <p>If any Bid is determined by the Debtors not to be a Qualified Bid, the Debtors will refund such Acceptable Bidder's Deposit on the date that is three business days after the Bid Deadline.</p> <p>Between the date that the Debtors notify an Acceptable Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase their Purchase Price, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; <i>provided</i> that any Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures.</p> <p>Notwithstanding anything herein to the contrary, the Debtors reserve the right to work with (a) Potential Bidders and Acceptable Bidders to aggregate two or more Bids into a single consolidated Bid prior to the Bid Deadline or (b) Qualified Bidders to aggregate two or more Qualified Bids into a single Qualified Bid prior to the conclusion of the Auction. The Debtors reserve the right to cooperate with any Acceptable Bidder to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid. The Debtors may accept a single Qualified Bid or multiple Bids that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid (in which event those multiple bidders shall be treated as a single Qualified Bidder and their Bid a single Qualified Bid for purposes of the Auction).</p>
Right to Credit Bid	<p>Any Qualified Bidder, including the Plan Sponsor, who has a valid and perfected lien on any Assets of the Debtors' estates (a "<u>Secured Creditor</u>") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the Bankruptcy Code; <i>provided</i> that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such Secured Creditor is secured.</p>
The Auction	<p>If the Debtors receive one or more Qualified Bids in addition to the Equitization Restructuring, and the Debtors determine that such Qualified Bid is a higher or better bid than the Equitization Restructuring, the Debtors will conduct the Auction to determine the Winning Bidder with respect to the Transaction. If the Debtors have received no Qualified Bids other than the Equitization Restructuring as of the Bid Deadline, then the Auction will not occur and the Debtors will proceed to seek confirmation of the Equitization Restructuring. If the Debtors elect not to conduct an Auction because the Debtors did not receive any Qualified Bid other than the Equitization Restructuring, then the Debtors</p>

shall file a notice with the Court of such election within one business day of the determination of such election by the Debtors.

No later than **August 5, 2021, at 12:00 p.m. (prevailing Central Time)**, the Debtors will notify all Qualified Bidders of the highest or otherwise best Qualified Bid, as determined in the Debtors' business judgment (the "Baseline Bid"), and provide copies of the documents supporting the Baseline Bid to all Qualified Bidders and the Consultation Parties. The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitutes the Winning Bid (as defined below) shall take into account any factors the Debtors reasonably deem, in the Debtors' business judgment, relevant to the value of the Qualified Bid to the Debtors' estates, including, among other things: (i) the number, type, and nature of any changes to the Plan requested by the Qualified Bidder; (ii) the amount and nature of the total consideration; *provided*, that as long as the class of Unsecured Notes Claims votes to accept the Plan, the Debtors will consider Qualified Bids where Cash value distributable to Existing Equity Interests matches dollar for dollar equal to the Equitization Restructuring irrespective of the total amount of value or form of consideration distributed to holders of Claims that are senior to Existing Equity Interests; (iii) the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof; (iv) the net economic effect of any changes to the value to be received by the Debtors' estates from the Transaction contemplated by the Baseline Bid; (v) the tax consequences of such Qualified Bid; and (vi) the impact to vendors, landlords, and employees (collectively, the "Bid Assessment Criteria").

Unless otherwise indicated as provided by the Bidding Procedures Order, the Auction shall take place on **August 6, 2021, at 9:00 a.m. (prevailing Central Time)**, via remote video or in-person at the Debtors' election.

The Auction shall be conducted in a timely fashion according to the following procedures:

- **The Debtors Shall Conduct the Auction.** The Debtors (with the assistance of their applicable professionals) shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid. All incremental Bids made thereafter shall be Overbids and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders. The Debtors shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Winning Bid.

Only Qualified Bidders, the Debtors, the Plan Sponsor, the DIP Agent, and the Consultation Parties, and each of their respective legal and financial advisors, and any other parties specifically invited or permitted to attend by the Debtors, shall be entitled to attend the Auction, and the Qualified Bidders shall appear at the Auction in person and may speak or bid themselves or

through duly authorized representatives. Except as otherwise permitted by the Debtors, only Qualified Bidders shall be entitled to bid at the Auction.

- **Terms of Overbids.** “Overbid” means any bid made at the Auction by a Qualified Bidder subsequent to the Debtors’ announcement of the Baseline Bid. Each Overbid must comply with the following conditions:
 - **Minimum Overbid Increment.** Any Overbid following the Baseline Bid or following any subsequent Prevailing Highest Bid (as defined below) shall be in increments of value (including revised treatment under the Plan) of \$2,500,000, unless otherwise determined by the Debtors.
 - **Conclusion of Each Overbid Round.** Upon the solicitation of each round of Overbids, the Debtors may announce a deadline (as the Debtors may, in their business judgment, extend from time to time, the “Overbid Round Deadline”) by which time any Overbids must be submitted to the Debtors.
 - **Overbid Alterations.** An Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable in the aggregate to the Debtors’ estates than any prior Qualified Bid or Overbid, as determined in the Debtors’ business judgment, but shall otherwise comply with the terms of these Bidding Procedures.
 - **Announcing Highest Bid.** Subsequent to each Overbid Round Deadline, the Debtors shall announce whether the Debtors have identified an Overbid as being higher or otherwise better than the Baseline Bid, in the initial Overbid Round, or, in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the “Prevailing Highest Bid”). The Debtors shall describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid, as well as the value attributable by the Debtors to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria.
- **Consideration of Overbids.** The Debtors reserve the right, in their business judgment to adjourn the Auction one or more times, to, among other things (a) facilitate discussions between the Debtors and Acceptable Bidders, (b) allow Qualified Bidders to consider how they wish to proceed, and (c) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their business judgment, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed Transaction at the prevailing Overbid amount.
- **Closing the Auction.** The Auction shall continue until there is only one Qualified Bid that the Debtors determine, in their business judgment, to be the highest or otherwise best Qualified Bid. Such Qualified Bid shall be

	<p>declared the “<u>Winning Bid</u>” and such Qualified Bidder, the “<u>Winning Bidder</u>,” at which point the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. Such acceptance by the Debtors of the Winning Bid is conditioned upon approval by the Court of the Winning Bid. As soon as reasonably practicable after closing the Auction, the Debtors shall finalize definitive documentation to implement the terms of the Winning Bid, including, as applicable, the Plan, the Plan Supplement (as defined in the Plan), the Confirmation Order (as defined in the Plan), and/or other form of definitive documentation, and cause such definitive documentation to be filed with the Court.¹⁶</p> <ul style="list-style-type: none"> • <u>No Collusion; Good-Faith <i>Bona Fide</i> Offer.</u> Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that (a) it has not engaged in any collusion with respect to the bidding and (b) its Qualified Bid is a good-faith <i>bona fide</i> offer and it intends to consummate the proposed Transaction if selected as the Winning Bidder.
Reservation of Rights	<p>The Debtors reserve their rights to modify these Bidding Procedures in their business judgment, in consultation with the Consultation Parties, and consistent with the Restructuring Support Agreement, in any manner that will best promote the goals of these Bidding Procedures, or impose, at or prior to the Auction, additional customary terms and conditions on a Transaction, including: (i) extending the deadlines set forth in these Bidding Procedures; (ii) adjourning the Auction at the Auction; (iii) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (iv) canceling the Auction; and (v) rejecting any or all Bids or Qualified Bids. Nothing in these Bidding Procedures shall abrogate the fiduciary duties of the Debtors.</p>

18. The Bidding Procedures recognize the Debtors’ fiduciary obligations to maximize value, and, as such, do not impair the Debtors’ ability to consider all proposals. And, as noted, the Bidding Procedures preserve the Debtors’ right to modify the Bidding Procedures to best promote the goals of the marketing and bidding process, including, without limitation, maximizing value for the Debtors’ estates. Importantly, the Bidding Procedures also allow the Debtors to abandon

¹⁶ Pursuant to the Restructuring Support Agreement, as soon as reasonably practicable (and in any case within one (1) Business Day) after the delivery of the Toggle Election Notice, the Debtors shall publicly disclose the material terms of the Winning Bid (if other than the Equitization Restructuring) by filing material documentation thereof with the Court or otherwise.

the pursuit of the sale process and solely focus on the Equitization Restructuring if no actionable bids are received or if continuing such sale process appears to become, on balance, a waste of estate resources.

III. Notice of Auction.

19. The Auction, if any, shall take place on **August 6, 2021, at 9:00 a.m. (prevailing Central Time)**, via remote video. As soon as practicable after entry of the Bidding Procedures Order, the Debtors will cause notice of the Auction (the "Auction Notice"), substantially in the form attached to the Bidding Procedures Order as Exhibit 2, to be served on (a) all parties listed on the notice block of this motion below, (b) all known holders of liens, encumbrances, and other claims secured by the Assets, and (c) any parties that have expressed written interest in pursuing a potential Transaction in connection with the prepetition marketing process.

20. The Auction Notice is reasonably calculated to provide all interested parties with timely and proper notice of the Auction, if any, including the date, time, and place of the Auction. Accordingly, the Debtors request that the form and manner of the Auction Notice be approved and no other or further notice of the Auction be required.

Basis for Relief

I. The Relief Sought in the Bidding Procedures Order Is in the Best Interests of the Debtors' Estates and Should Be Approved.

21. Courts have made clear that a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling an estate's assets. *See, e.g., In re Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc., et al. (In re Continental Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or a debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the

ordinary course of business.”); *In re Crutcher Resources Corp.*, 72 B.R. 628, 631 (Bankr. N.D. Tex. 1987) (“A Bankruptcy Judge has considerable discretion in approving a § 363(b) sale of property of the estate other than in the ordinary course of business but the movant must articulate some business justification for the sale.”).

22. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) (“The purpose of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate.”); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564–65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the [Bankruptcy] Code [is] to enhance the value of the estate at hand.”); *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (“It is a well-established principle of bankruptcy law that the objective of the bankruptcy rules and the [Debtor]’s duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.” (citation omitted)).

23. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and, therefore, are appropriate in the context of bankruptcy transactions. *See In re Integrated Res., Inc.*, 147 B.R. at 659 (bidding procedures “are important tools to encourage bidding and to maximize the value of the debtor’s assets”); *In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) (“court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates”). Where there is a court-approved auction process, the assets are presumed to sell for a full and fair price because the best way to determine value is exposure to the market. *See*

Bank of Am. Nat'l Trust & Sav. Ass'n. v. LaSalle St. P'ship, 526 U.S. 434, 457 (1999); *see also In re Trans World Airlines, Inc.*, No. 01-00056, 2001 WL 1820326, at *4 (Bankr. D. Del. 2001) (while a “sale transaction does not require an auction procedure,” “the auction procedure has developed over the years as an effective means for producing an arm’s length fair value transaction.”).

24. Here, the Bidding Procedures will promote active bidding from interested parties and will elicit the highest or otherwise best offers available for the Assets. The Bidding Procedures are designed to facilitate orderly yet competitive bidding to maximize value. In particular, the Bidding Procedures contemplate an open auction process and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid. This is especially true where, as here, the Assets have been subjected to an extensive prepetition and ongoing postpetition marketing process. Further, having the Equitization Restructuring in place ensures that the Debtors can set a minimum purchase price for the Assets that will be tested by the marketplace, and an alternate transaction will only be pursued in the event that it is value-maximizing in the best interests of the Debtors’ stakeholders.

25. The proposed Bidding Procedures will encourage competitive bidding and are appropriate under the relevant standards governing auction proceedings. Accordingly, the Court should enter the Bidding Procedures Order.

II. The Form and Manner of the Auction Notice Should Be Approved.

26. Pursuant to Bankruptcy Rule 2002(a), the Debtors are required to provide creditors with 21-days’ notice of a hearing where the Debtors will seek to use, lease, or sell property of the estate outside the ordinary course of business. Bankruptcy Rule 2002(c) requires any such notice to include the time and place of the auction and the hearing and the deadline for filing any

objections to the relief requested therein. Notice of this motion and the related hearing to consider entry of the Bidding Procedures Order, coupled with service of the Auction Notice, as provided for herein, is reasonably calculated to provide all interested parties with timely and proper notice of a potential Transaction, including the date, time, and place of the Auction (if one is held) and the Bidding Procedures and the dates and deadlines related thereto. Accordingly, the Debtors request that this Court approve the form and manner of the Auction Notice.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

27. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Reservation of Rights

28. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law, (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds, (c) a promise or requirement to pay any claim, (d) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested in this motion or a finding that any particular claim is an administrative expense claim or other priority claim, (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates, (g) a waiver or limitation of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law, or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that

may be satisfied pursuant to the relief requested in this motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

29. The Debtors reserve the right to file and serve any supplemental pleading or declaration that the Debtors deem appropriate or necessary in their sole discretion, including any such pleading or declaration summarizing the competitive bidding and marketing process and the results thereof.

30. The Debtors further reserve the right in their reasonable business judgment to suspend or cancel the marketing process and pursue the Equitization Restructuring at any time if it appears that the marketing process will not yield a value maximizing transaction.

Notice

31. The Debtors will provide notice of this motion to the following: (a) the U.S. Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the 2015 Credit Facility Agent; (d) the 2018 Credit Facility Agent; (e) the Weberstown Term Loan Facility Agent; (f) the trustee under the Senior Notes Indenture; (g) counsel to the *Ad Hoc* Lender Group; (h) counsel to SVP; (i) the United States Attorney's Office for the Southern District of Texas; (j) the Internal Revenue Service; (k) the United States Securities and Exchange Commission; (l) the state attorneys general for states in which the Debtors conduct business; (m) counsel to the agent under the Debtors' postpetition debtor-in-possession financing facility; (n) all known holders of liens, encumbrances, and other

claims secured by the Assets; (o) any parties that have expressed written interest in pursuing a potential Transaction in connection with the prepetition marketing process; and (p) any party that has requested notice pursuant to Bankruptcy Rule 2002. No other or further notice is needed in light of the nature of the relief requested.

WHEREFORE, the Debtors request that the Court enter the Bidding Procedures Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas
June 14, 2021

/s/ Matthew D. Cavanaugh

JACKSON WALKER LLP

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*Proposed Co-Counsel to the Debtors
and Debtors in Possession*

Certificate of Service

I certify that on June 14, 2021, I caused a copy of the foregoing document to be served via the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Matthew D. Cavanaugh

Matthew D. Cavanaugh

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

	)	Chapter 11
In re:)	
	)	Case No. 21-31948 (MI)
WASHINGTON PRIME GROUP INC., <i>et al.</i> , ¹)	
	)	(Joint Administration Requested)
Debtors.)	
	)	Re: Docket No. ____

ORDER (I) ESTABLISHING BIDDING PROCEDURES, (II) SCHEDULING CERTAIN DATES WITH RESPECT THERETO, (III) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (IV) GRANTING RELATED RELIEF

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) authorizing and approving Bidding Procedures, attached hereto as **Exhibit 1**, by which the Debtors will solicit and select the highest or otherwise best offer(s) for all of the Assets, potentially at an auction if needed, (b) scheduling certain dates with respect thereto, (c) approving the form and manner of the notice thereof, and (d) granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is permissible pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion

¹ A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://cases.primeclerk.com/washingtonprime>. The Debtors’ service address is 180 East Broad Street, Columbus, Ohio 43215.

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

is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby **FOUND AND DETERMINED THAT:**

1. 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, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. The Bidding Procedures are fair, reasonable, and appropriate and are designed to promote participation and active bidding and ensure that the highest or otherwise best value is generated for the Assets.

3. The Bidding Procedures were negotiated at arm's length, in good faith, and without collusion. The Bidding Procedures balance the Debtors' interests in emerging expeditiously from the chapter 11 cases while preserving the opportunity to attract value-maximizing proposals beneficial to the Debtors' estate, their creditors, and other parties in interest.

4. The Debtors, with the assistance of their advisors, engaged in a robust and extensive marketing and sale process prior to the Petition Date to solicit and develop the highest or otherwise

best offer for the Assets. The Bidding Procedures are designed to continue that robust and extensive marketing and sale process.

5. The Debtors have articulated good and sufficient business reasons for this Court to grant the relief requested in the Motion, including, without limitation, to approve the Bidding Procedures. Such compelling and sound business justification, which was set forth in the Motion and on the record at the Hearing, are incorporated herein by reference and, *inter alia*, form the basis for the Court’s findings of fact and conclusions of law herein.

6. The Auction Notice, substantially in the form attached hereto as **Exhibit 2**, and incorporated herein by reference, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction

IT IS HEREBY ORDERED THAT:

7. All objections to the relief granted herein that have not been withdrawn with prejudice, waived, or settled, and all reservations of rights included in such objections, are overruled and denied on the merits with prejudice, and the Bidding Procedures are approved as set forth herein.

I. Important Dates and Deadlines.

8. The following timeline is hereby approved:

Date and Time (all times in Central Time)	Event or Deadline
August 4, 2021, at 4:00 p.m.	Bid Deadline
August 5, 2021, at 4:00 p.m.	Deadline to notify all Qualified Bidders of the highest or otherwise best Qualified Bid and provide copies of the documents supporting such Bid to all Qualified Bidders and the Consultation Parties.
August 6, 2021, at 9:00 a.m.	Auction (if required)
August 9, 2021, at 4:00 p.m.	Deadline for objections to approval of any Bid (including any credit bid), including objections based on the manner in which the Auction was conducted and the identity of the

	Winning Bidder, whether submitted prior to, on, or after the Bid Deadline.
August 12, 2021	Confirmation Hearing ³
August 27, 2021	Effective Date ⁴

II. Auction, Bidding Procedures, and Related Relief.

9. The Bidding Procedures, substantially in the form attached hereto as **Exhibit 1**, are fully incorporated herein and approved in their entirety, and the Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to any proposed Transaction. Any party desiring to bid on the Assets shall comply with the Bidding Procedures and this Order. The Debtors are authorized to take all actions as are necessary or appropriate to implement the Bidding Procedures.

10. Each bidder participating at an Auction, if any, shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Transaction, as set forth in the Bidding Procedures; and an Auction, if any, shall be transcribed or videotaped.

11. Pursuant to the Bidding Procedures, including any applicable consent and consultation rights therein, the Debtors may (a) determine which Qualified Bid is the highest or otherwise best offer, (b) reject any Bid that the Debtors determine is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the Bidding Procedures, or (iii) contrary to the best interests of the Debtors' estates and their creditors, and (c) impose such

³ Pursuant to the Restructuring Support Agreement, if a Qualified Bid is received pursuant to these Bidding Procedures, the Debtors may elect a two-week extension of the confirmation milestone set forth in the Restructuring Support Agreement, which such extension shall be valid for so long as the Debtors are pursuing confirmation of such Qualified Bid.

⁴ Pursuant to the Restructuring Support Agreement, the Effective Date must occur no later than 15 calendar days after the entry of the Confirmation Order.

other terms and conditions upon Qualified Bidders as the Debtors determine to be in the best interests of the Debtors' estates in these chapter 11 cases.

12. If the Debtors elect not to conduct an Auction, then the Debtors shall file a notice with the Court of such election within one business day of the determination of such election by the Debtors. The deadline to object to the manner in which the Auction was conducted and the identity of the Winning Bidder, including objections to approval of any Bid (including any credit bid), whether submitted prior to, on, or after the Bid Deadline, shall be August 9, 2021, at 4:00 p.m. (prevailing Central Time).

13. No person or entity shall be entitled to any expense reimbursement, break-up fees, "topping," termination, or other similar fee or payment, and by submitting a Bid, such person or entity is deemed to have waived their right to request or to file with this Court any request for expense reimbursement or any fee of any nature in connection with such Bid, whether by virtue of section 503(b) of the Bankruptcy Code or otherwise.

III. Miscellaneous.

14. Notwithstanding anything to the contrary herein or in the Bidding Procedures (other than any applicable consent and consultation rights therein), the Debtors may determine in their reasonable business judgment to suspend or cancel the marketing and bidding process in favor of the Equitization Restructuring.

15. All persons or entities (whether or not Qualified Bidders) that participate in the bidding process shall be deemed to have knowingly and voluntarily (a) consented to the entry of a final order by this Court in connection with the Motion to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection

herewith consistent with Article III of the United States Constitution and (b) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

16. All parties in interest shall receive or be deemed to have received good and sufficient notice of the Motion and of the Auction, and no further notice of the foregoing shall be required except as expressly set forth herein.

17. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon entry hereof.

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

19. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Houston, Texas

Dated: _____, 2021

UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Bidding Procedures

claims, and the Backstop Base Premium, plus a recovery for the Debtors’ Existing Equity Interests in excess of what is provided for under the Equitization Restructuring, the Debtors are able to toggle to and then effectuate the Toggle Restructuring.

On [●], the Court entered the *Order (I) Establishing Bidding Procedures, (II) Scheduling Certain Dates With Respect Thereto, (III) Approving the Form and Manner of Notice Thereof, and (IV) Granting Related Relief* (the “Bidding Procedures Order”), by which the Court approved the Bidding Procedures. These Bidding Procedures set forth the process by which the Debtors are authorized to conduct an auction (the “Auction”) in furtherance of a potential Toggle Restructuring, which would provide the highest or otherwise best offer. These Bidding Procedures do not prohibit the pairing of bids (provided that any communications regarding pairing of the bids shall be facilitated by the Debtors’ Advisors (as defined below) as provided below and interested parties are encouraged to submit bids for all or a portion of the Assets (as defined below) or an alternate value-maximizing transaction that repays the creditors in full in Cash (including default interest, where applicable) to acquire the Assets.

Copies of the Bidding Procedures Order, the Plan, or any other documents in the Debtors’ chapter 11 cases are available upon request to Prime Clerk LLC, by calling the restructuring hotline at (877) 329-1913 (toll free) and (347) 919-5772 (international) or by visiting the Debtors’ restructuring website at <http://cases.primeclerk.com/washingtonprime>.

Marketing Process

A. Description of the Assets.

The Debtors are seeking to sell or enter into an alternate value-maximizing transaction with respect to all of the assets and/or equity interests of the Debtors and the Debtors’ non-Debtor subsidiaries through a plan of reorganization. These assets include, but are not limited to, the Debtors’ and non-Debtors’ enclosed real property and open-air real property assets, executory contracts, leasehold interests, joint venture interests, equipment, supplies, intellectual property, insurance proceeds, receivables, prepaid expenses and deposits, and books and records, in each case, free and clear of all liens, claims, interests, or other encumbrances (collectively, with the equity interests of the Debtors and/or non-Debtors, the “Assets,” and any transaction to be effectuated to acquire the Assets, a “Transaction”). The Debtors will consider bids for all or a portion of the Assets.

B. Key Dates and Deadlines.

The following table sets forth key dates and deadlines with respect to the Bidding Procedures:

Date and Time (all times in Central Time)	Event or Deadline
August 4, 2021, at 4:00 p.m.	Bid Deadline
August 5, 2021, at 4:00 p.m.	Deadline to notify all Qualified Bidders of the highest or otherwise best Qualified Bid and provide copies of the

	documents supporting such Bid to all Qualified Bidders and the Consultation Parties.
August 6, 2021, at 9:00 a.m.	Auction (if required)
August 9, 2021, at 4:00 p.m.	Deadline for objections to approval of any Bid (including any credit bid), including objections based on the manner in which the Auction was conducted and the identity of the Winning Bidder, whether submitted prior to, on, or after the Bid Deadline.
August 12, 2021	Confirmation Hearing ³
August 27, 2021	Effective Date ⁴

C. Participation Requirements and Due Diligence.

(i) Access to Due Diligence.

To receive due diligence information, including full access to the Debtors' electronic data room and additional non-public information regarding the Debtors, a party interested in consummating a Transaction (a "Potential Bidder") should deliver (or have delivered) an executed confidentiality agreement (a "Confidentiality Agreement"), to the extent not already executed, to each of:

- (a) proposed counsel to the Debtors, Kirkland & Ellis LLP ("Kirkland"), 601 Lexington Avenue, New York, New York 10022, Attn.: Joshua Sussberg (joshua.sussberg@kirkland.com) and Alexander Nicas (alexander.nicas@kirkland.com), and Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn.: Chad Husnick (chad.husnick@kirkland.com), Dan Latona (dan.latona@kirkland.com), and Scott J. Vail (scott.vail@kirkland.com);
- (b) proposed co-counsel to the Debtors, Jackson Walker LLP ("Jackson Walker"), 1401 McKinney Street, Suite 1900, Houston, Texas 77010, Attn.: Matthew D. Cavanaugh (mcavanaugh@jw.com), Kristhy M. Peguero (kpeguero@jw.com), and Genevieve Graham (ggraham@jw.com); and
- (c) proposed investment banker to the Debtors, Guggenheim Securities, LLC ("Guggenheim Securities"), 330 Madison Avenue, New York, New York 10017, Attn.: Ronen A. Bojmel

³ Pursuant to the Restructuring Support Agreement, if a Qualified Bid (as defined below) is received pursuant to these Bidding Procedures, the Debtors may elect a two-week extension of the confirmation milestone set forth in the Restructuring Support Agreement, which such extension shall be valid for so long as the Debtors are pursuing confirmation of such Qualified Bid.

⁴ Pursuant to the Restructuring Support Agreement, the Effective Date must occur no later than 15 calendar days after the entry of the Confirmation Order.

(Ronen.Bojmel@guggenheimpartners.com), Elizabeth Abrams
(Elizabeth.Abrams@guggenheimpartners.com), Daun Chung
(Daun.Chung@guggenheimpartners.com), and Matthew Moss
(Matthew.Moss@guggenheimpartners.com).

The term “Debtors’ Advisors” as used in these Bidding Procedures shall mean (i) Kirkland, (ii) Jackson Walker, and (iii) Guggenheim Securities.

Promptly after a Potential Bidder delivers an executed Confidentiality Agreement to the Debtors’ Advisors, such Potential Bidder may submit a Bid (as defined below). Except as otherwise determined in the Debtors’ business judgment, only those Potential Bidders that have delivered executed Confidentiality Agreements (each, an “Acceptable Bidder”)⁵ may submit Bids.

Beginning on or as soon as is reasonably practicable after the Debtors determine that a Potential Bidder is an Acceptable Bidder, the Debtors will provide such Acceptable Bidder with access to an electronic data room and reasonable due diligence information, as requested by such Acceptable Bidder, as soon as reasonably practicable after such request, and the Debtors shall use reasonable efforts to post substantially all written due diligence provided to any Acceptable Bidder to the Debtors’ electronic data room; *provided* that the Debtors may decline to provide such information to Acceptable Bidders who, at such time and in the Debtors’ business judgment, after notice to the Consultation Parties, have not established, or who have raised doubt, that such Acceptable Bidder intends in good faith to, or has the capacity to, consummate a Transaction. All due diligence requests must be directed to Guggenheim Securities at the following email address: GSIBProjectWillowInternal@guggenheimpartners.com. To the extent reasonably practicable, the Debtors will also facilitate meetings between any Acceptable Bidder and the Debtors’ management team, which meetings will proceed in a manner determined by the Debtors, in their reasonable discretion. The due diligence period will end on the Bid Deadline (as defined below), and, subsequent to the Bid Deadline, the Debtors will have no obligation to furnish any due diligence information.

For any Acceptable Bidder who is a competitor of the Debtors or is affiliated with any competitor of the Debtors, the Debtors reserve the right to withhold, or to delay providing, any diligence materials that the Debtors determine are business-sensitive or otherwise inappropriate for disclosure to such Acceptable Bidder at such time.

Each Acceptable Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Acceptable Bidder and its contemplated Transaction.

(ii) **No Communications Among Bidders Without Consent.**

There must be no communications between and amongst Potential Bidders and/or Acceptable Bidders, or between Potential Bidders and/or Acceptable Bidders and the Consultation Parties (as defined below), unless the Debtors’ Advisors have authorized such communication in

⁵ For the avoidance of doubt, the Plan Sponsor is deemed an Acceptable Bidder.

writing. Should any Potential Bidders and/or Acceptable Bidders attempt to communicate directly with a Consultation Party, such Consultation Party shall direct the Potential Bidder and/or Acceptable Bidder to the Debtors' Advisors. The Debtors reserve the right, in their reasonable business judgment and upon consultation with the Consultation Parties, to disqualify any Potential Bidders and/or Acceptable Bidders that have communications between and amongst themselves without the prior consent of the Debtors' Advisors. The Debtors further reserve their right, in their reasonable business judgment, to disqualify any Potential Bidders and/or Acceptable Bidders that have communications with a Consultation Party. For the avoidance of doubt, there will be no prohibition on pairing bids; *provided* that, to the extent any Potential Bidders and/or Acceptable Bidders are interested, the Debtors' Advisors will facilitate the communications between parties and the potential joining of bids.

Bidding and Auction Process

A. Bid Deadline.

An Acceptable Bidder that desires to make a proposal, solicitation, or offer (each, a "Bid") shall transmit such proposal, solicitation, or offer via email (in .pdf or similar format) so as to be **actually received** on or before **August 4, 2021, at 4:00 p.m. (prevailing Central Time)** (the "Bid Deadline") to:

- (i) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Joshua Sussberg (joshua.sussberg@kirkland.com) and Alexander Nicas (alexander.nicas@kirkland.com), and Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn.: Chad Husnick (chad.husnick@kirkland.com), Dan Latona (dan.latona@kirkland.com), and Scott J. Vail (scott.vail@kirkland.com);
- (ii) proposed co-counsel to the Debtors, Jackson Walker LLP, 1401 McKinney Street, Suite 1900, Houston, Texas 77010, Attn.: Matthew D. Cavanaugh (mcavanaugh@jw.com), Kristhy M. Peguero (kpeguero@jw.com), and Genevieve Graham (ggraham@jw.com); and
- (iii) proposed investment banker to the Debtors, Guggenheim Securities, LLC, 330 Madison Avenue, New York, New York 10017, Attn.: Ronen A. Bojmel (Ronen.Bojmel@guggenheimpartners.com), Elizabeth Abrams (Elizabeth.Abrams@guggenheimpartners.com), Daun Chung (Daun.Chung@guggenheimpartners.com), and Matthew Moss (Matthew.Moss@guggenheimpartners.com).

B. Bid Requirements.

Each Bid by an Acceptable Bidder must be submitted in writing and satisfy the following requirements (collectively, the "Bid Requirements"):

- (i) **Assets.** Each Acceptable Bidder must identify with reasonable specificity which Assets the Acceptable Bidder is interested in acquiring.

- (ii) **Purchase Price.** Each Bid must clearly set forth the purchase price for each individual Asset in the proposed Asset package that the Acceptable Bidder is interested in acquiring, including and identifying separately any Cash and non-Cash components (the “Purchase Price”).⁶
- (iii) **Deposit.** Each Bid must be accompanied by a Cash deposit in the amount equal to 5% of the aggregate Purchase Price to be held in one or more escrow accounts on terms acceptable to the Debtors (the “Deposit”).
- (iv) **Transaction Documents.** Each Bid must be accompanied by executed Transaction documents, including a draft purchase agreement, the form of which will be provided to any Acceptable Bidder by the Debtors prior to the Bid Deadline, including the exhibits, schedules, and ancillary agreements related thereto and any other related material documents integral to such Bid pursuant to which the Acceptable Bidder proposes to effectuate the proposed Transaction, along with copies that are marked to reflect any amendments and modifications from the form purchase agreement provided to such Acceptable Bidder, which amendments and modifications may not be materially more burdensome or otherwise inconsistent with these Bidding Procedures. The Debtors, in their reasonable business judgment, after consultation with the Consultation Parties, will determine whether any such amendments and modifications are materially more burdensome.
- (v) **Proof of Financial Ability to Perform.** A Bid must include written evidence that the Debtors reasonably conclude, in consultation with the Consultation Parties, demonstrates that the Acceptable Bidder has the necessary financial ability to close the Transaction. Such information must include, *inter alia*, the following:
 - (i) contact names and telephone numbers for verification of financing sources;
 - (ii) evidence of the Acceptable Bidder’s internal resources and proof of unconditional debt funding commitments from a recognized financial institution and, if applicable, equity commitments in an aggregate amount equal to the Cash portion of such Bid (including, if applicable, the Acceptable Bidder’s payment of cure amounts), or the posting of an irrevocable letter of credit from a recognized banking institution issued in favor of the Debtors in such amount, in each case, as are needed to close the Transaction;
 - (iii) the Acceptable Bidder’s current financial statements (audited if they exist) or other similar financial information reasonably acceptable to the Debtors;
 - (iv) a description of the Acceptable Bidder’s pro forma capital structure; and
 - (v) any such other form of financial disclosure or credit-quality support

⁶ The Purchase Price must consist of sufficient Cash consideration to satisfy the Qualified Bid requirements set forth below.

information or enhancement reasonably requested by the Debtors demonstrating that such Acceptable Bidder has the ability to close the Transaction.

- (ii) **Contingencies; No Financing or Diligence Outs.** A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence.
- (iii) **Identity.** Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Acceptable Bidder if such Acceptable Bidder is an entity formed for the purpose of consummating the proposed Transaction contemplated by such Bid), and the complete terms of any such participation. Each Bid should also include contact information for the specific person(s) and counsel whom the Debtors (and their advisors) should contact regarding such Bid.
- (iv) **Regulatory and Third-Party Approvals.** A Bid must set forth each regulatory and third-party approval required for the Acceptable Bidder to consummate the Transaction, if any, and the time period within which the Acceptable Bidder expects to receive such regulatory and third-party approvals (which date shall be no later than the Confirmation Hearing), and those actions the Acceptable Bidder will take to ensure receipt of such approval(s) as promptly as possible.
- (v) **Authorization.** Each Bid must contain evidence acceptable to the Debtors that the Acceptable Bidder has obtained authorization or approval from its board of directors (or a comparable governing body) with respect to the submission of its Bid and the consummation of the Transaction contemplated in such Bid.
- (vi) **Management and Employee Obligations.** Indicate whether the Acceptable Bidder intends to hire all or some of the employees who are primarily employed in connection with the Assets included in such proposal.
- (vii) **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the Acceptable Bidder: (a) has had an opportunity to conduct any and all due diligence regarding the Transaction prior to making its offer; (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents in making its Bid; (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, by the Debtors or their advisors or other representatives regarding the Transaction or the completeness of any information provided in connection therewith or the Auction; and (d) the Acceptable Bidder did not engage in any collusive conduct and acted in good faith in submitting its Bid.

- (viii) **No Break-Up Fee.** Each Bid shall indicate that such Acceptable Bidder will not seek any transaction break-up fee, expense reimbursement, or similar type of payment.

By submitting its Bid, each Acceptable Bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of the Bidding Procedures and to refrain from submitting a Bid, or seeking to reopen the Auction, after conclusion of the Auction. **The submission of a Bid shall constitute a binding and irrevocable offer to consummate the Transaction reflected in such Bid.**

C. Designation of Qualified Bidders.

A Bid will be considered a “Qualified Bid,” and each Acceptable Bidder that submits a Qualified Bid will be considered a “Qualified Bidder,”⁷ if the Debtors, after consultation with the Consultation Parties, determine that such Bid:

- (i) satisfies the Bid Requirements set forth above;
- (ii) is reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Winning Bid (as defined below), no later than September 10, 2021; and
- (iii) provides for a Transaction value accounting for:
 - (a) payment in full in Cash of at least approximately \$2.3 billion⁸ in respect of the following obligations;
 - (i) all allowed DIP Claims outstanding on the Effective Date, including any accrued but unpaid interest; *plus*
 - (ii) all allowed 2018 Credit Facility Claims outstanding on the Effective Date, including outstanding principal in the amount of approximately \$997 million and any accrued but unpaid interest (including any prepetition and postpetition interest at the default contract rate, as applicable); *plus*
 - (iii) all allowed 2015 Credit Facility Claims outstanding on the Effective Date, including outstanding principal in the amount of approximately \$340 million and any accrued but unpaid interest

⁷ For the avoidance of doubt, the Plan Sponsor is deemed a Qualified Bidder, and the Equitization Restructuring shall be a Qualified Bid and entitled to participate in the Auction, if any, notwithstanding the requirements of this Section C of the Bidding and Auction Process or any deadline to submit a Qualified Bid.

⁸ This figure is subject to material change as a result of the inputs provided below, certain of which are subject to a budget and/or can only be estimated at this time.

- (including any prepetition and postpetition interest at the default contract rate, as applicable); **plus**
- (iv) all allowed Weberstown Term Loan Facility Claims outstanding on the Effective Date, including outstanding principal in the amount of approximately \$65 million and any accrued but unpaid interest (including any prepetition and postpetition interest at the default contract rate, as applicable); **plus**
 - (v) all administrative, priority, and secured claims (other than the DIP Claims), including professional fees of the Debtor's professionals and professional fees of advisors to the Plan Sponsor and the *Ad Hoc* Lender Group, priority tax claims specified in section 507(a)(8) of the Bankruptcy Code,⁹ and secured tax claims;¹⁰ **plus**
 - (vi) all allowed Unsecured Notes Claims outstanding on the Effective Date, including outstanding principal in the amount of approximately \$720.9 million and any accrued but unpaid interest (including any postpetition interest at the default contract rate); **plus**
 - (vii) the Backstop Base Premium (as defined in the Backstop Commitment Agreement) of \$27,500,000;
- (b) payment in full in Cash or the assumption or reinstatement of other liabilities, including for the following obligations;
- (i) any or all non-Debtor Assets and liabilities, including property-level mortgage indebtedness; **plus**
 - (ii) all General Unsecured Claims (as defined in the Plan), arising in the Debtors' chapter 11 cases through the Effective Date;
- (c) additional value in an amount not less than the value of either Cash or New Common Equity provided to Holders of Existing Equity Interests under the Equitization Restructuring, as compared to Cash or non-Cash consideration provided to Holders of Existing Equity Interests under the Bid; *provided* that the Debtors shall have the right to assess the value of New Common Equity or non-Cash consideration, as applicable, in their sole discretion; *provided, however*, that if the Debtors so elect to assess the value of non-Cash consideration, they shall do so with respect to each of the proposed Bid and the Equitization Restructuring; and

⁹ Unless otherwise agreed to by the holder of such tax claim or if the Debtors or reorganized Debtors elect to treat such claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code.

¹⁰ For the avoidance of doubt, the Winning Bidder shall be responsible for any taxes that arise due to the consummation of the Transaction.

- (d) an initial Overbid (as defined below) providing incremental value in Cash or non-Cash consideration of at least \$2,500,000.

Within one business day after the Bid Deadline, the Debtors will notify each Acceptable Bidder whether such party is a Qualified Bidder and shall provide the Consultation Parties a copy of each Qualified Bid.

If any Bid is determined by the Debtors not to be a Qualified Bid, the Debtors will refund such Acceptable Bidder's Deposit on the date that is three business days after the Bid Deadline.

Between the date that the Debtors notify an Acceptable Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the Purchase Price, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; *provided* that any Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures.

Notwithstanding anything herein to the contrary, the Debtors reserve the right to work with (a) Potential Bidders and Acceptable Bidders to aggregate two or more Bids into a single consolidated Bid prior to the Bid Deadline or (b) Qualified Bidders to aggregate two or more Qualified Bids into a single Qualified Bid prior to the conclusion of the Auction. The Debtors reserve the right to cooperate with any Acceptable Bidder to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid. The Debtors may accept a single Qualified Bid or multiple Bids that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid (in which event those multiple bidders shall be treated as a single Qualified Bidder and their Bid a single Qualified Bid for purposes of the Auction).

D. Right to Credit Bid.

Any Qualified Bidder, including the Plan Sponsor, who has a valid and perfected lien on any Assets of the Debtors' estates (a "Secured Creditor") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the Bankruptcy Code; *provided* that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such Secured Creditor is secured.

E. The Auction.

If the Debtors receive one or more Qualified Bids in addition to the Equitization Restructuring, and the Debtors determine that such Qualified Bid is a higher or better bid than the Equitization Restructuring, the Debtors will conduct the Auction to determine the Winning Bidder with respect to the Transaction. If the Debtors have received no Qualified Bids other than the Equitization Restructuring as of the Bid Deadline, then the Auction will not occur and the Debtors will proceed to seek confirmation of the Equitization Restructuring. If the Debtors elect not to conduct an Auction because the Debtors did not receive any Qualified Bid other than the

Equitization Restructuring, then the Debtors shall file a notice with the Court of such election within one business day of the determination of such election by the Debtors.

No later than **August 5, 2021, at 12:00 p.m. (prevailing Central Time)**, the Debtors will notify all Qualified Bidders of the highest or otherwise best Qualified Bid, as determined in the Debtors' business judgment (the "Baseline Bid"), and provide copies of the documents supporting the Baseline Bid to all Qualified Bidders and the Consultation Parties. The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitutes the Winning Bid (as defined below) shall take into account any factors the Debtors reasonably deem, in the Debtors' business judgment, relevant to the value of the Qualified Bid to the Debtors' estates, including, among other things: (i) the number, type, and nature of any changes to the Plan requested by the Qualified Bidder; (ii) the amount and nature of the total consideration; *provided*, that as long as the class of Unsecured Notes Claims votes to accept the Plan, the Debtors will consider Qualified Bids where Cash value distributable to Existing Equity Interests matches dollar for dollar equal to the Equitization Restructuring irrespective of the total amount of value or form of consideration distributed to holders of Claims that are senior to Existing Equity Interests; (iii) the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof; (iv) the net economic effect of any changes to the value to be received by the Debtors' estates from the Transaction contemplated by the Baseline Bid; (v) the tax consequences of such Qualified Bid; and (vi) the impact to vendors, landlords, and employees (collectively, the "Bid Assessment Criteria").

Unless otherwise indicated as provided by the Bidding Procedures Order, the Auction shall take place on **August 6, 2021, at 9:00 a.m. (prevailing Central Time)**, via remote video or in-person at the Debtors' election.

The Auction shall be conducted in a timely fashion according to the following procedures:

- (i) **The Debtors Shall Conduct the Auction.** The Debtors (with the assistance of their applicable professionals) shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid. All incremental Bids made thereafter shall be Overbids and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders. The Debtors shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Winning Bid.

Only Qualified Bidders, the Debtors, the Plan Sponsor, the DIP Agent, and the Consultation Parties, and each of their respective legal and financial advisors, and any other parties specifically invited or permitted to attend by the Debtors, shall be entitled to attend the Auction, and the Qualified Bidders shall appear at the Auction in person and may speak or bid themselves or through duly authorized representatives. Except as otherwise permitted by the Debtors, only Qualified Bidders shall be entitled to bid at the Auction.

- (ii) **Terms of Overbids.** "Overbid" means any bid made at the Auction by a Qualified Bidder subsequent to the Debtors' announcement of the Baseline Bid. Each Overbid must comply with the following conditions:

- (a) Minimum Overbid Increment. Any Overbid following the Baseline Bid or following any subsequent Prevailing Highest Bid (as defined below) shall be in increments of value (including revised treatment under the Plan) of \$2,500,000, unless otherwise determined by the Debtors.
 - (b) Conclusion of Each Overbid Round. Upon the solicitation of each round of Overbids, the Debtors may announce a deadline (as the Debtors may, in their business judgment, extend from time to time, the “Overbid Round Deadline”) by which time any Overbids must be submitted to the Debtors.
 - (c) Overbid Alterations. An Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable in the aggregate to the Debtors’ estates than any prior Qualified Bid or Overbid, as determined in the Debtors’ business judgment, but shall otherwise comply with the terms of these Bidding Procedures.
 - (d) Announcing Highest Bid. Subsequent to each Overbid Round Deadline, the Debtors shall announce whether the Debtors have identified an Overbid as being higher or otherwise better than the Baseline Bid, in the initial Overbid Round, or, in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the “Prevailing Highest Bid”). The Debtors shall describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid, as well as the value attributable by the Debtors to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria.
- (i) Consideration of Overbids. The Debtors reserve the right, in their business judgment to adjourn the Auction one or more times, to, among other things (a) facilitate discussions between the Debtors and Acceptable Bidders, (b) allow Qualified Bidders to consider how they wish to proceed, and (c) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their business judgment, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed Transaction at the prevailing Overbid amount.
 - (ii) Closing the Auction. The Auction shall continue until there is only one Qualified Bid that the Debtors determine, in their business judgment, to be the highest or otherwise best Qualified Bid. Such Qualified Bid shall be declared the “Winning Bid” and such Qualified Bidder, the “Winning Bidder,” at which point the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. Such acceptance by the Debtors of the Winning Bid is conditioned upon approval by the Court of the Winning Bid. As soon as reasonably practicable after closing the Auction, the Debtors shall finalize definitive documentation to implement the terms of the Winning Bid,

including, as applicable, the Plan, the Plan Supplement (as defined in the Plan), the Confirmation Order (as defined in the Plan), and/or other form of definitive documentation, and cause such definitive documentation to be filed with the Court.¹¹

- (iii) **No Collusion; Good-Faith *Bona Fide* Offer.** Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that (a) it has not engaged in any collusion with respect to the bidding and (b) its Qualified Bid is a good-faith *bona fide* offer and it intends to consummate the proposed Transaction if selected as the Winning Bidder.

F. Fiduciary Out.

Notwithstanding anything to the contrary in these Bidding Procedures, nothing in these Bidding Procedures or the Bidding Procedures Order shall require a Debtor or the board of directors, board of managers, or similar governing body of a Debtor to take any action or to refrain from taking any action related to any Transaction or with respect to these Bidding Procedures, to the extent such Debtor, board of director, board of managers, or such similar governing body reasonably determines in good faith, in consultation with counsel, that taking or failing to take such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations under applicable law; *provided, however*, that the Debtors shall promptly provide the Consultation Parties with notice of such action or inaction; *provided, further, however*, that this provision shall not be deemed to prejudice, alter, or modify the Consenting Stakeholders' rights under the Restructuring Support Agreement, including any applicable consent rights with respect to the Bidding Procedures. If, at the Auction, the Debtors exercise the foregoing right to take any action or refrain from taking any action to the extent failing to do so would be inconsistent with applicable law or their fiduciary obligations under applicable law, the Debtors shall provide the Consultation Parties with notice of such action or inaction as soon as practicable.

Further, notwithstanding anything to the contrary in these Bidding Procedures and subject in all respects to the Restructuring Support Agreement, through the date of the Auction, the Debtors and their respective directors, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives shall have the right to: (a) consider, respond to, and facilitate alternate proposals for sales or other restructuring transactions involving any or all of the Assets (each an "Alternate Proposal"); (b) provide access to non-public information concerning the Debtors to any entity or enter into confidentiality agreements or nondisclosure agreements with any entity; (c) maintain or continue discussions or negotiations with respect to Alternate Proposals; (d) otherwise cooperate with, assist, participate in, or facilitate any inquiries, proposals, discussions, or negotiations of Alternate Proposals; and (e) enter into or continue discussions or negotiations with holders of claims against or equity interests in the Debtors (including any Consenting Stakeholders (as defined in the Restructuring Support Agreement)), any other party in interest in these chapter 11 cases (including any official committee

¹¹ Pursuant to the Restructuring Support Agreement, as soon as reasonably practicable (and in any case within one (1) Business Day) after the delivery of the Toggle Election Notice, the Debtors shall publicly disclose the material terms of the Winning Bid (if other than the Equitization Restructuring) by filing material documentation thereof with the Court or otherwise.

and the U.S. Trustee for the Southern District of Texas), or any other entity regarding Alternate Proposals; *provided, however*, that notwithstanding anything to the contrary herein, pursuant to the Restructuring Support Agreement, subject to any confidentiality provisions contained in a Bid or Alternate Proposal, within two business days of receiving a Bid or Alternate Proposal, the Debtors will provide counsel to the *Ad Hoc* Lender Group and counsel to the Plan Sponsor with such Bid or Alternate Proposal, the Debtors will:

- (i) within two business days of receiving a Bid or Alternate Proposal, provide Counsel to the *Ad Hoc* Lender Group and Counsel to the Plan Sponsor with such Bid or Alternate Proposal;
- (ii) upon written request, provide Counsel to the *Ad Hoc* Lender Group and Counsel to the Plan Sponsor with timely updates as to the status and progress of such Bid or Alternate Proposal; and
- (iii) respond to reasonable information requests and questions from Counsel to the *Ad Hoc* Lender Group and Counsel to the Plan Sponsor relating to such Alternate Proposal.

Notwithstanding the foregoing or any other consultation rights contained in these Bidding Procedures, if the Plan Sponsor submits a Bid or Alternate Proposal (other than the Equitization Restructuring) pursuant to these Bidding Procedures, then the Debtors may, in their sole discretion, elect not to provide Counsel to the Plan Sponsor and Counsel to the *Ad Hoc* Lender Group with any Bid or Alternate Proposal.

G. Consultation Parties.

The term “Consultation Parties” as used in these Bidding Procedures shall mean (i) counsel to the Plan Sponsor, (ii) counsel to the *Ad Hoc* Lender Group, and (iii) counsel to any official committee appointed in these chapter 11 cases.

H. “As Is, Where Is”.

Consummation of any Transaction will be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Debtors, their advisors, representatives, or estates, except, only with respect to the Debtors and their estates, as specifically accepted or agreed to by the Debtors. Unless otherwise specifically accepted or agreed to by the Debtors, all of the Debtors’ right, title, and interest in and to the respective Assets will be transferred to the Winning Bidder free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests in accordance with sections 363(f) and 1123(a)(5)(D) of the Bankruptcy Code.

By submitting a Bid, each Acceptable Bidder will be deemed to acknowledge and represent that it (i) has had an opportunity to conduct adequate due diligence regarding the Transaction prior to making its Bid, (ii) has relied solely on its own independent review, investigation, and inspection of any document, including executory contracts and unexpired leases, in making its Bid, and (iii) did not rely on or receive from any person or entity (including, without limitation, any of the

Debtors or their advisors or other representatives) any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, with respect to the Transaction or the completeness of any information provided in connection with the Transaction or the Auction.

I. Commissions.

The Debtors shall be under no obligation to pay commission to any bidder's agent(s), advisor(s), or broker(s). All commissions, fees, or expenses for such agents may be paid by bidders at such bidder's discretion. In no case shall any commissions, fees, or expenses for any bidder's agent(s) be deducted from any proceeds derived from the sale of the Assets or the agreed Successful Bid.

J. Reservation of Rights.

The Debtors reserve their rights to modify these Bidding Procedures in their business judgment, in consultation with the Consultation Parties, and consistent with the Restructuring Support Agreement, in any manner that will best promote the goals of these Bidding Procedures, or impose, at or prior to the Auction, additional customary terms and conditions on a Transaction, including: (i) extending the deadlines set forth in these Bidding Procedures; (ii) adjourning the Auction at the Auction; (iii) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (iv) canceling the Auction; and (v) rejecting any or all Bids or Qualified Bids. Nothing in these Bidding Procedures shall abrogate the fiduciary duties of the Debtors.

K. Consent to Jurisdiction.

All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction or the construction and enforcement of these Bidding Procedures.

L. Confirmation Hearing.

A hearing to consider approval of the Transaction and/or confirmation of a plan (the "Confirmation Hearing") pursuant to which the Debtors and the Winning Bidder intend to consummate the Transaction contemplated by the Winning Bid will be held **on or prior to August 12, 2021**,¹² and otherwise in accordance with any scheduling order entered by the Court regarding confirmation of such plan.

The Confirmation Hearing may be continued to a later date pursuant to the Restructuring Support Agreement by the Debtors sending notice prior to, or making an

¹² Pursuant to the Restructuring Support Agreement, if a Qualified Bid is received pursuant to these Bidding Procedures, the Debtors may elect a two-week extension of the confirmation milestone set forth in the Restructuring Support Agreement, which such extension shall be valid for so long as the Debtors are pursuing confirmation of such Qualified Bid.

announcement at, the Confirmation Hearing. No further notice of any such continuance will be required to be provided to any party.

M. Return of Deposit.

The Deposit of the Winning Bidder shall be applied to the Purchase Price of such Transaction at closing. The Deposits for each Qualified Bidder shall be held in one or more escrow accounts on terms acceptable to the Debtors and shall be returned (other than with respect to the Winning Bidder) on the date that is three business days after the Auction.

If a Winning Bidder fails to consummate a proposed Transaction because of a breach by such Winning Bidder, the Debtors will not have any obligation to return the Deposit deposited by such Winning Bidder, which may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors and their estates.

N. No Modification of Bidding Procedures.

These Bidding Procedures may not be modified except in accordance with Section J of these Bidding Procedures.

Exhibit 2

Auction Notice

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
WASHINGTON PRIME GROUP INC., <i>et al.</i> , ¹	)	Case No. 21-31948 (MI)
Debtors.	)	(Joint Administration Requested)

NOTICE OF AUCTION

PLEASE TAKE NOTICE that on [●], the United States Bankruptcy Court for the Southern District of Texas (Houston Division) (the “Court”) entered the *Order (I) Establishing Bidding Procedures, (II) Scheduling Certain Dates With Respect Thereto, (III) Approving the Form and Manner of Notice Thereof, and (IV) Granting Related Relief* [Docket No. [●]] (the “Bidding Procedures Order”)² authorizing the above-captioned debtors and debtors in possession (collectively, the “Debtors”) to conduct an auction (the “Auction”) in connection with the sale or alternate value maximizing transaction with respect to their Assets. The Auction will be governed by the bidding procedures attached to the Bidding Procedures Order as Exhibit 1 (the “Bidding Procedures”).

Copies of the Bidding Procedures Order, the Bidding Procedures, or other documents related thereto are available upon request to Prime Clerk LLC by calling the restructuring hotline at (877) 329-1913 (toll free) and (347) 919-5772 (international) or by visiting the Debtors’ restructuring website at <http://cases.primeclerk.com/washingtonprime>.

PLEASE TAKE FURTHER NOTICE that the Bid Deadline is **August 4, 2021, at 4:00 p.m. (prevailing Central Time)**, and that any person or entity who wishes to participate in the Auction must comply with the participation requirements, bid requirements, and other requirements set forth in the Bidding Procedures.

¹ A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://cases.primeclerk.com/washingtonprime>. The Debtors’ service address is 180 East Broad Street, Columbus, Ohio 43215.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Order or the Bidding Procedures (as defined herein), as applicable.

PLEASE TAKE FURTHER NOTICE that the Debtors intend to conduct the Auction, at which they will consider proposals submitted to the Debtors and their professionals, by and pursuant to the Bidding Procedures as set forth in the Bidding Procedures Order, on **August 6, 2021, at 9:00 a.m. (prevailing Central Time)** via remote video or in-person at the Debtors' election.

PLEASE TAKE FURTHER NOTICE that the Debtors reserve their rights to modify the Bidding Procedures in their business judgment, in any manner that will best promote the goals of these Bidding Procedures, or impose, at or prior to the Auction, additional customary terms and conditions on a Transaction, including: (i) extending the deadlines set forth in these Bidding Procedures; (ii) adjourning the Auction at the Auction; (iii) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (iv) canceling the Auction; and (v) rejecting any or all Bids or Qualified Bids.

Houston, Texas
[●], 2021

/s/ DRAFT

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