

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

<p><b>IN RE:</b></p> <p><b>WC BRAKER PORTFOLIO, LLC,</b></p> <p><b>DEBTOR.</b></p>	<p><b>CASE NO. 22-10293-TMD</b></p> <p><b>CHAPTER 11</b></p>
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**NOTICE OF MODIFIED PROPOSED BID PROCEDURES ORDER AND  
BIDDING PROCEDURES**  
[Relates to Dkt. No. 230]

**PLEASE TAKE NOTICE** that Dawn Ragan, the chapter 11 trustee for the above referenced debtor, hereby submits a modified proposed order and bidding procedures in connection with her *Chapter 11 Trustee’s Motion For Entry Of (I) An Order (A) Approving Bid Procedures In Connection With The Sale Of The Debtor’s Property, B) Approving Procedures For The Assumption And Assignment Of Executory Contracts And Unexpired Leases, (C) Approving Stalking Horse Bidder (D) Scheduling An Auction And Hearing To Approve Sale Of Property, (E) Approving Form And Manner Of Notices Related Thereto, And (F) Granting Related Relief; And (II) An Order Authorizing And Approving (A) The Sale Of The Debtor’s Property Free And Clear Of Liens, Claims, Rights, Encumbrances, And Other Interests, And (B) Related Relief (“Sale Motion”)*, filed on November 23, 2022 [Dkt. No. 230].

**PLEASE TAKE FURTHER NOTICE** that a copy of the modified proposed bid procedures order and bidding procedures is attached as **Exhibit A**. Redlines showing changes from the original proposed bid procedures order and bidding procedures filed with the Sale Motion is attached as **Exhibit B**.

Dated: December 7, 2022

Respectfully Submitted,

/s/ Nancy Ribaldo

Michael McConnell

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Nancy Ribaldo

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*Counsel for Dawn Ragan, Chapter 11 Trustee*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 7, 2022, a true and correct copy of the foregoing Notice was electronically filed with the Court and served through the CM-ECF system to all counsel of record registered to receive Notice of Electronic Filing for this case, and on all parties listed below and on the attached list (attached for filing purposes only) via CM-ECF or first class mail as indicated:

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by First Class Mail to:  
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814 Lavaca Street  
Austin, TX 78701

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/s/ Nancy Ribaldo  
Nancy Ribaldo

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WC Braker Matrix  
Case No. 22-10293  
Updated 11 22 2022  
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Haute Rock Creative  
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Motoza LLC  
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ONLINEMEDED LLC  
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Potts Automotive  
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Astound  
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Rainbow Pizza LLC  
Domino's Pizza  
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Raymond Construction Co., Inc.  
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Richardson, TX 75082

Smith & Nephew Inc.  
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John Patrick Lowe, Chp 11 Trustee  
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# EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**In re**

**WC BRAKER PORTFOLIO, LLC,**

**Debtor.<sup>1</sup>**

**Chapter 11**

**Case No. 22-10293 (TMD)**

**ORDER (A) APPROVING BID PROCEDURES IN CONNECTION WITH THE SALE OF THE DEBTOR’S PROPERTY, (B) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (C) APPROVING STALKING HORSE BIDDER (D) SCHEDULING AN AUCTION AND HEARING TO APPROVE SALE OF PROPERTY, (E) APPROVING FORM AND MANNER OF NOTICES RELATED THERETO, AND (F) GRANTING RELATED RELIEF**

Before the Court is the *Chapter 11 Trustee’s Motion For Entry Of (I) An Order (A) Approving Bid Procedures In Connection With The Sale Of The Debtor’s Property, B) Approving Procedures For The Assumption And Assignment Of Executory Contracts And Unexpired Leases, (C) Approving Stalking Horse Bidder (D) Scheduling An Auction And Hearing To Approve Sale*

<sup>1</sup> The last four digits of the Debtor’s federal employer identification number are 2115. The Debtor’s address is 814 Lavaca St, Austin, TX 78701.

*Of Property, (E) Approving Form And Manner Of Notices Related Thereto, And (F) Granting Related Relief; And (II) An Order Authorizing And Approving (A) The Sale Of The Debtor's Property Free And Clear Of Liens, Claims, Rights, Encumbrances, And Other Interests, And (B) Related Relief* (the "Motion")<sup>2</sup> for entry of an order authorizing or approving, among other things, (a) the proposed sale process and bidding procedures (in the form attached hereto as **Exhibit 1**, the "Bid Procedures"), by which the Trustee will solicit and select the highest or otherwise best offer for the sale (the "Sale") of the Debtor's properties (as described further in the Motion, the "Property"); (b) approving procedures for the assumption and assignment of executory contracts and unexpired leases; (c) approving the Trustee's selection of the stalking horse bidder; (d) scheduling an auction if necessary and final hearing to approve the proposed sale; and (e) approving the form and manner of notices related thereto.

The Court, having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157; and the Court having found that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having found that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given except as set forth herein with respect to the Auction and the Sale Hearing; and a reasonable opportunity to object to or be heard regarding the relief provided herein has been afforded to parties-in-interest pursuant to Bankruptcy Rule 6004(a); and upon the record of the hearing and all of the proceedings had before the Court; and the Court having found that the relief sought in the Motion is in the best interests of the Debtor, its

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<sup>2</sup> Capitalized terms used but not otherwise defined herein are to be given the meanings ascribed to them in the Motion.



estate, its creditors and all other parties in interest; and the Court having found that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. **Predicates for Relief.** The predicates for relief granted herein are sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and L. Rules 6004 and 9014.

B. **Best Interests.** The legal and factual bases set forth in the Motion establish just cause for the relief granted herein. Entry of this Order is in the best interests of the Debtor and its estate, creditors, and all other parties in interest.

C. **Bidding Procedures.** The Bidding Procedures attached hereto as **Exhibit 1**, are fair, reasonable, and appropriate under the circumstances and designed to achieve the highest or otherwise best Bid and to maximize the value to be achieved from the Sale of Debtor's Property for the estate.

D. **Sufficient Notice of the Motion, the Bidding Procedures Hearing, and the Order.** The Trustee's notice of the Motion, hearing and the proposed entry of this Order was adequate and sufficient under the circumstances of this Case, and such notice complied with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

E. **Business Justification for Relief.** The Trustee has articulated good and sufficient business reasons for the Court to approve the Bid Procedures, including the scheduling of bid deadlines, auction and sale hearing with respect to the proposed Sale.

F. **Stalking Horse.** The Trustee has demonstrated a sound business justification for the Court to approve (i) ATX Braker SR, LLC as the Stalking Horse Bidder for the Property, and (ii) the payment of the Expense Reimbursement to ATX Braker SR, LLC on the terms set forth in the Stalking Horse Agreement and the Motion.

G. **Expense Reimbursement.** The Expense Reimbursement is fair and reasonable and was negotiated by the parties at arm's length and in good faith. The Trustee's payment of the Expense Reimbursement to ATX Braker SR, LLC, as set forth in the Stalking Horse Agreement and the Motion, is (a) an actual and necessary cost and expense of preserving the Debtor's bankruptcy estate, within the meaning of section 503(b) of the Bankruptcy Code, (b) of substantial benefit to the Debtor's estate, (c) reasonable and appropriate, including in light of the size and nature of the proposed Sale and the efforts that have been and will be expended even though the proposed sale is subject to higher and better offers, and (d) necessary to ensure that ATX Braker SR, LLC will continue to pursue its proposed acquisition of the Property.

H. **Notice of Auction and Sale Hearing.** The Notice of Auction and Sale Hearing, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale, and the Bid Procedures, including, without limitation: (i) the date, time and place of the Auction (if one is held); (ii) the Bid Procedures and the dates and deadlines related thereto; (iii) the objection deadline for the Sale and the date, time and place of the Sale Hearing; (iv) reasonably specific identification of the Property for sale; and (v) representations describing the Sale as being free and clear of liens, claims, interests and other encumbrances, with all such liens, claims, interests and other encumbrances attaching with the same validity and priority to the proceeds of the Sale; and no other or further notice of the Sale shall be required.

I. **Assumption and Assignment Procedures.** The Motion and the Assumption Notice are reasonably calculated to provide counterparties to the Available Contracts with proper notice of the intended assumption and assignment of their executory contracts and leases, any Cure Amounts, and the Assumption Procedures (as defined herein), and are appropriate.

J. No further notice beyond that described in the foregoing paragraphs is required in connection with the Sale or assumption and assignment of Available Contracts.

K. The entry of this order (the “Bid Procedures Order”) is in the best interests of the Debtor, its estate, its creditors, and other parties-in-interest.

L. **Other Findings.** 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 any of the findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law herein constitute findings of fact, they are adopted as such.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein.
2. All objections to the Motion or the relief provided herein, as they pertain to the entry of this Bid Procedures Order, that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits.

**The Bid Procedures**

3. The Bid Procedures attached hereto as Exhibit 1 are incorporated herein and approved, and shall apply with respect to the Sale. The Trustee is authorized to take all actions reasonable and necessary or appropriate to implement the Bid Procedures.

4. The failure to specifically include or reference any particular provision, section, or article of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such provision, section, or article, it being the intent of this Court that the Bidding Procedures are authorized in their entirety.

5. The Trustee is authorized to conduct the Bidding Process (as defined in the Bid Procedures) in accordance with the Bid Procedures and the terms hereof.

6. ATX Braker SR, LLC shall be deemed a Qualified Bidder (as defined in the Bidding Procedures) for all purposes and the bid as set forth in the Stalking Horse Agreement shall be deemed a Qualified Bid (as defined in the Bidding Procedures). ATX Braker SR, LLC shall have the right to credit bid under section 363(k) of the Bankruptcy Code all or any portion of its claims (inclusive of all interest, fees and expenses) in connection with the Sale, without the need for further order of the Court.

7. The Expense Reimbursement (up to \$125,000.00 for ATX Braker SR, LLC's actual and reasonable out-of-pocket third party expenses incurred in connection with, among other things, preparing the Stalking Horse Agreement, conducting due diligence, and negotiating, finalizing and documenting a Stalking Horse Bid) is approved. Pursuant to the Bidding Procedures, ATX Braker SR, LLC shall be entitled to credit bid the Expense Reimbursement during each round of bidding at the Auction. The Trustee is authorized and directed to pay the Expense Reimbursement as set forth in the Stalking Horse Agreement and the Motion, and the Trustee's obligation to pay the Expense Reimbursement shall constitute administrative expense claims under sections 503(b) and 507(a)(1) of the Bankruptcy Code.

8. Potential Bidders or Qualified Bidders (other than the Stalking Horse Bidder), shall not be allowed any break-up, termination or similar fee with respect to the Property. Moreover,

all Potential Bidders, Qualified Bidders, and the Stalking Horse Bidder (excluding the Expense Reimbursement) waive any right to seek a claim for substantial contribution pursuant to section 503 of the Bankruptcy Code or the payment of any broker fees or costs.

### **Notice Procedures**

9. Service and publication of the Notice of Auction and Sale Hearing are sufficient to provide effective notice to all interested parties of, *inter alia*, the Bid Procedures, the Auction and the Sale Hearing, in accordance with Bankruptcy Rules 2002 and 6004, as applicable, and are approved.

10. On or before three (3) business days after entry of this Bid Procedures Order, the Trustee will cause the Notice of Auction and Sale Hearing, substantially in the form attached hereto as **Exhibit 2** to be sent by first-class mail postage prepaid, to the following: (a) counsel to the Debtor, (b) counsel to the Stalking Horse Bidder, (c) the US Trustee, (d) all persons known or reasonably believed to have asserted an interest in the Property; (e) all state and local taxing authorities in the State where the Property is located; (f) the Internal Revenue Service; and (g) all other known creditors of the Debtor.

11. In addition to the foregoing, on or before five (5) business days after entry of the Bid Procedures Order, the Trustee shall, subject to applicable submission deadlines, publish the Notice of Auction and Sale Hearing once in the national edition of *The New York Times*, *Wall Street Journal* or other comparable national publication.

12. Within two business days following conclusion of the Auction, the Trustee shall file a notice on the Court's docket identifying the Successful Bidder for the Property and any applicable Next-Highest Bidder.

**Auction and Sale Hearing**

13. **Bid Deadline.** As further described in the Bid Procedures, the deadline for submitting bids for the Property (the “Bid Deadline”) is February 7, 2023 at 5:00 p.m. (prevailing Central Time). No bid shall be deemed to be a Qualified Bid unless received by the Bid Deadline and otherwise meets the requirements set forth in the Bid Procedures.

14. **Auction.** The Trustee may sell the Property by conducting an Auction in accordance with the Bid Procedures. If at least one Qualified Bid (other than the Stalking Horse Bid) is received by the Bid Deadline, the Trustee will conduct an Auction in accordance with the Bid Procedures, which Auction shall take place on February 14, 2023 at 2:00 p.m. (prevailing Central Time), at a venue that the Trustee shall announce to all Qualified Bidders. The Trustee reserves the right to conduct the auction live, in-person, or through a virtual platform and to change the location and time of the Auction. If the Trustee receives no Qualified Bids (other than the Stalking Horse Bid), (a) the Trustee shall not hold an Auction; (b) the Stalking Horse Bid will be the Successful Bid; and (c) the Stalking Horse Bidder will be named the Successful Bidder.

15. Each Qualified Bidder participating in the Auction will be required to confirm, in writing or on the record at the Auction, that (a) it has not engaged in any collusion with respect to the Bidding Process, (b) its Qualified Bid is a good faith bona fide offer that it intends to consummate if selected as the Successful Bidder, and (c) the Qualified Bidder agrees to serve as the Next-Highest Bidder if the Qualified Bidder’s Qualified Bid is the next highest and best bid after the Successful Bid.

16. The Trustee and her professionals shall direct and preside over the Auction. Other than as expressly set forth in this Order or the Bidding Procedures, the Trustee may conduct the

Auction in the manner she reasonably determines will result in the highest or otherwise best Qualified Bid.

17. Except as otherwise provided in the Bidding Procedures or this Order, the Trustee reserves the right as she may reasonably determine to be in the best interest of the Debtor's estate and in the exercise of her fiduciary duties to: (a) determine which bidders are Qualified Bidders; (b) determine which Bids are Qualified Bids; (c) determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (d) reject any Bid (other than a Qualified Credit Bid by the Stalking Horse Bidder) that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtor and its estate; (e) impose additional terms and conditions with respect to all Potential Bidders (other than the Stalking Horse Bidder); (f) extend the deadlines set forth herein or in the Bidding Procedures; and (g) continue or cancel the Auction and/or Sale Hearing, including by announcement in open court without further notice.

18. **Sale Hearing.** The Sale Hearing shall be held before the Court on February 23, 2023 at 2:45 p.m. (prevailing Central Time) before the Honorable Tony M. Davis, United States Bankruptcy Judge for the Bankruptcy Court for the Western District of Texas, at Homer J. Thornberry Federal Judicial Bldg., 903 San Jacinto Blvd., Suite 332, Austin, Texas 78701. The Trustee shall file a form of Sale Order no later than 7 days before the Sale Hearing. At the Sale Hearing, the Trustee will seek the entry of the Sale Order approving and authorizing the Sale to the Successful Bidder. The Sale Hearing (or any portion thereof) may be adjourned by the Court or the Trustee from time to time without further notice other than by announcement in open court, on the Court's calendar or through the filing of a notice or other document on the Court's docket.

19. **Sale Objection Deadline.** The deadline to object to the relief requested in the Motion, including entry of the proposed Sale Order (a “Sale Objection”) is February 7, 2023, at 4:00 p.m. (prevailing Central Time) (the “Sale Objection Deadline”). A Sale Objection must be filed with the Court and served in the manner set forth below so *actually received* no later than the Sale Objection Deadline.

20. Objections solely to the identity of the Successful Bidder(s) or Next-Highest Bidder(s) that are not the Stalking Horse Bidder, including Assumed Contract counterparty objections based on inadequate assurance of future performance by a Successful Bidder other than the Stalking Horse Bidder (any such objection, a “Supplemental Limited Sale Objection”) must be made by **4:00 p.m. (prevailing Central Time) on February 21, 2023** (the “Supplemental Limited Sale Objection Deadline”); *provided*, that such deadlines may be extended by agreement of the Trustee and the affected objecting party.

### **Objection Procedures**

21. Any party that seeks to object to the relief requested in the Motion pertaining to approval of the Sale shall file a formal written objection that complies with the objection procedures as set forth herein and in the Motion, as applicable.

22. Objections, if any, must be: (i) in writing; (ii) signed by counsel or attested to by the objecting party; (iii) in conformity with the applicable provisions of the Bankruptcy Rules and the Local Rules; (iv) state with particularity the legal and factual basis for the objection and the specific grounds therefor; (v) be filed with the Court and (vi) served on the following parties (the “Notice Parties”): (a) counsel to the Trustee, Kelly Hart & Hallman LLP, 201 Main Street, Suite 2500, Fort Worth, TX 76102, Attn: Michael McConnell (michael.mcconnell@kellyhart.com) and Nancy Ribauda (nancy.ribauda@kellyhart.com); (b) counsel to the Stalking Horse Bidder,



(i) Polsinelli P.C., 2950 N. Harwood, Suite 2100, Dallas, TX 75201, Attn: Liz Boydston (lboydston@polsinelli.com); and (ii) Gibson, Dunn & Crutcher LLP, 200 Park Ave. New York, New York 10166, Attn: Keith R. Martorana (kmartorana@gibsondunn.com) and Matthew Bouslog (mbouslog@gibsondunn.com); and (c) the U.S. Trustee.

23. Failure to file a Sale Objection on or before the Sale Objection Deadline (a) shall forever bar the assertion, whether at any Sale Hearing or thereafter, of any objection to the Motion, to entry of the Sale Order, and/or to the consummation and performance of the Sale with the Successful Bidder, and (b) for purposes of section 363(f)(2) of the Bankruptcy Code, shall be deemed to be “consent” to entry of the Sale Order and consummation of the Sale and all transactions related thereto.

#### **Assumption Procedures**

24. The Assumption and Assignment Procedures, as detailed in the Motion and Bid Procedures and incorporated herein by reference as if fully set forth in the Order, are approved.

25. Within three (3) days after the entry of this Order, the Trustee shall (A) file with the Court the Assumption Notice substantially in the form attached hereto as **Exhibit 3** including a list of the Available Contracts (the “Available Contracts List”); and (B) serve, via first-class mail, the Assumption Notice that contains (i) the Available Contracts List, (ii) information necessary and appropriate to provide notice of the relevant proposed assumption and assignment of Available Contract(s), (iii) Cure Amounts, if any, and (iv) the procedures for objecting thereto on all counterparties to the Available Contracts and all parties entitled to such notice pursuant to Bankruptcy Rule 2002. If no Cure Amount is listed on the Available Contracts List for a particular Available Contract, the Trustee’s asserted Cure Amount for such Available Contract shall be deemed to be \$0.00. Service of such Assumption Notice as set forth herein shall be deemed good and sufficient notice of, among other things, the proposed assumption and assignment of the

Available Contracts, the applicable Cure Amounts related thereto, and the procedures for objecting thereto, and no other or further notice is necessary.

26. Any objection by a counterparty to an Available Contract (a “**Contract Objection**”) other than a Supplemental Limited Sale Objection must (i) be in writing; (ii) comply with the applicable provisions of the Bankruptcy Rules and Local Bankruptcy Rules; (iii) be filed with the Clerk of Court on or before the Sale Objection Deadline; (iv) be served, so as to be actually received on or before the Sale Objection Deadline, upon the Notice Parties; and (v) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the counterparty believes is required to be paid under Bankruptcy Code sections 365(b)(1)(A) and (B) for the applicable Available Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto.

27. Any time before 5:00 p.m. (prevailing Central Time) on the date that is three (3) business days prior to the Sale Hearing, the Trustee reserves the right, and is authorized but not directed, to add previously omitted Available Contracts as contracts to be assumed and assigned to a Successful Bidder, (ii) remove Available Contract from the list of Available Contracts that a Successful Bidder proposes be assumed and assigned to it in connection with the Sale, or (iii) modify the previously stated Cure Amount associated with any Available Contract.

28. If, after the mailing of the Assumption Notice, additional executory contracts or unexpired leases of the Debtor are determined to be Available Contracts or the Trustee seeks to modify the previously stated Cure Amount associated with any Available Contract, as soon as practicable thereafter and in no event later than 5:00 p.m. (prevailing Central Time) on that date that is three (3) business days before the date of the Sale Hearing, the Trustee shall file with the

Court and serve, by overnight delivery on the applicable counterparties, any revised Assumption Notice (which shall be deemed to amend and restate the prior Assumption Notice with respect to such Available Contracts and/or Cure Amounts), and such counterparties shall file any Contract Objections not later than (a) the Sale Objection Deadline in the event that such revised Assumption Notice was filed and served at least ten (10) days prior to the Sale Objection Deadline, (b) two (2) days prior to the Sale Hearing in the event that such revised Assumption Notice was filed and served at least seven (7) days prior to the commencement of the Sale Hearing, and (c) seven (7) days from the date such revised Assumption Notice was filed and served, in the event that such revised Assumption Notice was filed and served less than seven (7) days prior to the commencement of the Sale Hearing.

29. Not later than two business days after the conclusion of the Auction, if any, the Trustee shall file with the Court and serve, by overnight delivery, on the counterparties a notice (the “Post-Auction Notice”), substantially in the form attached as **Exhibit 4** hereto, identifying the Successful Bidder(s), and the counterparties shall file any Supplemental Limited Sale Objections not later than **February 21, 2023 at 4:00 p.m. prevailing Central Time**; *provided*, that the deadline for any party who did not receive an Assumption Notice prior to the date that is seven (7) days before the Sale Hearing to assert a Contract Objection shall be seven (7) days after the later of (i) the date of service of such Assumption Notice and (ii) the Post-Auction Notice.

30. At the Sale Hearing, the Trustee will seek Court approval of the assumption and assignment to the Successful Bidder(s) of only those Available Contracts that have been selected by such Successful Bidder(s) to be assumed and assigned (collectively, the “Assumed Contracts”). The inclusion of an Available Contract on an Assumption Notice will not (i) obligate the Trustee to assume any Available Contract listed thereon nor the Successful Bidder(s) to take

assignment of such Available Contract or (ii) constitute any admission or agreement of the Trustee that such Available Contract is an executory contract. The Trustee and the Debtors' estates reserve any and all rights with respect to any Available Contracts that are not ultimately as Assumed Contracts.

31. If no Contract Objection is timely received with respect to an Assumed Contract: (i) the counterparty to such Assumed Contract shall be deemed to have consented to the assumption by the Trustee and assignment to the Successful Bidder of the Assumed Contract, and shall be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the Successful Bidder); (ii) any and all defaults under the Assumed Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to Bankruptcy Code section 365(b)(1)(A) and (B) upon payment of the Cure Amount set forth in the Assumption Notice for such Assumed Contract; (iii) the Cure Amount set forth in the Assumption Notice for such Assumed Contract shall be controlling, notwithstanding anything to the contrary in such Assumed Contract, or any other related document, and the counterparty shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other Claims related to such Assumed Contract against the Debtor and its estate or the Successful Bidder, or the property of any of them, that existed prior to the entry of the order resolving the Contract Objections and the Sale Order; and (iv) the counterparty to such Assumed Contract shall be deemed to have consented to the Sale and to any related relief.

32. Absent further order of this Court, to the extent that the parties are unable to consensually resolve any Contract Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the cure amount required to be paid to

the applicable counterparty under Bankruptcy Code sections 365(b)(1)(A) and (B) (any such dispute, a “**Cure Dispute**”), such Contract Objection will be adjudicated at the Sale Hearing, at such other date and time as may be fixed by the Court, or such other date that may be agreed to by the parties; *provided, however*, that if the Contract Objection relates solely to a Cure Dispute, the Assumed Contract may be assumed by the Trustee and assigned to the Successful Bidder provided that the cure amount the counterparty asserts is required to be paid under Bankruptcy Code section 365(b)(1)(A) and (B) (or such lower amount as agreed to by the counterparty) is deposited in a segregated account by the Trustee pending the Court’s adjudication of the Cure Dispute or the parties’ consensual resolution of the Cure Dispute.

**Other Relief Granted**

33. The Trustee reserves the right, and is authorized to, modify the above timeline and the Bidding Procedures (the “**Modifications**”) in accordance with the Bidding Procedures. The U.S. Trustee, and the Stalking Horse Bidder will be given notice of the Modifications.

34. Notwithstanding any provision in the Bankruptcy Rules to the contrary, the stay provided for in Bankruptcy Rules 6004(h) is waived and this Bid Procedures Order shall be effective immediately and enforceable upon its entry.

35. In the event of any conflict between this Order and the Bid Procedures, this Order shall govern in all respects.

36. This Court shall retain exclusive jurisdiction over any matters related to or arising from the implementation of this Order.

### END OF ORDER ###

Prepared By:

*s/ Michael A. McConnell*

Michael A. McConnell

Texas Bar No. 13447300

Nancy Ribaldo

Texas Bar No. 24026066

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***Counsel for Dawn Ragan, Chapter 11 Trustee***

**EXHIBIT 1**

**Bid Procedures**

**BID PROCEDURES**

Set forth below are the bid procedures (the “Bid Procedures”) to be used with respect to the sale or disposition (the “Sale”) of the Property (as defined below) of WC Braker Portfolio, LLC (the “Debtor,” or “Seller”), by the Chapter 11 Trustee (the “Trustee”) appointed by the United States Bankruptcy Court for the Western District of Texas (the “Bankruptcy Court”) in the Debtor’s bankruptcy proceeding, Case No. 22-10293-TMD.

**I. Description of the Property to be Sold**

The Trustee is seeking to sell (i) the real property commonly known as Braker Portfolio, as more particularly described in Exhibit A hereof, together with all structures and improvements thereon, all fixtures therein or thereto and all privileges, easements, appurtenances, development rights and air rights pertaining thereto, including all of Seller’s right, title and interest in and to any adjacent or adjoining streets, alleys, or rights-of-ways and any strips or gores adjacent or adjoining thereto, or used in connection with the beneficial use and enjoyment thereof and all licenses and permits used in connection with the beneficial use and enjoyment thereof (the “Real Property”), (ii) all right, title, and interest of Seller in and to those certain lease agreements affecting the Real Property (“Leases”); (iii) all right, title, and interest of Seller, if any, in and to any fixtures, furniture, equipment, racking, conveyors, appliances, machinery, furniture, furnishings, tools, supplies and other tangible personal property located on the Real Property that is not otherwise owned by the any respective tenant under the Leases; and (iv) all right, title, and interest of Seller, if any, in and to any intangible personal property (including any intellectual property, if any, without representation or warranty, to the extent the foregoing can be assigned or transferred without the joinder or consent of any third party) that is necessary or useful in connection with the ownership, improvement or operation of the Real Property, including permits, plans and specifications, licenses, and certificates of occupancy (clauses (ii), (iii), and (iv) together with the Real Property, collectively, the “Property” or “Assets”). The Real Property consists of the following:

The “Office Buildings”:

<b>Individual Property</b>	<b>Address</b>
Braker A	1836 Kramer, Austin, Texas 78758
Braker B	1908 Kramer Lane, Austin, Texas 78758
Braker C	1901 W Braker Lane, Austin, Texas 78758
Braker D	1909 W Braker Lane, Austin, Texas 78758
Braker E	1817 W Braker Lane, Austin, Texas 78758
Braker F	11109 Metric Blvd, Austin, Texas 78758
Braker G	11101 Metric Blvd., Austin, Texas 78758
Braker H	11009 Metric Blvd., Austin, Texas 78758
Braker M1, M2, M3, M4	11500 Metric Boulevard, Austin, Texas 78758
Braker One	2100 Kramer Lane, Austin, Texas 78758

The “Retail Building”:

Lonestar Center	1910 W Braker Lane, Austin, Texas 78758
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The Sale of the Property shall be subject to a competitive bidding process as set forth herein (the “Bidding Process”) and approval by the Bankruptcy Court pursuant to sections 363, 503 and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6003, 6004, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Bankr. W.D. Local Rules 6004, 9013 and 9014 (the “Local Rules”). The sale of the Property may be in one lot or in two lots, consisting of (i) the Office Buildings as one combined lot, and (ii) the Retail Building as a separate lot. A Bid may include or exclude some or all of the Leases or other executory contracts.

**Additional information regarding the Property can be obtained by contacting the Trustee’s broker:**

**Keen-Summit Capital Partners LLC**  
Telephone (646) 381-9222  
Attn: Matt Bordwin, mbordwin@keen-summit.com;  
Harold Bordwin, hbordwin@keen-summit.com; and  
Chris Mahoney, cmahoney@keen-summit.com

**II. Submissions to the Trustee**

All submissions to the Trustee required to be made under these Bidding Procedures must be directed to each of the following persons unless otherwise provided (collectively, the “Bid Notice Parties”):

- a. **Broker.** Keen-Summit Capital Partners LLC, 1 Huntington Quadrangle, Suite 2CO4, Melville, NY 11747, Attn: Matt Bordwin (mbordwin@keen-summit.com); Harold Bordwin hbordwin@keen-summit.com; and Chris Mahoney (cmahoney@keen-summit);
- b. **Chapter 11 Trustee.** Dawn Ragan, CR3 Partners, 13355 Noel Road, Suite 2005, Dallas, TX 75240 (dawn.ragan@cr3partners.com); and
- c. **Chapter 11 Trustee’s Counsel.** Kelly Hart & Hallman LLP, 201 Main Street, Suite 2500, Fort Worth, TX 76102, Attn: Michael A. McConnell (michael.mcconnell@kellyhart.com) and Nancy Ribaldo (nancy.ribaldo@kellyhart.com).

**III. Key Dates**

- a. Key Proposed Auction and Sale-Related Dates (subject to the Court’s availability):

Event	Proposed Date
Deadline to file and serve the Sale Notice	Within three days of entry of Bid Procedures Order

Event	Proposed Date
Sale Objection Deadline ( <i>e.g.</i> , deadline for objecting to sale to a Stalking Horse Bidder)	February 7, 2023, 4:00 p.m.(Central Time)
Bid Deadline	February 7, 2023 at 5:00 p.m.(Central Time)
Auction (if necessary)	February 14, 2023 at 2:00 p.m.(Central Time)
Deadline to file and serve notice of Successful Bidder and amount of Successful Bid	Within two business days after the Auction is completed
Supplemental Limited Sale Objection Deadline ( <i>e.g.</i> , deadline for objecting to manner in which Auction was conducted and sale to a Successful Bidder that is not a Stalking Horse Bidder)	February 21, 2023 at 4:00 p.m. (Central Time)
Sale Hearing	February 23, 2023 at 2:45 p.m. (Central Time)
Closing Date	On or before February 28, 2023

**b. Key Dates Related to Proposed Assumption and Assignment Procedures (subject to the Court’s availability):**

Event	Proposed Date
Deadline for objecting to assignment to Stalking Horse Bidder and proposed Cure Amounts	February 7, 2023, 4:00 p.m.(Central Time)
Deadline for objecting to assignment to Successful Bidder (other than Stalking Horse Bidder)	February 21, 2023 at 4:00 p.m. (Central Time)
Sale Hearing	February 23, 2023 at 2:45 p.m. (Central Time)

**IV. Stalking Horse Bidder**

The Trustee has chosen ATX Braker SR, LLC as the stalking horse bidder for the Property (the “Stalking Horse Bidder”). ATX Braker SR, LLC is the lender under that certain Loan Agreement, dated as of February 28, 2019 (as the same has been amended, restated, supplemented or otherwise modified from time to time), by and between Debtor and the ATX Braker SR, LLC

(as successor to JPMorgan Chase Bank, National Association) (the “Mortgage Loan”), which Mortgage Loan is secured by a first priority lien on the Property.

The Stalking Horse Bidder has committed to purchase the Property pursuant to the terms of the Purchase and Sale Agreement attached to these bid procedures as Exhibit B (the “Stalking Horse Agreement”), and has agreed to pay a purchase price of \$75,461,418.00 in the form of a credit bid of the Mortgage Loan (the “Stalking Horse Bid”). The Stalking Horse Bid shall set the floor for all bids for the Property at the Auction (defined below). Recognizing the Stalking Horse Bidder’s expenditure of time, energy and resources, and that the Stalking Horse Bid provides a floor bid with respect to the Property, the Trustee has agreed to provide the Stalking Horse Bidder with customary bid protections in the form of reimbursement of expenses in the maximum amount of \$125,000.00 (the “Expense Reimbursement”).

#### **V. Potential Bidders and Due Diligence**

Unless otherwise ordered by the Bankruptcy Court for cause shown, to participate in the Bidding Process, each person or entity must enter into (unless previously entered into) with the Trustee, on or before the Bid Deadline (as defined below), an executed confidentiality agreement in form and substance reasonably satisfactory to the Trustee (the “Confidentiality Agreement”). Each person or entity that enters into the Confidentiality Agreement with the Trustee on or before the Bid Deadline is hereinafter referred to as a (“Potential Bidder.”)

Up to and including the Bid Deadline (as defined below) (such period, the “Diligence Period”), the Trustee shall afford each Potential Bidder such available due diligence access or additional information as may be reasonably requested in writing by the Potential Bidder that the Trustee, in her business judgment, determines to be reasonable and appropriate under the circumstances. Only those Potential Bidders whose financials, the financials of their equity holder(s), or whose written commitments, as applicable, demonstrate the financial capability to consummate the Sale shall be eligible to receive due diligence information.

The Trustee may designate Keen-Summit Capital Partners LLC (“Keen-Summit”) as her representatives to coordinate all reasonable requests for additional information and due diligence access from such Potential Bidders. Each Potential Bidder shall be required to acknowledge that it has had an opportunity to conduct any and all due diligence regarding the Property in conjunction with submitting its Bid (as defined below). Notwithstanding the foregoing, the Trustee reserves the right to withhold or limit access to any information that the Trustee determines to be commercially sensitive or otherwise not appropriate to disclose to any Potential Bidder. **No Potential Bidder will be permitted to conduct any due diligence without entering into a Confidentiality Agreement.**

**All due diligence requests must be directed to Keen-Summit Capital Partners LLC.**

**Potential Bidders shall not contact the Debtor or conduct a site inspection without coordinating same with Keen-Summit.**

For all Potential Bidders, the due diligence period will end on the Bid Deadline and, subsequent to the Bid Deadline, the Trustee shall have no obligation to furnish any due diligence information.

Neither the Trustee nor the Debtor shall furnish any confidential information relating to the assets, or liabilities of the Debtor, or the Sale to any person except to a Potential Bidder or to such Potential Bidder's duly authorized representatives to the extent provided in the applicable Confidentiality Agreement. The Trustee and her advisors shall coordinate all reasonable requests from Potential Bidders for additional information and due diligence access; *provided*, that the Trustee may decline to provide such information to Potential Bidders who, at such time and in the Trustee's reasonable business judgment have not established, or who have raised doubt, that such Potential Bidder intends in good faith to, or has the capacity to, consummate the Sale. For the avoidance of doubt, the Stalking Horse Bidder shall be granted access to diligence materials.

The Trustee also reserves the right to withhold any diligence materials that the Trustee determines are sensitive or otherwise not appropriate for disclosure to a Potential Bidder who the Trustee determines is a competitor of the Debtor or is affiliated with any competitor of the Debtor. Neither the Trustee, the Debtor nor their representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Potential Bidder that intends in good faith to, or has the capacity to, consummate the Sale.

**(a) Communications with Potential Bidders.**

Notwithstanding anything to the contrary in these Bidding Procedures, all substantive direct communications between and amongst Potential Bidders shall involve the Trustee and the Trustee's advisors, to the extent reasonably practicable.

**(b) Due Diligence from Potential Bidders.**

Each bidder shall comply with all reasonable requests for additional information and due diligence access requested by the Trustee or her advisors regarding the ability of the Potential Bidder to consummate the Sale or discussions with other Potential Bidders regarding any topic and with any party regarding the Debtor (and/or the Assets). Failure by a Potential Bidder to comply with such reasonable requests for additional information and due diligence access may be a basis for the Trustee to determine that such bidder is not a Qualified Bidder or that a Bid made by such bidder is not a Qualified Bid.

The Trustee and each of her respective advisors and representatives shall be obligated to maintain in confidence any confidential information in accordance with any applicable confidentiality agreement, except as otherwise set forth in these Bidding Procedures. Each recipient of confidential information agrees to use, and to instruct their advisors and representatives to use, such confidential information only in connection with the evaluation of Bids during the bidding process or otherwise in connection with the chapter 11 cases or in accordance with the terms of any applicable confidentiality agreement.

Notwithstanding the foregoing and the provisions contained in any applicable confidentiality agreement, the Trustee and the Trustee's advisors may disclose confidential information: (i) with the prior written consent of such bidder and the Trustee; (ii) to the applicable bidder; and (iii) as otherwise required or allowed by any applicable confidentiality agreement with respect to a particular bidder or other agreement, law, court or other governmental order, or regulation, including, as appropriate, to regulatory agencies.

**VI. Bid Deadline: February 7, 2023 at 5:00 p.m. (prevailing Central Time).**

A Potential Bidder that desires to make a Bid shall deliver copies of its Bid (defined below) in Microsoft Word format, by email to:

(a) the Trustee, Dawn Ragan, at dawn.ragan@cr3partners.com;

(b) Keen-Summit, Attn: Matthew Bordwin at mbordwin@keen-summit.com, Harold Bordwin at hbordwin@keen-summit.com and Chris Mahoney at cmahoney@keen-summit.com; and

(c) counsel to the Trustee, Kelly Hart & Hallman LLP, Attn: Michael McConnell at michael.mcconnell@kellyhart.com and Nancy Ribaldo at nancy.ribaldo@kellyhart.com

by no later than **February 7, 2023 at 5:00 p.m.** (prevailing Central Time) (the “Bid Deadline”).

**VII. Bid Requirements**

A proposal, solicitation, or offer for a purchase and sale of all or part of the Property (each, a “**Bid**”) by a bidder that is submitted in writing and satisfies at least each of the following requirements (the “**Bid Requirements**”), as determined by the Trustee, in her reasonable business judgment, shall constitute a “**Qualified Bid**,” *provided*, that, if the Trustee receives a Bid before the Bid Deadline that is not a Qualified Bid, the Trustee may provide the bidder with the opportunity to remedy any deficiencies by 5:00 p.m. (prevailing Central Time) on the last business day prior to the Auction in order to render such Bid a Qualified Bid; *provided, further*, that for the avoidance of doubt, if any Qualified Bidder fails to comply with reasonable requests for additional information and due diligence access requested by the Trustee to the satisfaction of the Trustee, the Trustee may disqualify any Qualified Bidder and Qualified Bid and such Qualified Bidder will not be entitled to attend or participate in the Auction; *provided, further*, that the Stalking Horse Bid will constitute a Qualified Bid, and the Stalking Horse Bidder will constitute a Qualified Bidder. The Trustee may also waive or modify any of the above requirements in the exercise of her reasonable business judgment, and with the reasonable consent of the Stalking Horse Bidder. To constitute a Qualified Bid, a Bid must:

a) Be accompanied by a letter or email:

- i. stating with specificity the Property (including the specific executory contracts and unexpired leases) such Potential Bidder wishes to bid on and the liabilities and obligations (including applicable cure costs) to be assumed by the Potential Bidder in the Sale (a Bid may include or exclude some or all of the Property, Leases or other executory contracts);

- ii. detailing the following:
    - (A) a duly executed purchase agreement (the “Purchase Agreement”);
    - (B) a redline of the Purchase Agreement marked to reflect any proposed amendments and modifications to the Stalking Horse Agreement and the applicable schedules and exhibits.
  - iii. agreeing that the Potential Bidder’s offer is **binding and irrevocable** until the later of (i) the Closing Date (as defined herein), or (ii) thirty (30) days after the Sale Hearing (unless selected as the “Next-Highest Bidder” (as defined below) in which case such offer will remain open until the Closing Date);
  - iv. providing for a Closing Date that occurs on or before **February 28, 2023**;
  - v. offering to pay a price, in cash, equal to \$75,836,418.00 or greater, such amount being calculated as the sum of (a) the Stalking Horse Bid, (b) the Expense Reimbursement, and (c) \$250,000 (such sum, the “Minimum Bid”);
  - vi. providing that such Bid is not subject to any due diligence or financing contingency;
  - vii. written evidence of a commitment for financing or other evidence of ability to consummate the transaction as the Trustee may request; and
  - viii. providing that the Potential Bidder agrees to serve as a backup bidder (the “Next-Highest Bidder”) if the Potential Bidder’s Qualified Bid (as defined below) is the next highest and best bid after the Successful Bid (as defined below) (the “Next-Highest Bid”);
  - ix. provide contact information for the Bidder and its legal counsel, including for each their respective company name, mailing address, office phone number, cell phone number, and email address; and
- b) Be accompanied by adequate assurance of future performance information (the “Adequate Assurance Information”), including (i) information about the Potential Bidder’s financial condition, such as federal tax returns for two years, a current financial statement, or bank account statements, (ii) information demonstrating (in the Trustee’s reasonable business judgment) that the Potential Bidder has the financial capacity to consummate the proposed Sale, (iii) evidence that the Potential Bidder has obtained authorization or approval from its board of directors (or comparable governing body) with respect to the submission of its Bid, (iv) the identity and exact name of the Potential Bidder (including any equity holder or other financial backer if the Potential Bidder is an entity formed for the purpose of consummating the proposed Sale), and (v) such additional information regarding the Potential Bidder as the Potential Bidder may elect to include. By submitting a Bid, Potential Bidders agree that the Trustee may disseminate such Adequate Assurance Information to affected lessees, and contract counterparties in the event that the Trustee determines such bid to be a Qualified Bid.

A Bid must be accompanied by (a) a deposit in the form of a certified check or wire transfer, payable to the order of the Trustee, in the amount of ten percent (10%) of the Bid, which funds will be deposited into an interest bearing escrow account to be identified by the Trustee (a “Good Faith Deposit”) and (b) written evidence, documented to the Trustee’s satisfaction, that

demonstrates the Potential Bidder has available cash, a commitment for financing if selected as the Successful Bidder (as defined below) with respect to the Property (provided, however, that the closing shall not be contingent in any way on the Successful Bidder's financing) and such other evidence of ability to consummate the transaction(s) as the Trustee may request, including proof that such funding commitments or other financing are not subject to any internal approvals, syndication requirements, diligence or credit committee approvals.

The Trustee will review each Bid received from a Potential Bidder to determine whether it meets the requirements set forth above. A Bid received from a Potential Bidder that meets the above requirements, and is otherwise satisfactory to the Trustee, will be considered a "Qualified Bid" and each Potential Bidder that submits a Qualified Bid will be considered a "Qualified Bidder." The Trustee shall inform Qualified Bidders that their Bids have been designated as Qualified Bids no later than 48 hours after the Bid Deadline. For the avoidance of doubt, the Stalking Horse Agreement will be deemed a Qualified Bid and the Stalking Horse Bidder will be deemed a Qualified Bidder, for all purposes and requirements pursuant to the Bid Procedures, notwithstanding the requirements that a Potential Bidder must satisfy to be a Qualified Bidder.

If Trustee receives a Bid by the Bid Deadline that is not a "Qualified Bid", Trustee reserves the right work with such Potential Bidder and to extend any applicable deadlines in order to help a Potential Bidder to convert a Bid that is not a "Qualified Bid" into a "Qualified Bid" provided that such Bid must be converted into a "Qualified Bid" by no later than the last business day prior to the Auction at 5:00 p.m. (prevailing Central Time).

A Qualified Bid will be valued by the Trustee based upon any and all factors that the Trustee reasonably deems pertinent in its reasonable business judgment, including, among others, (a) the amount of the Qualified Bid, (b) the risks and timing associated with consummating the transaction(s) with the Qualified Bidder, (c) excluded executory contracts or leases, (d) any modifications to the Stalking Horse Agreement, and (e) any other factors that the Trustee may reasonably deem relevant.

The Trustee, in her business judgment, reserves the right to reject any Bid (other than the Stalking Horse Bid) if such Bid, among other things:

- (a) is on terms that are more burdensome or conditional than the terms of the Stalking Horse Agreement;
- (b) requires any indemnification of the Potential Bidder in its Purchase Agreement;
- (c) is not received by the Bid Deadline;
- (d) it is not accompanied by a Good Faith Deposit;
- (e) is submitted by a Potential Bidder who (or who's affiliate) files an objection to the Sale;
- (f) is subject to any contingencies (including representations, warranties, covenants and timing requirements) of any kind or any other conditions precedent to such party's obligation to acquire the Property;

- (g) seeks any bid protections; or
- (h) does not, in the Trustee's determination, include at least the Minimum Bid, or the acceptance of such Bid would not be in the best interests of the Debtor's estate or the Auction; and
- (i) is determined not to be a good faith, bona fide offer to purchase the Property.

Any Bid rejected pursuant to this paragraph shall not be deemed to be a Qualified Bid. In the event that any Bid is so rejected, the Trustee shall cause the Good Faith Deposit of such Potential Bidder (including all accumulated interest thereon) to be refunded to it within three (3) business days after the Auction.

The Trustee shall deliver all Qualified Bids to counsel to the Stalking Horse Bidder promptly following the designation of such Bid as a Qualified Bid, but in any event no later than 6:00 p.m. (prevailing Central Time) on February 10, 2023.

### **VIII. Credit Bidding**

The Trustee has stipulated that the Stalking Horse Bidder has a perfected security interest in the Property, and is entitled to credit bid some or all of its claims for its collateral (a "Credit Bid") pursuant to section 363(k) of the Bankruptcy Code. The Stalking Horse Bidder shall be considered a Qualified Bidder with respect to its right to acquire the Property by Credit Bid. All other Qualified Bids shall be cash bids.

### **IX. Auction: February 14, 2023**

Unless otherwise ordered by the Bankruptcy Court for cause shown, only Qualified Bidders are eligible to participate at the Auction (as defined below). At least three (3) business days prior to the Auction, each Qualified Bidder, other than the Stalking Horse Bidder, must inform the Trustee in writing whether it intends to participate in the Auction. If the Trustee receives no Qualified Bids (other than the Stalking Horse Bid), then (a) the Trustee may elect to not hold an Auction; (b) may deem the Stalking Horse Bid the Successful Bid and name the Stalking Horse Bidder the Successful Bidder.

If at least one Qualified Bid (other than the Stalking Horse Bid) is received by the Bid Deadline, the Trustee will conduct an auction (the "Auction") and shall determine which Qualified Bid is the highest or otherwise best Qualified Bid for the Property (the "Starting Bid"), which determination will be communicated to Qualified Bidders prior to the commencement of the Auction. The Auction shall take place at **2:00 p.m. (prevailing Central Time) February 14, 2023**, at a venue that the Trustee shall announce to all Qualified Bidders. The Trustee reserves the right to conduct the auction live, in-person, or through a virtual platform and to change the location and time of the Auction. Professionals and principals for the Trustee, the Stalking Horse Bidder, each Qualified Bidder, the chapter 11 trustee for WC Braker Portfolio B, LLC, Nate Paul, and the United States Trustee, and their advisors may attend the Auction; any creditor of the Debtor and their counsel upon written request delivered to the Trustee at least three days prior to the Auction and approved by the Trustee; and the Trustee shall be authorized to exclude other parties.



Each Qualified Bidder participating in the Auction will be required to confirm, in writing, and on the record at the Auction, that (a) it has not engaged in any collusion with respect to the Bidding Process, and (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder.

Bidding at the Auction for the Property will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one Subsequent Bid (defined below) is submitted by a Qualified Bidder that (i) improves on such Qualified Bidder's immediately prior Qualified Bid (a "Subsequent Bid") and (ii) the Trustee reasonably determines that such Subsequent Bid is (A) for the first round, a higher or otherwise better offer than the Starting Bid, and (B) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below). Each Subsequent Bid at the Auction shall provide net value to the estate in an amount of at least \$250,000 ("Incremental Overbid") over the Starting Bid or the Leading Bid (as defined below), as the case may be, provided that: (i) if the Leading Bid was made by the Stalking Horse Bidder, such bid shall be deemed to include the Expense Reimbursement, and (ii) any Subsequent Bid made by the Stalking Horse Bidder shall only be required to equal the sum of the amount of (w) the Starting Bid or the Leading Bid, as applicable, and (x) the Incremental Overbid, less the Expense Reimbursement. After the first round of bidding and between each subsequent round of bidding, the Trustee shall announce the bid that the Trustee believes to be the highest or otherwise best offer for the Property (the "Leading Bid"). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid. For the avoidance of doubt, a Qualified Bidder must provide written evidence, documented to the Trustee's satisfaction, that demonstrates that the Qualified Bidder has available cash or a commitment for financing to support each Bid submitted at the Auction, and failure to satisfy such obligation shall result in disqualification of the Qualified Bidder and any such Bids.

The bidding at the Auction shall be transcribed or videotaped and the Trustee shall maintain a transcript of all Bids made and announced at the Auction.

Based upon the terms of the Qualified Bids, the level of interest expressed in the Property and such other information as the Trustee may determine to be relevant, Trustee shall have the right to supplement the procedures set forth herein in her sole and absolute discretion, such rules for the bidding process which she determines will better promote the goals of the bidding process. Among other things, Trustee shall determine, in the exercise of her sole and absolute discretion, acceptable bidding increments, which may be modified by the Trustee during the Auction. Trustee may offer the Property for bidding in successive rounds, may conduct an open Auction, or may otherwise conduct the Auction in the manner that she deems most appropriate for soliciting the highest and best Bids.

Immediately prior to the conclusion of the Auction, the Trustee will: (a) determine, consistent with the Bid Procedures, which bid constitutes the highest or otherwise best bid (the "Successful Bid"); and (b) notify all Qualified Bidders at the Auction, prior to its conclusion, of the name of the maker of the Successful Bid (the "Successful Bidder"), and the amount and other material terms of the Successful Bid. The Trustee may designate the Next-Highest Bid (and the corresponding Next-Highest Bidder) to close in the event that the Successful Bidder does not close the Sale; *provided, however*, that the Next-Highest Bid shall be deemed to be the last Bid provided

by such Next-Highest Bidder at the time when there were two or more Bidders not affiliates of the Debtor still actively bidding at the Auction (and if there are only two Bidders for any lot at the start of the Auction of which only one is a non-affiliate of the Debtor, the Next-Highest Bid will be deemed to be such party's starting Bid). The Trustee shall not consider any Bids or Subsequent Bids submitted after the conclusion of the Auction and any and all such Bids and Subsequent Bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

Within two business days following conclusion of the Auction, the Trustee shall file a notice on the Bankruptcy Court's docket identifying (with specificity) the Successful Bidder and any applicable Next-Highest Bidder. Notwithstanding the selections of the Successful Bidder and the Next-Highest Bidder, all bids are **binding and irrevocable** until the later of (i) the Closing Date, or (ii) thirty (30) days after the Sale Hearing (unless selected as the Next-Highest Bidder, in which case such offer will remain open until the Closing Date).

At the conclusion of the Auction, both the Successful Bidder and the Next Highest Bidder shall modify and re-execute the Purchase and Sale Contract, as appropriate, without varying its terms other than to reflect the terms of the Successful Bid and the terms of the Next Highest Bid, respectively, as publicly announced at the Auction.

**X. Adequate Assurance Information.**

Within twenty-four (24) hours of the filing of the notice of the Successful Bidder and the Next-Highest Bidder, the Successful Bidder and the Next-Highest Bidder will send by overnight delivery to each contract counterparty whose contract is part of such Bid, the financial and other commercial information to demonstrate adequate assurance of future performance under such contract.

**XI. Jurisdictional Consent**

All bidders at the Auction will be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to jury trial in connection with any disputes relating or pertaining to or resulting or arising from the marketing of the Property by Keen-Summit, the Auction, the Sale, the acts or omissions of Trustee and/or Keen-Summit, and the construction and enforcement of the Stalking Horse Agreement and all other agreements entered into in connection with any proposed Sale transaction. The submission of a Bid shall constitute an express consent by the Bidder to the exclusive jurisdiction of the Bankruptcy Court for all such matters. Such consent and waiver shall apply to the extent that it is later determined that the Bankruptcy Court, absent consent, cannot enter final orders or judgments with regard to the foregoing matters consistent with Article III of the United States Constitution..

**XII. No Fees for Potential Bidders or Qualified Bidders**

Potential Bidders or Qualified Bidders, other than the Stalking Horse Bidder, shall not be allowed any break-up, termination or similar fee. Moreover, all Potential Bidders, Qualified Bidders, and the Stalking Horse Bidder (excluding the Expense Reimbursement), by participating in the Bidding Process, will be deemed to have waived any right to seek a claim for substantial contribution pursuant to section 503 of the Bankruptcy Code or the payment of any broker fees or cost.

### **XIII. Sale Hearing**

The Successful Bid and the Next-Highest Bid (or if no Qualified Bid other than that of the Stalking Horse Bidder is received, then the Stalking Horse Bid) will be subject to approval by the Bankruptcy Court. The hearing to approve the Successful Bid and the Next-Highest Bid (or if no Qualified Bid other than that of the Stalking Horse Bidder is received, then the Stalking Horse Bid) shall take place **on February 23, 2023 at 2:45 p.m.** (prevailing Central Time) (the “Sale Hearing”).

At the Sale Hearing, the Trustee will seek entry of an order that, among other things: (i) authorizes and approves the Sale to the Successful Bidder and/or the Next-Highest Bidder, (ii) includes a finding that the Successful Bidder and/or the Next-Highest Bidder is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code, and (iii) as appropriate, exempts the Sale and conveyance of the Property from any transfer tax, stamp tax or similar tax, or deposit under any applicable bulk sales statute.

The Trustee intends to close the Sale on or before February 28, 2023 unless another time or date, or both, are agreed to in writing by the Trustee and the Successful Bidder (the “Closing Date”).

### **XIV. Return of Good Faith Deposit**

The Good Faith Deposits of all Potential Bidders shall be held in escrow by the Trustee, but shall not become property of the Debtor’s estate absent further order of the Bankruptcy Court. The Good Faith Deposits of all Potential Bidders shall be retained by the Trustee, notwithstanding Bankruptcy Court approval of the Sale, until three (3) business days after the earlier of (a) the Closing Date, or (b) ten (10) days following the Sale Hearing; provided, however, that the Good Faith Deposit of the Next-Highest Bidder shall be retained until three (3) business days after the applicable Closing Date. The Trustee shall retain any Good Faith Deposit submitted by each Successful Bidder. At the closing of a Sale contemplated by a Successful Bid, the applicable Successful Bidder will be entitled to a credit for the amount of its Good Faith Deposit.

If the Successful Bidder (or, if the Sale is to be closed with a Next-Highest Bidder, then the Next-Highest Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Purchase Agreement or the Stalking Horse Agreement, as applicable (and as such agreements may be amended or modified at the Auction), the Trustee, on behalf of the Debtor’s estate, shall be entitled to retain the Good Faith Deposit of such Successful Bidder (or, if the Sale is to be closed with the Next-Highest Bidder, then such Next-Highest Bidder) as part of the damages resulting to the Debtor and its estate for such breach or failure to perform.

### **XV. Next-Highest Bidder**

Notwithstanding any of the foregoing, in the event that a Successful Bidder fails to close the Sale prior to such date as specified in the applicable Purchase Agreement, the Trustee, upon written notice to the Next-Highest Bidder, may designate the Next-Highest Bid as the Successful Bid for the Property, the Next-Highest Bidder will be deemed to be the Successful Bidder for the

Property, and the Trustee will be authorized, but not directed, to close the Sale to the Next-Highest Bidder subject to the terms of the Next-Highest Bid without the need for further order of the Bankruptcy Court and without the need for further notice to any interested parties.

**XVI. Fiduciary Out**

Nothing in these Bidding Procedures shall require the Trustee to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent the Trustee determines, or based on the advice of counsel, that taking such action, or refraining from taking such action, as applicable, would violate applicable law or her fiduciary obligations under applicable law.

**XVII. Miscellaneous**

By participating in this sale process, Bidder acknowledges that, pursuant to, inter alia, 18 U.S.C. Section 371, it is a federal crime to engage in collusive bidding or to chill the bidding and Bidder warrants and represents that it has not and will not engage in such activities.

By participating in this sale process, Bidder warrants and represents that it is a principal acting on its own behalf, and not a broker, finder or agent acting on another's behalf. Bidder acknowledges that it will not look to the Trustee and/or Keen-Summit and their respective representatives for the payment of any fee or commission. Trustee is compensating Keen-Summit pursuant to a separate Bankruptcy Court approved agreement. In addition, Bidder agrees to be responsible for the payment of any fee, commission or other compensation payable to any broker, finder or agent who alleges it has dealt with or through Bidder. Bidder hereby agrees to indemnify, defend and hold the Trustee and Keen-Summit and their respective representatives harmless from and against any and all claims, damages, losses and liabilities, costs and expenses (including reasonable attorneys' fees and disbursements) arising out of any claim or claims by any broker, finder or similar agent for commissions, fees or other compensation who allege that they have dealt with Bidder in connection with the Property. Bidder understands that the Trustee and Keen-Summit and their respective representatives have not agreed to pay any brokerage commissions, finder's fee or other compensation in connection with Bidder's possible purchase. If Bidder is working with a broker or finder other than Keen-Summit, Bidder agrees that Bidder shall be responsible for the payment of any fees, if any, to such broker or finder.

*[The remainder of this page is intentionally left blank.]*

Exhibit A

Real Property Description

<b>Individual Property</b>	<b>Address</b>
Braker A	1836 Kramer Lane, Austin, Texas 78758
Braker B	1908 Kramer Lane, Austin, Texas 78758
Braker C	1901 W Braker Lane, Austin, Texas 78758
Braker D	1909 W Braker Lane, Austin, Texas 78758
Braker E	1817 W Braker Lane, Austin, Texas 78758
Braker F	11109 Metric Blvd., Austin, Texas 78758
Braker G	11101 Metric Blvd., Austin, Texas 78758
Braker H	11009 Metric Blvd., Austin, Texas 78758
Braker M1, M2, M3, M4	11500 Metric Blvd., Austin, Texas 78758
Lonestar Center	1910 W Braker Lane, Austin, Texas 78758
Braker One	2100 Kramer Lane, Austin, Texas 78758

Exhibit B

Stalking Horse Agreement

3364546.1 11-23-22

3645456.2-12-1-22

**EXHIBIT 2**

**Notice of Auction and Sale Hearing**

**EXHIBIT 3**

**Assumption and Assignment Notice**



**EXHIBIT 4**

**Post Auction Notice**

3644804.3

## EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

In re

WC BRAKER PORTFOLIO, LLC,

Debtor.<sup>1</sup>

Chapter 11

Case No. 22-10293 (TMD)

**ORDER (A) APPROVING BID PROCEDURES IN CONNECTION WITH THE SALE OF THE DEBTOR'S PROPERTY, (B) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (C) APPROVING STALKING HORSE BIDDER (D) SCHEDULING AN AUCTION AND HEARING TO APPROVE SALE OF PROPERTY, (E) APPROVING FORM AND MANNER OF NOTICES RELATED THERE TO, AND (F) GRANTING RELATED RELIEF**

Before the Court is the *Chapter 11 Trustee's Motion For Entry Of (I) An Order (A) Approving Bid Procedures In Connection With The Sale Of The Debtor's Property, B) Approving Procedures For The Assumption And Assignment Of Executory Contracts And Unexpired Leases, (C) Approving Stalking Horse Bidder (D) Scheduling An Auction And Hearing To Approve Sale*

<sup>1</sup> The last four digits of the Debtor's federal employer identification number are 2115. The Debtor's address is 814 Lavaca St, Austin, TX 78701.

*Of Property, (E) Approving Form And Manner Of Notices Related Thereto, And (F) Granting Related Relief; And (II) An Order Authorizing And Approving (A) The Sale Of The Debtor's Property Free And Clear Of Liens, Claims, Rights, Encumbrances, And Other Interests, And (B) Related Relief (the "Motion")<sup>2</sup> for entry of an order authorizing or approving, among other things, (a) the proposed sale process and bidding procedures (in the form attached hereto as **Exhibit 1**, the "Bid Procedures"), by which the Trustee will solicit and select the highest or otherwise best offer for the sale (the "Sale") of the Debtor's properties (as described further in the Motion, the "Property"); (b) approving procedures for the assumption and assignment of executory contracts and unexpired leases; (c) approving the Trustee's selection of the stalking horse bidder; (d) scheduling an auction if necessary and final hearing to approve the proposed sale; and (e) approving the form and manner of notices related thereto.*

The Court, having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157; and the Court having found that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having found that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given except as set forth herein with respect to the Auction and the Sale Hearing; and a reasonable opportunity to object to or be heard regarding the relief provided herein has been afforded to parties-in-interest pursuant to Bankruptcy Rule 6004(a); and upon the record of the hearing and all of the proceedings had before the Court; and the Court having found that the relief sought in the Motion is in the best interests of the Debtor, its

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<sup>2</sup> Capitalized terms used but not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

estate, its creditors and all other parties in interest; and the Court having found that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. **Predicates for Relief.** The predicates for relief granted herein are sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and L. Rules 6004 and 9014.

B. **Best Interests.** The legal and factual bases set forth in the Motion establish just cause for the relief granted herein. Entry of this Order is in the best interests of the Debtor and its estate, creditors, and all other parties in interest.

C. **Bidding Procedures.** The Bidding Procedures attached hereto as **Exhibit 1**, are fair, reasonable, and appropriate under the circumstances and designed to achieve the highest or otherwise best Bid and to maximize the value to be achieved from the Sale of Debtor's Property for the estate.

D. **Sufficient Notice of the Motion, the Bidding Procedures Hearing, and the Order.** The Trustee's notice of the Motion, hearing and the proposed entry of this Order was adequate and sufficient under the circumstances of this Case, and such notice complied with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

E. **Business Justification for Relief.** The Trustee has articulated good and sufficient business reasons for the Court to approve the Bid Procedures, including the scheduling of bid deadlines, auction and sale hearing with respect to the proposed Sale.

F. **Stalking Horse.** The Trustee has demonstrated a sound business justification for the Court to approve (i) ATX Braker SR, LLC as the Stalking Horse Bidder for the Property, and (ii) the payment of the Expense Reimbursement to ATX Braker SR, LLC on the terms set forth in the Stalking Horse Agreement and the Motion.

G. **Expense Reimbursement.** The Expense Reimbursement is fair and reasonable and was negotiated by the parties at arm's length and in good faith. The Trustee's payment of the Expense Reimbursement to ATX Braker SR, LLC, as set forth in the Stalking Horse Agreement and the Motion, is (a) an actual and necessary cost and expense of preserving the Debtor's bankruptcy estate, within the meaning of section 503(b) of the Bankruptcy Code, (b) of substantial benefit to the Debtor's estate, (c) reasonable and appropriate, including in light of the size and nature of the proposed Sale and the efforts that have been and will be expended even though the proposed sale is subject to higher and better offers, and (d) necessary to ensure that ATX Braker SR, LLC will continue to pursue its proposed acquisition of the Property.

H. **Notice of Auction and Sale Hearing.** The Notice of Auction and Sale Hearing, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale, and the Bid Procedures, including, without limitation: (i) the date, time and place of the Auction (if one is held); (ii) the Bid Procedures and the dates and deadlines related thereto; (iii) the objection deadline for the Sale and the date, time and place of the Sale Hearing; (iv) reasonably specific identification of the Property for sale; and (v) representations describing the Sale as being free and clear of liens, claims, interests and other encumbrances, with all such liens, claims, interests and other encumbrances attaching with the same validity and priority to the proceeds of the Sale; and no other or further notice of the Sale shall be required.

I. **Assumption and Assignment Procedures.** The Motion and the Assumption Notice are reasonably calculated to provide counterparties to the Available Contracts with proper notice of the intended assumption and assignment of their executory contracts and leases, any Cure Amounts, and the Assumption Procedures (as defined herein), and are appropriate.

J. No further notice beyond that described in the foregoing paragraphs is required in connection with the Sale or assumption and assignment of Available Contracts.

K. The entry of this order (the "Bid Procedures Order") is in the best interests of the Debtor, its estate, its creditors, and other parties-in-interest.

L. **Other Findings.** 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 any of the findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law herein constitute findings of fact, they are adopted as such.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein.
2. All objections to the Motion or the relief provided herein, as they pertain to the entry of this Bid Procedures Order, that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits.

**The Bid Procedures**

3. The Bid Procedures attached hereto as Exhibit 1 are incorporated herein and approved, and shall apply with respect to the Sale. The Trustee is authorized to take all actions reasonable and necessary or appropriate to implement the Bid Procedures.

4. The failure to specifically include or reference any particular provision, section, or article of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such provision, section, or article, it being the intent of this Court that the Bidding Procedures are authorized in their entirety.

5. The Trustee is authorized to conduct the Bidding Process (as defined in the Bid Procedures) in accordance with the Bid Procedures and the terms hereof.

6. ATX Braker SR, LLC shall be deemed a Qualified Bidder (as defined in the Bidding Procedures) for all purposes and the bid as set forth in the Stalking Horse Agreement shall be deemed a Qualified Bid (as defined in the Bidding Procedures). ATX Braker SR, LLC shall have the right to credit bid under section 363(k) of the Bankruptcy Code all or any portion of its claims (inclusive of all interest, fees and expenses) in connection with the Sale, without the need for further order of the Court.

7. The Expense Reimbursement (up to \$125,000.00 for ATX Braker SR, LLC's actual and reasonable out-of-pocket third party expenses incurred in connection with, among other things, preparing the Stalking Horse Agreement, conducting due diligence, and negotiating, finalizing and documenting a Stalking Horse Bid) is approved. Pursuant to the Bidding Procedures, ATX Braker SR, LLC shall be entitled to credit bid the Expense Reimbursement during each round of bidding at the Auction. The Trustee is authorized and directed to pay the Expense Reimbursement as set forth in the Stalking Horse Agreement and the Motion, and the Trustee's obligation to pay the Expense Reimbursement shall constitute administrative expense claims under sections 503(b) and 507(a)(1) of the Bankruptcy Code.

8. Potential Bidders or Qualified Bidders (other than the Stalking Horse Bidder), shall not be allowed any break-up, termination or similar fee with respect to the Property. Moreover,

all Potential Bidders, Qualified Bidders, and the Stalking Horse Bidder (excluding the Expense Reimbursement) waive any right to seek a claim for substantial contribution pursuant to section 503 of the Bankruptcy Code or the payment of any broker fees or costs.

### **Notice Procedures**

9. Service and publication of the Notice of Auction and Sale Hearing are sufficient to provide effective notice to all interested parties of, *inter alia*, the Bid Procedures, the Auction and the Sale Hearing, in accordance with Bankruptcy Rules 2002 and 6004, as applicable, and are approved.

10. On or before three (3) business days after entry of this Bid Procedures Order, the Trustee will cause the Notice of Auction and Sale Hearing, substantially in the form attached hereto as **Exhibit 2** to be sent by first-class mail postage prepaid, to the following: (a) counsel to the Debtor, (b) counsel to the Stalking Horse Bidder, (c) the US Trustee, (d) all persons known or reasonably believed to have asserted an interest in the Property; (e) all state and local taxing authorities in the State where the Property is located; (f) the Internal Revenue Service; and (g) all other known creditors of the Debtor.

11. In addition to the foregoing, on or before five (5) business days after entry of the Bid Procedures Order, the Trustee shall, subject to applicable submission deadlines, publish the Notice of Auction and Sale Hearing once in the national edition of *The New York Times*, *Wall Street Journal* or other comparable national publication.

12. Within two business days following conclusion of the Auction, the Trustee shall file a notice on the Court's docket identifying the Successful Bidder for the Property and any applicable Next-Highest Bidder.



**Auction and Sale Hearing**

13. **Bid Deadline.** As further described in the Bid Procedures, the deadline for submitting bids for the Property (the “Bid Deadline”) is February 7, 2023 at 5:00 p.m. (prevailing Central Time). No bid shall be deemed to be a Qualified Bid unless received by the Bid Deadline and otherwise meets the requirements set forth in the Bid Procedures.

14. **Auction.** The Trustee may sell the Property by conducting an Auction in accordance with the Bid Procedures. If at least one Qualified Bid (other than the Stalking Horse Bid) is received by the Bid Deadline, the Trustee will conduct an Auction in accordance with the Bid Procedures, which Auction shall take place on February 14, 2023 at 2:00 p.m. (prevailing Central Time), at a venue that the Trustee shall announce to all Qualified Bidders. The Trustee reserves the right to conduct the auction live, in-person, or through a virtual platform and to change the location and time of the Auction. If the Trustee receives no Qualified Bids (other than the Stalking Horse Bid), (a) the Trustee shall not hold an Auction; (b) the Stalking Horse Bid will be the Successful Bid; and (c) the Stalking Horse Bidder will be named the Successful Bidder.

15. Each Qualified Bidder participating in the Auction will be required to confirm, in writing or on the record at the Auction, that (a) it has not engaged in any collusion with respect to the Bidding Process, (b) its Qualified Bid is a good faith bona fide offer that it intends to consummate if selected as the Successful Bidder, and (c) the Qualified Bidder agrees to serve as the Next-Highest Bidder if the Qualified Bidder’s Qualified Bid is the next highest and best bid after the Successful Bid.

16. The Trustee and her professionals shall direct and preside over the Auction. Other than as expressly set forth in this Order or the Bidding Procedures, the Trustee may conduct the

Auction in the manner she reasonably determines will result in the highest or otherwise best Qualified Bid.

17. Except as otherwise provided in the Bidding Procedures or this Order, the Trustee reserves the right as she may reasonably determine to be in the best interest of the Debtor's estate and in the exercise of her fiduciary duties to: (a) determine which bidders are Qualified Bidders; (b) determine which Bids are Qualified Bids; (c) determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (d) reject any Bid (other than a Qualified Credit Bid by the Stalking Horse Bidder) that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtor and its estate; (e) impose additional terms and conditions with respect to all Potential Bidders (other than the Stalking Horse Bidder); (f) extend the deadlines set forth herein or in the Bidding Procedures; and (g) continue or cancel the Auction and/or Sale Hearing, including by announcement in open court without further notice.

18. **Sale Hearing.** The Sale Hearing shall be held before the Court on February 23, 2023 at 2:45 p.m. (prevailing Central Time) before the Honorable Tony M. Davis, United States Bankruptcy Judge for the Bankruptcy Court for the Western District of Texas, at Homer J. Thornberry Federal Judicial Bldg., 903 San Jacinto Blvd., Suite 332, Austin, Texas 78701. The Trustee shall file a form of Sale Order no later than 7 days before the Sale Hearing. At the Sale Hearing, the Trustee will seek the entry of the Sale Order approving and authorizing the Sale to the Successful Bidder. The Sale Hearing (or any portion thereof) may be adjourned by the Court or the Trustee from time to time without further notice other than by announcement in open court, on the Court's calendar or through the filing of a notice or other document on the Court's docket.

19. **Sale Objection Deadline.** The deadline to object to the relief requested in the Motion, including entry of the proposed Sale Order (a “Sale Objection”) is February 7, 2023, at 4:00 p.m. (prevailing Central Time) (the “Sale Objection Deadline”). A Sale Objection must be filed with the Court and served in the manner set forth below so *actually received* no later than the Sale Objection Deadline.

20. Objections solely to the identity of the Successful Bidder(s) or Next-Highest Bidder(s) that are not the Stalking Horse Bidder, including Assumed Contract counterparty objections based on inadequate assurance of future performance by a Successful Bidder other than the Stalking Horse Bidder (any such objection, a “Supplemental Limited Sale Objection”) must be made by **4:00 p.m. (prevailing Central Time) on February 17~~21~~, 2023** (the “Supplemental Limited Sale Objection Deadline”); *provided*, that such deadlines may be extended by agreement of the Trustee and the affected objecting party.

### **Objection Procedures**

21. Any party that seeks to object to the relief requested in the Motion pertaining to approval of the Sale shall file a formal written objection that complies with the objection procedures as set forth herein and in the Motion, as applicable.

22. Objections, if any, must be: (i) in writing; (ii) signed by counsel or attested to by the objecting party; (iii) in conformity with the applicable provisions of the Bankruptcy Rules and the Local Rules; (iv) state with particularity the legal and factual basis for the objection and the specific grounds therefor; (v) be filed with the Court and (vi) served on the following parties (the “Notice Parties”): (a) counsel to the Trustee, Kelly Hart & Hallman LLP, 201 Main Street, Suite 2500, Fort Worth, TX 76102, Attn: Michael McConnell (michael.mcconnell@kellyhart.com) and Nancy Ribauda (nancy.ribauda@kellyhart.com); (b) counsel to the Stalking Horse Bidder,

(i) Polsinelli P.C., 2950 N. Harwood, Suite 2100, Dallas, TX 75201, Attn: Liz Boydston (lboydston@polsinelli.com); and (ii) Gibson, Dunn & Crutcher LLP, 200 Park Ave. New York, New York 10166, Attn: Keith R. Martorana (kmartorana@gibsondunn.com) and Matthew Bouslog (mbouslog@gibsondunn.com); and (c) the U.S. Trustee.

23. Failure to file a Sale Objection on or before the Sale Objection Deadline (a) shall forever bar the assertion, whether at any Sale Hearing or thereafter, of any objection to the Motion, to entry of the Sale Order, and/or to the consummation and performance of the Sale with the Successful Bidder, and (b) for purposes of section 363(f)(2) of the Bankruptcy Code, shall be deemed to be “consent” to entry of the Sale Order and consummation of the Sale and all transactions related thereto.

#### **Assumption Procedures**

24. The Assumption and Assignment Procedures, as detailed in the Motion and Bid Procedures and incorporated herein by reference as if fully set forth in the Order, are approved.

25. Within three (3) days after the entry of this Order, the Trustee shall (A) file with the Court the Assumption Notice substantially in the form attached hereto as **Exhibit 3** including a list of the Available Contracts (the “Available Contracts List”); and (B) serve, via first-class mail, the Assumption Notice that contains (i) the Available Contracts List, (ii) information necessary and appropriate to provide notice of the relevant proposed assumption and assignment of Available Contract(s), (iii) Cure Amounts, if any, and (iv) the procedures for objecting thereto on all counterparties to the Available Contracts and all parties entitled to such notice pursuant to Bankruptcy Rule 2002. If no Cure Amount is listed on the Available Contracts List for a particular Available Contract, the Trustee’s asserted Cure Amount for such Available Contract shall be deemed to be \$0.00. Service of such Assumption Notice as set forth herein shall be deemed good and sufficient notice of, among other things, the proposed assumption and assignment of the

Available Contracts, the applicable Cure Amounts related thereto, and the procedures for objecting thereto, and no other or further notice is necessary.

26. Any objection by a counterparty to an Available Contract (a “**Contract Objection**”) other than a Supplemental Limited Sale Objection must (i) be in writing; (ii) comply with the applicable provisions of the Bankruptcy Rules and Local Bankruptcy Rules; (iii) be filed with the Clerk of Court on or before the Sale Objection Deadline; (iv) be served, so as to be actually received on or before the Sale Objection Deadline, upon the Notice Parties; and (v) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the counterparty believes is required to be paid under Bankruptcy Code sections 365(b)(1)(A) and (B) for the applicable Available Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto.

27. Any time before 5:00 p.m. (prevailing Central Time) on the date that is three (3) business days prior to the Sale Hearing, the Trustee reserves the right, and is authorized but not directed, to add previously omitted Available Contracts as contracts to be assumed and assigned to a Successful Bidder, (ii) remove Available Contract from the list of Available Contracts that a Successful Bidder proposes be assumed and assigned to it in connection with the Sale, or (iii) modify the previously stated Cure Amount associated with any Available Contract.

28. If, after the mailing of the Assumption Notice, additional executory contracts or unexpired leases of the Debtor are determined to be Available Contracts or the Trustee seeks to modify the previously stated Cure Amount associated with any Available Contract, as soon as practicable thereafter and in no event later than 5:00 p.m. (prevailing Central Time) on that date that is three (3) business days before the date of the Sale Hearing, the Trustee shall file with the

Court and serve, by overnight delivery on the applicable counterparties, any revised Assumption Notice (which shall be deemed to amend and restate the prior Assumption Notice with respect to such Available Contracts and/or Cure Amounts), and such counterparties shall file any Contract Objections not later than (a) the Sale Objection Deadline in the event that such revised Assumption Notice was filed and served at least ten (10) days prior to the Sale Objection Deadline, (b) two (2) days prior to the Sale Hearing in the event that such revised Assumption Notice was filed and served at least seven (7) days prior to the commencement of the Sale Hearing, and (c) seven (7) days from the date such revised Assumption Notice was filed and served, in the event that such revised Assumption Notice was filed and served less than seven (7) days prior to the commencement of the Sale Hearing.

29. Not later than two business days after the conclusion of the Auction, if any, the Trustee shall file with the Court and serve, by overnight delivery, on the counterparties a notice (the “Post-Auction Notice”), substantially in the form attached as **Exhibit 4** hereto, identifying the Successful Bidder(s), and the counterparties shall file any Supplemental Limited Sale Objections not later than **February 17~~21~~, 2023 at 4:00 p.m. prevailing Central Time**; *provided*, that the deadline for any party who did not receive an Assumption Notice prior to the date that is seven (7) days before the Sale Hearing to assert a Contract Objection shall be seven (7) days after the later of (i) the date of service of such Assumption Notice and (ii) the Post-Auction Notice.

30. At the Sale Hearing, the Trustee will seek Court approval of the assumption and assignment to the Successful Bidder(s) of only those Available Contracts that have been selected by such Successful Bidder(s) to be assumed and assigned (collectively, the “**Assumed Contracts**”). The inclusion of an Available Contract on an Assumption Notice will not (i) obligate the Trustee to assume any Available Contract listed thereon nor the Successful Bidder(s) to take

assignment of such Available Contract or (ii) constitute any admission or agreement of the Trustee that such Available Contract is an executory contract. The Trustee and the Debtors' estates reserve any and all rights with respect to any Available Contracts that are not ultimately as Assumed Contracts.

31. If no Contract Objection is timely received with respect to an Assumed Contract: (i) the counterparty to such Assumed Contract shall be deemed to have consented to the assumption by the Trustee and assignment to the Successful Bidder of the Assumed Contract, and shall be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the Successful Bidder); (ii) any and all defaults under the Assumed Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to Bankruptcy Code section 365(b)(1)(A) and (B) upon payment of the Cure Amount set forth in the Assumption Notice for such Assumed Contract; (iii) the Cure Amount set forth in the Assumption Notice for such Assumed Contract shall be controlling, notwithstanding anything to the contrary in such Assumed Contract, or any other related document, and the counterparty shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other Claims related to such Assumed Contract against the Debtor and its estate or the Successful Bidder, or the property of any of them, that existed prior to the entry of the order resolving the Contract Objections and the Sale Order; and (iv) the counterparty to such Assumed Contract shall be deemed to have consented to the Sale and to any related relief.

32. Absent further order of this Court, to the extent that the parties are unable to consensually resolve any Contract Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the cure amount required to be paid to

the applicable counterparty under Bankruptcy Code sections 365(b)(1)(A) and (B) (any such dispute, a “**Cure Dispute**”), such Contract Objection will be adjudicated at the Sale Hearing, at such other date and time as may be fixed by the Court, or such other date that may be agreed to by the parties; *provided, however*, that if the Contract Objection relates solely to a Cure Dispute, the Assumed Contract may be assumed by the Trustee and assigned to the Successful Bidder provided that the cure amount the counterparty asserts is required to be paid under Bankruptcy Code section 365(b)(1)(A) and (B) (or such lower amount as agreed to by the counterparty) is deposited in a segregated account by the Trustee pending the Court’s adjudication of the Cure Dispute or the parties’ consensual resolution of the Cure Dispute.

**Other Relief Granted**

33. The Trustee reserves the right, and is authorized to, modify the above timeline and the Bidding Procedures (the “**Modifications**”) in accordance with the Bidding Procedures. The U.S. Trustee, and the Stalking Horse Bidder will be given notice of the Modifications.

34. Notwithstanding any provision in the Bankruptcy Rules to the contrary, the stay provided for in Bankruptcy Rules 6004(h) is waived and this Bid Procedures Order shall be effective immediately and enforceable upon its entry.

35. In the event of any conflict between this Order and the Bid Procedures, this Order shall govern in all respects.

36. This Court shall retain exclusive jurisdiction over any matters related to or arising from the implementation of this Order.

### END OF ORDER ###



Prepared By:

*s/ Michael A. McConnell*

Michael A. McConnell

Texas Bar No. 13447300

Nancy Ribaldo

Texas Bar No. 24026066

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***Counsel for Dawn Ragan, Chapter 11 Trustee***

**EXHIBIT 1**

**Bid Procedures**

## **BID PROCEDURES**

Set forth below are the bid procedures (the “Bid Procedures”) to be used with respect to the sale or disposition (the “Sale”) of the Property (as defined below) of WC Braker Portfolio, LLC (the “Debtor,” or “Seller”), by the Chapter 11 Trustee (the “Trustee”) appointed by the United States Bankruptcy Court for the Western District of Texas (the “Bankruptcy Court”) in the Debtor’s bankruptcy proceeding, Case No. 22-10293-TMD.

### **I. Description of the Property to be Sold**

The Trustee is seeking to sell (i) the real property commonly known as Braker Portfolio, as more particularly described in Exhibit A hereof, together with all structures and improvements thereon, all fixtures therein or thereto and all privileges, easements, appurtenances, development rights and air rights pertaining thereto, including all of Seller’s right, title and interest in and to any adjacent or adjoining streets, alleys, or rights-of-ways and any strips or gores adjacent or adjoining thereto, or used in connection with the beneficial use and enjoyment thereof and all licenses and permits used in connection with the beneficial use and enjoyment thereof (the “Real Property”), (ii) all right, title, and interest of Seller in and to those certain lease agreements affecting the Real Property (“Leases”); (iii) all right, title, and interest of Seller, if any, in and to any fixtures, furniture, equipment, racking, conveyors, appliances, machinery, furniture, furnishings, tools, supplies and other tangible personal property located on the Real Property that is not otherwise owned by the any respective tenant under the Leases; and (iv) all right, title, and interest of Seller, if any, in and to any intangible personal property (including any intellectual property, if any, without representation or warranty, to the extent the foregoing can be assigned or transferred without the joinder or consent of any third party) that is necessary or useful in connection with the ownership, improvement or operation of the Real Property, including permits, plans and specifications, licenses, and certificates of occupancy (clauses (ii), (iii), and (iv) together with the Real Property, collectively, the “Property” or “Assets”). The Real Property consists of the following:

The “Office Buildings”:

<b>Individual Property</b>	<b>Address</b>
Braker A	1836 Kramer, Austin, Texas 78758
Braker B	1908 Kramer Lane, Austin, Texas 78758
Braker C	1901 W Braker Lane, Austin, Texas 78758
Braker D	1909 W Braker Lane, Austin, Texas 78758
Braker E	1817 W Braker Lane, Austin, Texas 78758
Braker F	11109 Metric Blvd, Austin, Texas 78758
Braker G	11101 Metric Blvd., Austin, Texas 78758
Braker H	11009 Metric Blvd., Austin, Texas 78758
Braker M1, M2, M3, M4	11500 Metric Boulevard, Austin, Texas 78758
Braker One	2100 Kramer Lane, Austin, Texas 78758

The “Retail Building”:

Lonestar Center	1910 W Braker Lane, Austin, Texas 78758
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The Sale of the Property shall be subject to a competitive bidding process as set forth herein (the “Bidding Process”) and approval by the Bankruptcy Court pursuant to sections 363, 503 and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6003, 6004, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Bankr. W.D. Local Rules 6004, 9013 and 9014 (the “Local Rules”). The sale of the Property may be in one lot or in two lots, consisting of (i) the Office Buildings as one combined lot, and (ii) the Retail Building as a separate lot. A Bid may include or exclude some or all of the Leases or other executory contracts.

**Additional information regarding the Property can be obtained by contacting the Trustee’s broker:**

**Keen-Summit Capital Partners LLC**  
 Telephone (646) 381-9222  
 Attn: Matt Bordwin, mbordwin@keen-summit.com;  
 Harold Bordwin, hbordwin@keen-summit.com; and  
 Chris Mahoney, cmahoney@keen-summit.com

**II. Submissions to the Trustee**

All submissions to the Trustee required to be made under these Bidding Procedures must be directed to each of the following persons unless otherwise provided (collectively, the “Bid Notice Parties”):

- a. Broker.** Keen-Summit Capital Partners LLC, 1 Huntington Quadrangle, Suite 2CO4, Melville, NY 11747, Attn: Matt Bordwin (mbordwin@keen-summit.com; Harold Bordwin hbordwin@keen-summit.com; and Chris Mahoney (cmahoney@keen-summit);
- b. Chapter 11 Trustee.** Dawn Ragan, CR3 Partners, 13355 Noel Road, Suite 2005, Dallas, TX 75240 (dawn.ragan@cr3partners.com); and
- c. Chapter 11 Trustee’s Counsel.** Kelly Hart & Hallman LLP, 201 Main Street, Suite 2500, Fort Worth, TX 76102, Attn: Michael A. McConnell (michael.mcconnell@kellyhart.com) and Nancy Ribaldo (nancy.ribaldo@kellyhart.com).

**III. Key Dates**

- a. Key Proposed Auction and Sale-Related Dates (subject to the Court’s availability):**

Event	Proposed Date
Deadline to file and serve the Sale Notice	Within three days of entry of Bid Procedures Order

Event	Proposed Date
Sale Objection Deadline ( <i>e.g.</i> , deadline for objecting to sale to a Stalking Horse Bidder)	February 7, 2023, 4:00 p.m.(Central Time)
Bid Deadline	February 7, 2023 at 5:00 p.m.(Central Time)
Auction (if necessary)	February 14, 2023 at 2:00 p.m.(Central Time)
Deadline to file and serve notice of Successful Bidder and amount of Successful Bid	Within two business days after the Auction is completed
Supplemental Limited Sale Objection Deadline ( <i>e.g.</i> , deadline for objecting to manner in which Auction was conducted and sale to a Successful Bidder that is not a Stalking Horse Bidder)	February <del>17</del> <sup>21</sup> , 2023 at 4:00 p.m. (Central Time) <del>Four business days prior to the commencement of the Sale Hearing</del>
Sale Hearing	February 23, 2023 at 2:45 p.m. (Central Time)
Closing Date	On or before February 28, 2023

**b. Key Dates Related to Proposed Assumption and Assignment Procedures (subject to the Court’s availability):**

Event	Proposed Date
Deadline for objecting to assignment to Stalking Horse Bidder and proposed Cure Amounts	February 7, 2023, 4:00 p.m.(Central Time)
Deadline for objecting to assignment to Successful Bidder (other than Stalking Horse Bidder)	February <del>17</del> <sup>21</sup> , 2023 at 4:00 p.m. (Central Time) <del>(Four business days prior to the commencement of the Sale Hearing)</del>
Sale Hearing	February 23, 2023 at 2:45 p.m. (Central Time)

**IV. Stalking Horse Bidder**

The Trustee has chosen ATX Braker SR, LLC as the stalking horse bidder for the Property (the “Stalking Horse Bidder”). ATX Braker SR, LLC is the lender under that certain Loan Agreement, dated as of February 28, 2019 (as the same has been amended, restated, supplemented or otherwise modified from time to time), by and between Debtor and the ATX Braker SR, LLC

(as successor to JPMorgan Chase Bank, National Association) (the “Mortgage Loan”), which Mortgage Loan is secured by a first priority lien on the Property.

The Stalking Horse Bidder has committed to purchase the Property pursuant to the terms of the Purchase and Sale Agreement attached to these bid procedures as Exhibit B (the “Stalking Horse Agreement”), and has agreed to pay a purchase price of \$75,461,418.00 in the form of a credit bid of the Mortgage Loan (the “Stalking Horse Bid”). The Stalking Horse Bid shall set the floor for all bids for the Property at the Auction (defined below). Recognizing the Stalking Horse Bidder’s expenditure of time, energy and resources, and that the Stalking Horse Bid provides a floor bid with respect to the Property, the Trustee has agreed to provide the Stalking Horse Bidder with customary bid protections in the form of reimbursement of expenses in the maximum amount of \$125,000.00 (the “Expense Reimbursement”).

#### **V. Potential Bidders and Due Diligence**

Unless otherwise ordered by the Bankruptcy Court for cause shown, to participate in the Bidding Process, each person or entity must enter into (unless previously entered into) with the Trustee, on or before the Bid Deadline (as defined below), an executed confidentiality agreement in form and substance reasonably satisfactory to the Trustee (the “Confidentiality Agreement”). Each person or entity that enters into the Confidentiality Agreement with the Trustee on or before the Bid Deadline is hereinafter referred to as a (“Potential Bidder.”)

Up to and including the Bid Deadline (as defined below) (such period, the “Diligence Period”), the Trustee shall afford each Potential Bidder such available due diligence access or additional information as may be reasonably requested in writing by the Potential Bidder that the Trustee, in her business judgment, determines to be reasonable and appropriate under the circumstances. Only those Potential Bidders whose financials, the financials of their equity holder(s), or whose written commitments, as applicable, demonstrate the financial capability to consummate the Sale shall be eligible to receive due diligence information.

The Trustee may designate Keen-Summit Capital Partners LLC (“Keen-Summit”) as her representatives to coordinate all reasonable requests for additional information and due diligence access from such Potential Bidders. Each Potential Bidder shall be required to acknowledge that it has had an opportunity to conduct any and all due diligence regarding the Property in conjunction with submitting its Bid (as defined below). Notwithstanding the foregoing, the Trustee reserves the right to withhold or limit access to any information that the Trustee determines to be commercially sensitive or otherwise not appropriate to disclose to any Potential Bidder. **No Potential Bidder will be permitted to conduct any due diligence without entering into a Confidentiality Agreement.**

**All due diligence requests must be directed to Keen-Summit Capital Partners LLC.**

**Potential Bidders shall not contact the Debtor or conduct a site inspection without coordinating same with Keen-Summit.**

For all Potential Bidders, the due diligence period will end on the Bid Deadline and, subsequent to the Bid Deadline, the Trustee shall have no obligation to furnish any due diligence information.

Neither the Trustee nor the Debtor shall furnish any confidential information relating to the assets, or liabilities of the Debtor, or the Sale to any person except to a Potential Bidder or to such Potential Bidder's duly authorized representatives to the extent provided in the applicable Confidentiality Agreement. The Trustee and her advisors shall coordinate all reasonable requests from Potential Bidders for additional information and due diligence access; *provided*, that the Trustee may decline to provide such information to Potential Bidders who, at such time and in the Trustee's reasonable business judgment have not established, or who have raised doubt, that such Potential Bidder intends in good faith to, or has the capacity to, consummate the Sale. For the avoidance of doubt, the Stalking Horse Bidder shall be granted access to diligence materials.

The Trustee also reserves the right to withhold any diligence materials that the Trustee determines are sensitive or otherwise not appropriate for disclosure to a Potential Bidder who the Trustee determines is a competitor of the Debtor or is affiliated with any competitor of the Debtor. Neither the Trustee, the Debtor nor their representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Potential Bidder that intends in good faith to, or has the capacity to, consummate the Sale.

**(a) Communications with Potential Bidders.**

Notwithstanding anything to the contrary in these Bidding Procedures, all substantive direct communications between and amongst Potential Bidders shall involve the Trustee and the Trustee's advisors, to the extent reasonably practicable.

**(b) Due Diligence from Potential Bidders.**

Each bidder shall comply with all reasonable requests for additional information and due diligence access requested by the Trustee or her advisors regarding the ability of the Potential Bidder to consummate the Sale or discussions with other Potential Bidders regarding any topic and with any party regarding the Debtor (and/or the Assets). Failure by a Potential Bidder to comply with such reasonable requests for additional information and due diligence access may be a basis for the Trustee to determine that such bidder is not a Qualified Bidder or that a Bid made by such bidder is not a Qualified Bid.

The Trustee and each of her respective advisors and representatives shall be obligated to maintain in confidence any confidential information in accordance with any applicable confidentiality agreement, except as otherwise set forth in these Bidding Procedures. Each recipient of confidential information agrees to use, and to instruct their advisors and representatives to use, such confidential information only in connection with the evaluation of Bids during the bidding process or otherwise in connection with the chapter 11 cases or in accordance with the terms of any applicable confidentiality agreement.

Notwithstanding the foregoing and the provisions contained in any applicable confidentiality agreement, the Trustee and the Trustee's advisors may disclose confidential information: (i) with the prior written consent of such bidder and the Trustee; (ii) to the applicable bidder; and (iii) as otherwise required or allowed by any applicable confidentiality agreement with respect to a particular bidder or other agreement, law, court or other governmental order, or regulation, including, as appropriate, to regulatory agencies.

**VI. Bid Deadline: February 7, 2023 at 5:00 p.m. (prevailing Central Time).**

A Potential Bidder that desires to make a Bid shall deliver copies of its Bid (defined below) in Microsoft Word format, by email to:

(a) the Trustee, Dawn Ragan, at dawn.ragan@cr3partners.com;

(b) Keen-Summit, Attn: Matthew Bordwin at mbordwin@keen-summit.com, Harold Bordwin at hbordwin@keen-summit.com and Chris Mahoney at cmahoney@keen-summit.com; and

(c) counsel to the Trustee, Kelly Hart & Hallman LLP, Attn: Michael McConnell at michael.mcconnell@kellyhart.com and Nancy Ribaldo at nancy.ribaldo@kellyhart.com

by no later than **February 7, 2023 at 5:00 p.m.** (prevailing Central Time) (the “Bid Deadline”).

**VII. Bid Requirements**

A proposal, solicitation, or offer for a purchase and sale of all or part of the Property (each, a “**Bid**”) by a bidder that is submitted in writing and satisfies at least each of the following requirements (the “**Bid Requirements**”), as determined by the Trustee, in her reasonable business judgment, shall constitute a “**Qualified Bid**,” *provided*, that, if the Trustee receives a Bid before the Bid Deadline that is not a Qualified Bid, the Trustee may provide the bidder with the opportunity to remedy any deficiencies by 5:00 p.m. (prevailing Central Time) on the last business day prior to the Auction in order to render such Bid a Qualified Bid; *provided, further*, that for the avoidance of doubt, if any Qualified Bidder fails to comply with reasonable requests for additional information and due diligence access requested by the Trustee to the satisfaction of the Trustee, the Trustee may disqualify any Qualified Bidder and Qualified Bid and such Qualified Bidder will not be entitled to attend or participate in the Auction; *provided, further*, that the Stalking Horse Bid will constitute a Qualified Bid, and the Stalking Horse Bidder will constitute a Qualified Bidder. The Trustee may also waive or modify any of the above requirements in the exercise of her reasonable business judgment, and with the reasonable consent of the Stalking Horse Bidder. To constitute a Qualified Bid, a Bid must:

a) Be accompanied by a letter or email:

- i. stating with specificity the Property (including the specific executory contracts and unexpired leases) such Potential Bidder wishes to bid on and the liabilities and obligations (including applicable cure costs) to be assumed by the Potential Bidder in the Sale (a Bid may include or exclude some or all of the Property, Leases or other executory contracts);



- ii. detailing the following:
    - (A) a duly executed purchase agreement (the “Purchase Agreement”);
    - (B) a redline of the Purchase Agreement marked to reflect any proposed amendments and modifications to the Stalking Horse Agreement and the applicable schedules and exhibits.
  - iii. agreeing that the Potential Bidder’s offer is **binding and irrevocable** until the later of (i) the Closing Date (as defined herein), or (ii) thirty (30) days after the Sale Hearing (unless selected as the “Next-Highest Bidder” (as defined below) in which case such offer will remain open until the Closing Date);
  - iv. providing for a Closing Date that occurs on or before **February 28, 2023**;
  - v. offering to pay a price, in cash, equal to \$75,836,418.00 or greater, such amount being calculated as the sum of (a) the Stalking Horse Bid, (b) the Expense Reimbursement, and (c) \$250,000 (such sum, the “Minimum Bid”);
  - vi. providing that such Bid is not subject to any due diligence or financing contingency;
  - vii. written evidence of a commitment for financing or other evidence of ability to consummate the transaction as the Trustee may request; and
  - viii. providing that the Potential Bidder agrees to serve as a backup bidder (the “Next-Highest Bidder”) if the Potential Bidder’s Qualified Bid (as defined below) is the next highest and best bid after the Successful Bid (as defined below) (the “Next-Highest Bid”);
  - ix. provide contact information for the Bidder and its legal counsel, including for each their respective company name, mailing address, office phone number, cell phone number, and email address; and
- b) Be accompanied by adequate assurance of future performance information (the “Adequate Assurance Information”), including (i) information about the Potential Bidder’s financial condition, such as federal tax returns for two years, a current financial statement, or bank account statements, (ii) information demonstrating (in the Trustee’s reasonable business judgment) that the Potential Bidder has the financial capacity to consummate the proposed Sale, (iii) evidence that the Potential Bidder has obtained authorization or approval from its board of directors (or comparable governing body) with respect to the submission of its Bid, (iv) the identity and exact name of the Potential Bidder (including any equity holder or other financial backer if the Potential Bidder is an entity formed for the purpose of consummating the proposed Sale), and (v) such additional information regarding the Potential Bidder as the Potential Bidder may elect to include. By submitting a Bid, Potential Bidders agree that the Trustee may disseminate such Adequate Assurance Information to affected lessees, and contract counterparties in the event that the Trustee determines such bid to be a Qualified Bid.

A Bid must be accompanied by (a) a deposit in the form of a certified check or wire transfer, payable to the order of the Trustee, in the amount of ten percent (10%) of the Bid, which funds will be deposited into an interest bearing escrow account to be identified by the Trustee (a “Good Faith Deposit”) and (b) written evidence, documented to the Trustee’s satisfaction, that

demonstrates the Potential Bidder has available cash, a commitment for financing if selected as the Successful Bidder (as defined below) with respect to the Property (provided, however, that the closing shall not be contingent in any way on the Successful Bidder's financing) and such other evidence of ability to consummate the transaction(s) as the Trustee may request, including proof that such funding commitments or other financing are not subject to any internal approvals, syndication requirements, diligence or credit committee approvals.

The Trustee will review each Bid received from a Potential Bidder to determine whether it meets the requirements set forth above. A Bid received from a Potential Bidder that meets the above requirements, and is otherwise satisfactory to the Trustee, will be considered a "Qualified Bid" and each Potential Bidder that submits a Qualified Bid will be considered a "Qualified Bidder." The Trustee shall inform Qualified Bidders that their Bids have been designated as Qualified Bids no later than 48 hours after the Bid Deadline. For the avoidance of doubt, the Stalking Horse Agreement will be deemed a Qualified Bid and the Stalking Horse Bidder will be deemed a Qualified Bidder, for all purposes and requirements pursuant to the Bid Procedures, notwithstanding the requirements that a Potential Bidder must satisfy to be a Qualified Bidder.

If Trustee receives a Bid by the Bid Deadline that is not a "Qualified Bid", Trustee reserves the right work with such Potential Bidder and to extend any applicable deadlines in order to help a Potential Bidder to convert a Bid that is not a "Qualified Bid" into a "Qualified Bid" provided that such Bid must be converted into a "Qualified Bid" by no later than the last business day prior to the Auction at 5:00 p.m. (prevailing Central Time).

A Qualified Bid will be valued by the Trustee based upon any and all factors that the Trustee reasonably deems pertinent in its reasonable business judgment, including, among others, (a) the amount of the Qualified Bid, (b) the risks and timing associated with consummating the transaction(s) with the Qualified Bidder, (c) excluded executory contracts or leases, (d) any modifications to the Stalking Horse Agreement, and (e) any other factors that the Trustee may reasonably deem relevant.

The Trustee, in her business judgment, reserves the right to reject any Bid (other than the Stalking Horse Bid) if such Bid, among other things:

- (a) is on terms that are more burdensome or conditional than the terms of the Stalking Horse Agreement;
- (b) requires any indemnification of the Potential Bidder in its Purchase Agreement;
- (c) is not received by the Bid Deadline;
- (d) it is not accompanied by a Good Faith Deposit;
- (e) is submitted by a Potential Bidder who (or who's affiliate) files an objection to the Sale;
- (f) is subject to any contingencies (including representations, warranties, covenants and timing requirements) of any kind or any other conditions precedent to such party's obligation to acquire the Property;

- (g) seeks any bid protections; or
- (h) does not, in the Trustee's determination, include at least the Minimum Bid, or the acceptance of such Bid would not be in the best interests of the Debtor's estate or the Auction; and
- (i) is determined not to be a good faith, bona fide offer to purchase the Property.

Any Bid rejected pursuant to this paragraph shall not be deemed to be a Qualified Bid. In the event that any Bid is so rejected, the Trustee shall cause the Good Faith Deposit of such Potential Bidder (including all accumulated interest thereon) to be refunded to it within ~~five~~ **five (5) three (3)** business days after the ~~Bid-Deadline~~ **Auction**.

The Trustee shall deliver all Qualified Bids to counsel to the Stalking Horse Bidder promptly following the designation of such Bid as a Qualified Bid, but in any event no later than 6:00 p.m. (prevailing Central Time) on February 10, 2023.

### **VIII. Credit Bidding**

The Trustee has stipulated that the Stalking Horse Bidder has a perfected security interest in the Property, and is entitled to credit bid some or all of its claims for its collateral (a "Credit Bid") pursuant to section 363(k) of the Bankruptcy Code. The Stalking Horse Bidder shall be considered a Qualified Bidder with respect to its right to acquire the Property by Credit Bid. All other Qualified Bids shall be cash bids.

### **IX. Auction: February 14, 2023**

Unless otherwise ordered by the Bankruptcy Court for cause shown, only Qualified Bidders are eligible to participate at the Auction (as defined below). At least three (3) business days prior to the Auction, each Qualified Bidder, other than the Stalking Horse Bidder, must inform the Trustee in writing whether it intends to participate in the Auction. If the Trustee receives no Qualified Bids (other than the Stalking Horse Bid), then (a) the Trustee may elect to not hold an Auction; (b) may deem the Stalking Horse Bid the Successful Bid and name the Stalking Horse Bidder the Successful Bidder.

If at least one Qualified Bid (other than the Stalking Horse Bid) is received by the Bid Deadline, the Trustee will conduct an auction (the "Auction") and shall determine which Qualified Bid is the highest or otherwise best Qualified Bid for the Property (the "Starting Bid"), which determination will be communicated to Qualified Bidders prior to the commencement of the Auction. The Auction shall take place at **2:00 p.m. (prevailing Central Time) February 14, 2023**, at a venue that the Trustee shall announce to all Qualified Bidders. The Trustee reserves the right to conduct the auction live, in-person, or through a virtual platform and to change the location and time of the Auction. Professionals and principals for the Trustee, the Stalking Horse Bidder, each Qualified Bidder, the chapter 11 trustee for WC Braker Portfolio B, LLC, Nate Paul, and the United States Trustee, and their advisors may attend the Auction; any creditor of the Debtor and their counsel upon written request delivered to the Trustee at least three days prior to the Auction and approved by the Trustee; and the Trustee shall be authorized to exclude other parties.

Each Qualified Bidder participating in the Auction will be required to confirm, in writing, and on the record at the Auction, that (a) it has not engaged in any collusion with respect to the Bidding Process, and (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder.

Bidding at the Auction for the Property will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one Subsequent Bid (defined below) is submitted by a Qualified Bidder that (i) improves on such Qualified Bidder's immediately prior Qualified Bid (a "Subsequent Bid") and (ii) the Trustee reasonably determines that such Subsequent Bid is (A) for the first round, a higher or otherwise better offer than the Starting Bid, and (B) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below). Each Subsequent Bid at the Auction shall provide net value to the estate in an amount of at least \$250,000 ("Incremental Overbid") over the Starting Bid or the Leading Bid (as defined below), as the case may be, provided that: (i) if the Leading Bid was made by the Stalking Horse Bidder, such bid shall be deemed to include the Expense Reimbursement, and (ii) any Subsequent Bid made by the Stalking Horse Bidder shall only be required to equal the sum of the amount of (w) the Starting Bid or the Leading Bid, as applicable, and (x) the Incremental Overbid, less the Expense Reimbursement. After the first round of bidding and between each subsequent round of bidding, the Trustee shall announce the bid that the Trustee believes to be the highest or otherwise best offer for the Property (the "Leading Bid"). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid. For the avoidance of doubt, a Qualified Bidder must provide written evidence, documented to the Trustee's satisfaction, that demonstrates that the Qualified Bidder has available cash or a commitment for financing to support each Bid submitted at the Auction, and failure to satisfy such obligation shall result in disqualification of the Qualified Bidder and any such Bids.

The bidding at the Auction shall be transcribed or videotaped and the Trustee shall maintain a transcript of all Bids made and announced at the Auction.

Based upon the terms of the Qualified Bids, the level of interest expressed in the Property and such other information as the Trustee may determine to be relevant, Trustee shall have the right to supplement the procedures set forth herein in her sole and absolute discretion, such rules for the bidding process which she determines will better promote the goals of the bidding process. Among other things, Trustee shall determine, in the exercise of her sole and absolute discretion, acceptable bidding increments, which may be modified by the Trustee during the Auction. Trustee may offer the Property for bidding in successive rounds, may conduct an open Auction, or may otherwise conduct the Auction in the manner that she deems most appropriate for soliciting the highest and best Bids.

Immediately prior to the conclusion of the Auction, the Trustee will: (a) determine, consistent with the Bid Procedures, which bid constitutes the highest or otherwise best bid (the "Successful Bid"); and (b) notify all Qualified Bidders at the Auction, prior to its conclusion, of the name of the maker of the Successful Bid (the "Successful Bidder"), and the amount and other material terms of the Successful Bid. The Trustee may designate the Next-Highest Bid (and the corresponding Next-Highest Bidder) to close in the event that the Successful Bidder does not close the Sale; *provided, however*, that the Next-Highest Bid shall be deemed to be the last Bid provided

by such Next-Highest Bidder at the time when there were two or more Bidders not affiliates of the Debtor still actively bidding at the Auction (and if there are only two Bidders for any lot at the start of the Auction of which only one is a non-affiliate of the Debtor, the Next-Highest Bid will be deemed to be such party's starting Bid). ~~Any Bids made by the Next Highest Bidder at a time when there were only two Bidders remaining shall not be binding as the Next Highest Bid.~~ The Trustee shall not consider any Bids or Subsequent Bids submitted after the conclusion of the Auction and any and all such Bids and Subsequent Bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

Within ~~one~~ two business ~~day~~ days following conclusion of the Auction, the Trustee shall file a notice on the Bankruptcy Court's docket identifying (with specificity) the Successful Bidder and any applicable Next-Highest Bidder. Notwithstanding the selections of the Successful Bidder and the Next-Highest Bidder, all bids are **binding and irrevocable** until the later of (i) the Closing Date, or (ii) thirty (30) days after the Sale Hearing (unless selected as the Next-Highest Bidder, in which case such offer will remain open until the Closing Date).

At the conclusion of the Auction, both the Successful Bidder and the Next Highest Bidder shall modify and re-execute the Purchase and Sale Contract, as appropriate, without varying its terms other than to reflect the terms of the Successful Bid and the terms of the Next Highest Bid, respectively, as publicly announced at the Auction.

**X. Adequate Assurance Information.**

Within twenty-four (24) hours of the filing of the notice of the Successful Bidder and the Next-Highest Bidder, the Successful Bidder and the Next-Highest Bidder will send by overnight delivery to each contract counterparty whose contract is part of such Bid, the financial and other commercial information to demonstrate adequate assurance of future performance under such contract.

**XI. Jurisdictional Consent**

All bidders at the Auction will be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to jury trial in connection with any disputes relating or pertaining to or resulting or arising from the marketing of the Property by Keen-Summit, the Auction, the Sale, the acts or omissions of Trustee and/or Keen-Summit, and the construction and enforcement of the Stalking Horse Agreement and all other agreements entered into in connection with any proposed Sale transaction. The submission of a Bid shall constitute an express consent by the Bidder to the exclusive jurisdiction of the Bankruptcy Court for all such matters. Such consent and waiver shall apply to the extent that it is later determined that the Bankruptcy Court, absent consent, cannot enter final orders or judgments with regard to the foregoing matters consistent with Article III of the United States Constitution..

**XII. No Fees for Potential Bidders or Qualified Bidders**

Potential Bidders or Qualified Bidders, other than the Stalking Horse Bidder, shall not be allowed any break-up, termination or similar fee. Moreover, all Potential Bidders, Qualified Bidders, and the Stalking Horse Bidder (excluding the Expense Reimbursement), by participating in the Bidding Process, will be deemed to have waived any right to seek a claim for substantial

contribution pursuant to section 503 of the Bankruptcy Code or the payment of any broker fees or cost.

### **XIII. Sale Hearing**

The Successful Bid and the Next-Highest Bid (or if no Qualified Bid other than that of the Stalking Horse Bidder is received, then the Stalking Horse Bid) will be subject to approval by the Bankruptcy Court. The hearing to approve the Successful Bid and the Next-Highest Bid (or if no Qualified Bid other than that of the Stalking Horse Bidder is received, then the Stalking Horse Bid) shall take place **on February 23, 2023 at 2:45 p.m.** (prevailing Central Time) (the “Sale Hearing”).

At the Sale Hearing, the Trustee will seek entry of an order that, among other things: (i) authorizes and approves the Sale to the Successful Bidder and/or the Next-Highest Bidder, (ii) includes a finding that the Successful Bidder and/or the Next-Highest Bidder is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code, and (iii) as appropriate, exempts the Sale and conveyance of the Property from any transfer tax, stamp tax or similar tax, or deposit under any applicable bulk sales statute.

The Trustee intends to close the Sale on or before February 28, 2023 unless another time or date, or both, are agreed to in writing by the Trustee and the Successful Bidder (the “Closing Date”).

### **XIV. Return of Good Faith Deposit**

The Good Faith Deposits of all Potential Bidders shall be held in escrow by the Trustee, but shall not become property of the Debtor’s estate absent further order of the Bankruptcy Court. The Good Faith Deposits of all Potential Bidders shall be retained by the Trustee, notwithstanding Bankruptcy Court approval of the Sale, until three (3) business days after the earlier of (a) the Closing Date, or (b) ten (10) days following the Sale Hearing; provided, however, that the Good Faith Deposit of the Next-Highest Bidder shall be retained until three (3) business days after the applicable Closing Date. The Trustee shall retain any Good Faith Deposit submitted by each Successful Bidder. At the closing of a Sale contemplated by a Successful Bid, the applicable Successful Bidder will be entitled to a credit for the amount of its Good Faith Deposit.

If the Successful Bidder (or, if the Sale is to be closed with a Next-Highest Bidder, then the Next-Highest Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Purchase Agreement or the Stalking Horse Agreement, as applicable (and as such agreements may be amended or modified at the Auction), the Trustee, on behalf of the Debtor’s estate, shall be entitled to retain the Good Faith Deposit of such Successful Bidder (or, if the Sale is to be closed with the Next-Highest Bidder, then such Next-Highest Bidder) as part of the damages resulting to the Debtor and its estate for such breach or failure to perform.

### **XV. Next-Highest Bidder**

Notwithstanding any of the foregoing, in the event that a Successful Bidder fails to close

the Sale prior to such date as specified in the applicable Purchase Agreement, the Trustee, upon written notice to the Next-Highest Bidder, may designate the Next-Highest Bid as the Successful Bid for the Property, the Next-Highest Bidder will be deemed to be the Successful Bidder for the Property, and the Trustee will be authorized, but not directed, to close the Sale to the Next-Highest Bidder subject to the terms of the Next-Highest Bid without the need for further order of the Bankruptcy Court and without the need for further notice to any interested parties.

**XVI. Fiduciary Out**

Nothing in these Bidding Procedures shall require the Trustee to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent the Trustee determines, or based on the advice of counsel, that taking such action, or refraining from taking such action, as applicable, would violate applicable law or her fiduciary obligations under applicable law.

**XVII. Miscellaneous**

By participating in this sale process, Bidder acknowledges that, pursuant to, inter alia, 18 U.S.C. Section 371, it is a federal crime to engage in collusive bidding or to chill the bidding and Bidder warrants and represents that it has not and will not engage in such activities.

By participating in this sale process, Bidder warrants and represents that it is a principal acting on its own behalf, and not a broker, finder or agent acting on another's behalf. Bidder acknowledges that it will not look to the Trustee and/or Keen-Summit and their respective representatives for the payment of any fee or commission. Trustee is compensating Keen-Summit pursuant to a separate Bankruptcy Court approved agreement. In addition, Bidder agrees to be responsible for the payment of any fee, commission or other compensation payable to any broker, finder or agent who alleges it has dealt with or through Bidder. Bidder hereby agrees to indemnify, defend and hold the Trustee and Keen-Summit and their respective representatives harmless from and against any and all claims, damages, losses and liabilities, costs and expenses (including reasonable attorneys' fees and disbursements) arising out of any claim or claims by any broker, finder or similar agent for commissions, fees or other compensation who allege that they have dealt with Bidder in connection with the Property. Bidder understands that the Trustee and Keen-Summit and their respective representatives have not agreed to pay any brokerage commissions, finder's fee or other compensation in connection with Bidder's possible purchase. If Bidder is working with a broker or finder other than Keen-Summit, Bidder agrees that Bidder shall be responsible for the payment of any fees, if any, to such broker or finder.

*[The remainder of this page is intentionally left blank.]*

Exhibit A

Real Property Description

<b>Individual Property</b>	<b>Address</b>
Braker A	1836 Kramer Lane, Austin, Texas 78758
Braker B	1908 Kramer Lane, Austin, Texas 78758
Braker C	1901 W Braker Lane, Austin, Texas 78758
Braker D	1909 W Braker Lane, Austin, Texas 78758
Braker E	1817 W Braker Lane, Austin, Texas 78758
Braker F	11109 Metric Blvd., Austin, Texas 78758
Braker G	11101 Metric Blvd., Austin, Texas 78758
Braker H	11009 Metric Blvd., Austin, Texas 78758
Braker M1, M2, M3, M4	11500 Metric Blvd., Austin, Texas 78758
Lonestar Center	1910 W Braker Lane, Austin, Texas 78758
Braker One	2100 Kramer Lane, Austin, Texas 78758



Exhibit B

Stalking Horse Agreement

3364546.1 [11-23-22](#)

[3645456.2-12-1-22](#)

**EXHIBIT 2**

**Notice of Auction and Sale Hearing**

**EXHIBIT 3**

**Assumption and Assignment Notice**

**EXHIBIT 4**

**Post Auction Notice**

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