

**Exhibit B to Motion**

**Proposed Bid Procedures Order**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

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In re:	)	
	)	
	)	Chapter 11
Banyan Cay Resort & Golf, LLC, <i>et al.</i> <sup>1</sup>	)	
	)	Case No. 23-12368
	)	
Debtors.	)	(Jointly Administered)
	)	

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**ORDER (I) APPROVING BID PROCEDURES IN CONNECTION WITH THE SALE OF CERTAIN PROPERTY OF THE DEBTORS' ESTATES, (II) SCHEDULING AN AUCTION AND A SALE HEARING, (III) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (IV) AUTHORIZING THE DEBTORS TO ENTER INTO THE STALKING HORSE AGREEMENT, AND (V) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (the "Debtors") for entry of an order (this "Order") (i) authorizing and approving the Bid Procedures attached hereto as **Exhibit 1** (the "Bid Procedures") in connection with the sale

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<sup>1</sup> The Debtors are: (i) Banyan Cay Investment, LLC; (ii) Banyan Cay Mezzanine Borrower, LLC; (iii) Banyan Cay Resort & Golf LLC; (iv) Banyan Cay Dev. LLC; (v) Banyan Cay Villas, LLC; and (vi) Banyan Cay Maintenance, LLC. The address of the Debtors is 1900 Banyan Club Road, West Palm Beach, Florida 33401.

<sup>2</sup> Capitalized terms used as defined terms herein but not otherwise defined shall have the meanings ascribed to them in the Motion or the Bid Procedures, as applicable. In the event there is a conflict between this Order and the Motion, this Order shall control and govern.

(the “Sale”) of certain assets of the Debtors identified in the Stalking Horse Agreement (the “Assets”), (ii) scheduling an auction and hearing to consider the Sale of the Assets, (iii) approving the form and manner of notice thereof, (iv) authorizing the Debtors to enter into the Stalking Horse Agreement (as defined below), (v) approving the Bid Protections (as defined below) in connection therewith, and (vi) granting related relief, all as more fully set forth in the Motion; this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); this Court having determined the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor:

**THE COURT FINDS THAT:**

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

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

C. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The Debtors have confirmed its consent to the entry of a final order by this Court in connection with the Motion, to the extent it is later determined this Court, absent the consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

D. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

E. The bases for the relief requested in the Motion are sections 105, 363, 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) and Federal Rule of Bankruptcy Procedure (the “Bankruptcy Rules”) 2002, 6004, 6006, 9007, and 9014.

F. Good and sufficient notice of the Motion, including the relief sought therein, and the Hearing was sufficient under the circumstances, and such notice complied with all applicable requirements under the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice need be provided. A reasonable opportunity to object or be heard regarding the relief provided in this Order has been afforded to all parties in interest.

G. The Debtors have articulated good and sufficient reasons for this Court to (i) approve the Bid Procedures, (ii) schedule the bid deadlines and the Auction and the Sale Hearing, (iii) approve the form and manner of notice of the Auction and Sale Hearing, (iv) authorize the Debtors to enter into a Stalking Horse Agreement, and (v) extend to the Stalking Horse Bidder the Bid Protections, in the exercise of its reasonable business judgment. The entry of this Order is in the best interests of the Debtors, their estate, creditors, and other parties in interest.

H. The Bid Procedures attached hereto as **Exhibit 1** are reasonable, appropriate and represent the best method for maximizing value for the benefit of the Debtors, their estates, and their creditors. The Bid Procedures were negotiated at arm’s length, in good faith, and without collusion. The Bid Procedures balance the Debtors’ interests in emerging expeditiously from the chapter 11 cases while preserving the opportunity to attract value-maximizing proposals beneficial to the Debtors, their estates, their creditors, and other parties in interest.

I. The Debtors have demonstrated compelling and sound business justifications for authorization to (i) enter into that certain Asset Purchase Agreement, a copy of which is attached

as **Exhibit A** to the Motion (the “Stalking Horse Agreement”) by and among the Debtors and the Stalking Horse Bidder, and (ii) offer the Stalking Horse Bidder the following: (a) a break-up fee equal to 3% of the Purchase Price (the “Break-Up Fee”) on the terms set forth in the Stalking Horse Agreement, (b) an expense reimbursement in the amount of \$300,000 (the “Expense Reimbursement”), and (c) an initial overbid of to **\$5,000,000.00** (the “Initial Overbid” and, together with the Break-Up Fee and the Expense Reimbursement, the “Bid Protections”). With respect to the Bid Protections, the Court makes the following findings:

- a. the Bid Protections are the product of extensive negotiations between the Debtors and the Stalking Horse Bidder conducted in good faith and at arm’s length, and the Stalking Horse Agreement (including the Bid Protections) are the culmination of a process undertaken by the Debtors and their professionals to negotiate a transaction with a bidder who was prepared to pay the highest price or best purchase price to date for the Assets to maximize the value of the Debtors’ estates;
- b. the Break-Up Fee and Expense Reimbursement are an actual and necessary cost and expenses of preserving the value of the respective Debtors’ estate;
- c. the Bid Protections are fair, reasonable, and appropriate in light of, among other things, the size and nature of the proposal Sale under the Stalking Horse Agreement, the substantial efforts that have been and will be expended by the Stalking Horse Bidder, and notwithstanding that the proposed sale is subject to higher and better offers, the substantial benefits the Stalking Horse Bidder has provided to the Debtors, their estates, their creditors, and all parties in interest, including, among other things, by increasing the likelihood that the best possible price for the Assets will be received;
- d. the Bid Protections were material inducements for, and express conditions of, the Stalking Horse Bidder’s willingness to enter into the Stalking Horse Agreement and were necessary to ensure that the Stalking Horse Bidder would continue to pursue the proposed acquisition on terms acceptable to the Debtors in their sound business judgment, subject to competitive bidding;
- e. the offer of the Bid Protections is intended to promote more competitive bidding by inducing the Stalking Horse Bid, which (i) will serve as a minimum floor bid on which all other bidders can rely with respect to the Assets, (ii) may prove to be the highest or otherwise best available offer for

the Assets, and (iii) increases the likelihood that the final purchase price will reflect the true value of the Assets; and

- f. the Stalking Horse Bidder is unwilling to commit to purchase the Assets under the terms of the Stalking Horse Agreement without approval of the Bid Protections.

J. The Debtors' performance of certain pre-closing obligations contained in the Stalking Horse Agreement is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest, and represents a reasonable exercise of the Debtors' sound business judgment.

K. The Stalking Horse Bidder is not an "insider" or "affiliate" of the Debtors, as those terms are defined in § 101 of the Bankruptcy Code, and no common identity of incorporators, directors, managers, controlling shareholders, or other insider of the Debtors exist between the Stalking Horse Bidder and the Debtor.

L. The notice, substantially in the form attached hereto as Exhibit 2, provided by the Debtors regarding the Sale of the Assets by Auction and Sale Hearing (the "Sale Notice"), is reasonably calculated to provide interested parties with timely and proper notice of the proposed Sale, including, without limitation: (i) the date, time, and place of the Auction (if one is held), (ii) the Bid Procedures and certain dates and deadlines related thereto, (iii) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale Hearing, (iv) reasonably specific identification of the assets for sale, (v) instructions for promptly obtaining a copy of the Stalking Horse Agreement, and (vi) a description of 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 sale proceeds.

M. Neither the filing of the Motion, entry of this Order, the solicitation of bids or the conducting of the Auction in accordance with the Bid Procedures nor any other actions taken by

the Debtors in accordance therewith shall constitute a sale of the Assets, which sale will only take place, if at all, following the Sale Hearing.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. All objections, statements, and reservations of rights with respect to the relief requested in the Motion with respect to the Bid Procedures that have not been withdrawn, waived, or settled, as announced to the Court at the hearing on the Motion or by stipulation filed with the Court, are overruled and denied on the merits with prejudice.

**A. The Bid Procedures**

3. The Bid Procedures, attached hereto as **Exhibit 1**, are hereby approved in their entirety and fully incorporated into this Order. The Bid Procedures shall govern the submission, receipt, and analysis of all bids relating to the proposed Sale and any party desiring to submit a higher or better offer for the Assets must comply with the terms of the Bid Procedures and this Order. The Bid Procedures shall also govern the terms on which the Debtors will proceed with the Auction and/or Sale pursuant to the Stalking Horse Agreement.

4. The Stalking Horse Bidder shall be deemed a Qualified Bidder pursuant to the Bid Procedures for all purposes.

5. The following dates and deadlines regarding competitive bidding are hereby established (subject to modification in accordance with the Bid Procedures):

- (All times are prevailing Eastern Time)
- ☐ at 5:00 p.m.: Deadline to submit Bid to be considered for the Auction
- ☐ at 10:00 a.m.: Proposed date of Auction
- ☐ at 5:00 p.m.: Debtors to file notice of Successful Bidder
- ☐ at 5:00 p.m.: Deadline to file and serve objections to relief requested at Sale Hearing (except for any objection that arises at the Auction)
- ☐ at  a.m./p.m.: Proposed date of Sale Hearing

**B. Entry into Stalking Horse Agreement**

6. The Stalking Horse Agreement is hereby approved. The Debtors are authorized to enter into the Stalking Horse Agreement with the Stalking Horse Bidder and to pay the Break-Up Fee and Expense Reimbursement pursuant to the terms and conditions set forth in the Stalking Horse Agreement.

7. The Debtors are authorized to perform all of its respective pre-closing obligations under the Stalking Horse Agreement; *provided* that for the avoidance of doubt, approval and consummation of the transactions contemplated by the Stalking Horse Agreement shall be subject to the terms and conditions herein and the entry of an order approving the Sale of the Assets and the satisfaction or waiver of the other conditions to closing on the terms set forth in the Stalking Horse Agreement.

**C. Approval of the Bid Protections**

8. The Bid Protections are hereby approved. The Debtors are authorized to pay the Stalking Horse Bidder the Break-Up Fee and Expense Reimbursement if and to the extent they become due and payable under the Stalking Horse Agreement and the terms of the Bid Procedures Order. The Break-Up Fee and Expense Reimbursement shall be treated as post-petition debt



secured by a lien on the Assets under Section 364(c) of the Bankruptcy Code subject only to the lien of U.S. Real Estate Credit Holdings III-A, LP.

**D. The Auction**

9. As further described in the Bid Procedures, if a Qualified Bid, other than the Stalking Horse Agreement, is received by the Bid Deadline, the Debtors will conduct the Auction virtually at [ ] [ ].m. (**prevailing Eastern Time**) on \_\_\_\_\_, **2023**, or such later time on such day or other place as the Debtors shall notify all Qualified Bidders who have submitted Qualified Bids, if a Qualified Bid is timely received. The Debtors are authorized, subject to the terms of this Order and the Bid Procedures, to take actions reasonably necessary to conduct and implement the Auction. The Debtors and their professionals shall have the right to adjourn or cancel the Auction at or prior to the Auction, without the need for further approval by the Bankruptcy Court.

10. If the Debtors do not receive a Qualified Bid (other than the Stalking Horse Agreement): (i) the Debtors may cancel the Auction, (ii) the Stalking Horse Agreement may be deemed by the Debtors to be the Successful Bid for the Assets, and (iii) the Debtors shall be authorized to seek approval of the Stalking Horse Agreement as the Successful Bid at the Sale Hearing.

11. Only Qualified Bidders (including, for the avoidance of doubt, the Stalking Horse Bidder) will be entitled to make any Bids at the Auction.

12. The Debtors and their professionals shall direct and preside over the Auction and the Auction shall be transcribed or videotaped.

13. Each Qualified Bidder (including, for the avoidance of doubt, the Stalking Horse Bidder) participating in the Auction must confirm that it (a) has not engaged in any collusion with respect to the bidding or sale of any of the assets described herein, (b) has reviewed, understands, and accepts the Bid Procedures, and (c) has consented to the core jurisdiction of this Court and to

the entry of a final order by this Court on any matter related to this Order, the Sale, or the Auction if it is determined that this Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

14. The Stalking Horse Bidder shall be deemed to be a Qualified Bidder and is not required to make any Good Faith Deposit other than as contemplated in the Stalking Horse Agreement.

15. To the fullest extent permissible under Bankruptcy Code section 363(k), the Stalking Horse Bidder, in its capacity as DIP Lender, may credit bid, as a Qualified Bid or subsequent Bid, in its sole and absolute discretion, any portion and up to the entire amount of its secured claims (the “Credit Bid”).

16. In the event of a competing Qualified Bid, all Qualified Bidders will be entitled, but not obligated, to submit Overbids.

17. The Debtors may: (i) determine which Qualified Bid or combination of Qualified Bids (including the Stalking Horse Agreement) is the highest or best offer; (ii) reject at any time before the entry of the Sale Order any Bid (other than the Stalking Horse Agreement) that, in the discretion of the Debtor, is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or the Bid Procedures, or (c) contrary to the best interest of the Debtor, its estate, its creditors, interest holders, or other parties in interest; and (iii) at or before the conclusion of the Auction may impose such other terms and conditions upon Qualified Bidders (other than the Stalking Horse Bidder) as the Debtors determine to be in the best interest of the Debtors’ estates.

18. No person or entity, other than the Stalking Horse Bidder, shall be entitled to any expense reimbursement, breakup fee, topping or termination fee, or other similar fee or payment,

and, by submitting a Bid, such person or entity is deemed to have waived its right to request or file with this Court any request for expense reimbursement or any other fee of any nature in connection with the Auction and the Sale, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

**E. Notice of the Sale Process**

19. The Sale Notice, in substantially the form as annexed to this Order as **Exhibit 2**, is hereby approved.

20. Within three (3) business days after the entry of this Order, the Debtors (or their agent) shall serve the Sale Notice on the Notice Parties (as defined in the Motion).

21. As soon as reasonably practicable after the entry of the Bid Procedures Order, the Debtors shall publish the Sale Notice in The Wall Street Journal, and such publication notice shall be deemed sufficient and proper notice of the Sale to any other interested parties whose identities are unknown to the Debtors.

22. The Post-Auction Notice, in substantially the form annexed to this Order as **Exhibit 3**, is hereby approved.

23. Subsequent to the conclusion of the Auction, the Debtors (or their agent) shall serve the Post-Auction Notice on the Notice Parties (as defined in the Motion).

**F. The Sale Hearing**

24. The Sale Hearing will be conducted on \_\_\_\_\_ at [\_\_\_\_] a.m./p.m. (**prevailing Eastern Time**). The Debtors will seek entry of an order of the Court at the Sale Hearing approving and authorizing the sale of the Assets to the Successful Bidder. Upon entry of this Order, the Debtors are authorized to perform any obligation intended to be performed prior to the Sale Hearing or entry of the Sale Order with respect thereto. The Sale Hearing may be adjourned from time to time without further notice other than such announcement being made in open court or a notice of adjournment filed on the Court's docket.

**G. Objections to the Sale**

25. Objections, if any, to the relief requested in the Motion relating to the Sale (each, a “Sale Objection”) must: (i) be in writing, (ii) comply with the Bankruptcy Rules and the Local Rules, (iii) be filed with the Court, and (iv) be served so it is actually received no later than **5:00 p.m. (prevailing Eastern Time) on [\_\_]**.

26. A party’s failure to timely file a Sale Objection in accordance with this Order shall forever bar the assertion, at the applicable Sale Hearing or otherwise, of any objection to the relief requested in the Motion, or to the consummation of the Sale and the performance of the related transactions, including the transfer of the Assets to the applicable Successful Bidder(s), free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and shall be deemed to be a “consent” for purposes of section 363(f) of the Bankruptcy Code.

**H. Other Relief Granted**

27. Nothing in this Order, the Stalking Horse Agreement, or the Motion shall be deemed to or constitute the assumption or assignment of an executory contract or unexpired lease.

28. The requirements of Bankruptcy Rules 6004(h) and 6006(d) are waived.

29. The Debtors are hereby authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

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

31. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry, notwithstanding any provision in the Bankruptcy Rules or the Local Rules to the contrary, and the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

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

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**Submitted by:**

Joseph Pack, Esq.

Counsel for the Debtors and Debtors-in-Possession

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**Exhibit 1 to Bid Procedures Order**

**Bid Procedures**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

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	)	
In re:	)	
	)	Chapter 11
Banyan Cay Resort & Golf, LLC, <i>et al.</i> <sup>1</sup>	)	
	)	Case No. 23-12386
	)	
Debtors.	)	(Jointly Administered)
	)	

**BID PROCEDURES**

In the exercise of their good faith reasonable business judgment, the above-captioned debtors and debtors in possession (the “Debtors”) have executed an Asset Purchase Agreement (the “Stalking Horse Agreement”) with Westside Property Investment Company, Inc., or an affiliated assignee (the “Stalking Horse Bidder”), pursuant to which (i) the Stalking Horse Bidder proposes to (a) purchase, acquire, and take assignment and delivery of the Assets (as defined in the Stalking Horse Agreement) and (b) assume certain Assumed Contracts, Permits and Licenses, and Assumed Liabilities (each as defined in the Stalking Horse Agreement), and (ii) the Debtors propose to, upon the termination of the Stalking Horse Agreement, pay the Stalking Horse Bidder an aggregate stalking-horse bidder fee in an amount equal to \$3,063,000 to be paid to the Stalking Horse Bidder in the event of and upon the closing of a sale of the Assets to any other bidder, which break-up fee shall be treated as a senior priority post-petition debt second only to the lien of U.S. Real Estate Credit Holdings III-A, LP (the “Break-Up Fee”), and an expense reimbursement of up to \$300,000 limited to actual legal fees and actual costs incurred in connection with the Stalking Horse Agreement, which expense reimbursement shall be treated as a senior priority post-petition debt second only to the lien of U.S. Real Estate Credit Holdings III-A, LP (the “Expense Reimbursement”), in accordance with the terms and conditions of the Stalking Horse Agreement.

On [\_\_\_\_], 2023, the Bankruptcy Court entered an order [Docket No. \_\_\_\_] (the “Bid Procedures Order”) approving, *inter alia*, these bid procedures (the “Bid Procedures”).

These Bid Procedures set forth the process by which the Debtors are authorized to conduct the auction (the “Auction”) for the sale (the “Sale”) of the Assets. Subject to the entry of the Sale Order, the Sale may be implemented pursuant to the terms and conditions of the Stalking Horse Agreement, as the same may be amended pursuant to the terms thereof, subject to the receipt of higher or otherwise better Bids (as defined below) in accordance with these Bid Procedures.

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<sup>1</sup> The Debtors are: (i) Banyan Cay Investment, LLC; (ii) Banyan Cay Mezzanine Borrower, LLC; (iii) Banyan Cay Resort & Golf LLC; (iv) Banyan Cay Dev. LLC; (v) Banyan Cay Villas, LLC; and (vi) Banyan Cay Maintenance, LLC. The address of the Debtors is 1900 Banyan Club Road, West Palm Beach, Florida 33401.

Pursuant to the Bid Procedures, the Debtors will determine the highest or otherwise best price for the sale of the Assets.

## **I. Important Dates**

- (All times are prevailing Eastern Time)
- \_\_\_\_ at **5:00 p.m.**: Deadline to submit Bid to be considered for the Auction
- \_\_\_\_ at **10:00 a.m.**: Proposed date of Auction
- \_\_\_\_ at **5:00 p.m.**: Debtors to file notice of Successful Bidder
- \_\_\_\_ at **4:00 p.m.**: Deadline to file and serve objections to relief requested at Sale Hearing (except for any objection that arises at the Auction)
- \_\_\_\_ at \_\_\_\_ a.m./p.m.: Proposed date of Sale Hearing

## **J. Marketing Process**

### **1. Auction Qualification Process**

To be eligible to participate in the Auction, each offer, solicitation, or proposal (each, a “Bid”), and each party submitting such Bid (each, a “Bidder”), must be determined by the Debtors to satisfy each of the following conditions:

- (i) Stalking Horse Bidder. The Stalking Horse Bidder shall be deemed to be a Qualified Bidder and the Stalking Horse Agreement shall be deemed to be a Qualified Bid (the “Stalking Horse Bid”), without the need to comply with any of the requirements set forth in this section.
- (ii) Form and Contents. All Bids shall be in the form of an offer letter from a person or persons that the Debtor, in its reasonable discretion taking into account its fiduciary duties, deems financially able to consummate the purchase of the Assets, which letter states and includes:
  - (A) Marked Agreement. Each Bid must state the Bidder offers to purchase some or all of the Assets upon the terms and conditions set forth in an executed and attached complete asset purchase agreement prepared and executed by the Bidder (an electronic version in Word format and blacklined against the Stalking Horse Agreement), together with its exhibits and schedules, including terms relating to price and the time of closing (the “Proposed Agreement”);
  - (B) Purchase Price. Each Bid must clearly set forth the terms of any proposed Transaction, including and identifying separately any cash and non-cash components of the proposed Transaction consideration, such as certain



liabilities to be assumed by the Bidder as part of the Transaction, for example (the “Purchase Price”);

- (C) Overbid. Each Bid or combination of Bids (a) must propose a purchase price equal to or greater than the sum of (i) the value of the Stalking Horse Agreement, as determined by the Debtors; and (ii) an initial overbid of at least **\$5,000,000.00** (the “Initial Overbid”), and (b) must obligate the Bidder(s) to pay, to the extent provided in the Agreement, all amounts which the Stalking Horse Bidder under the Agreement has agreed to pay, including (if any) assumed liabilities (as set forth in the Stalking Horse Agreement);
- (D) Contingencies; No Financing or Diligence Outs. A Bid shall not be conditioned on a Bidder obtaining, or the sufficiency of, financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions;
- (E) Evidence of Financial Ability to Close. A Bid shall be accompanied by reasonable evidence (in the form of current bank statements, funds availability letters from an acceptable financial institution, or other evidence of available funding) of the Bidder’s financial ability to promptly consummate its Bid;
- (F) Identity. Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Bidder if such Bidder is an entity formed for the purpose of consummating the proposed Transaction contemplated by such Bid), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any Bid. Each Bid must also include contact information for the specific person(s) and counsel the Debtors’ advisors should contact regarding such Bid;
- (G) Authorization. Each Bid must contain evidence that the Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors) with respect to the submission of its Bid and the consummation of the Transactions contemplated in such Bid;
- (H) Substantial Contribution Waiver. Each Bid must contain an express waiver, effective upon submission of the Qualified Bid, of any substantial contribution claims by the Bidder;
- (I) Expenses; Disclaimer to Fees. Each Bid must disclaim any right to receive a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Potential

Bidder (other than the Stalking Horse Bidder) will be permitted to request, nor be granted by the Debtor, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, substantial contribution, or any other similar form of compensation, and by submitting a Bid any Potential Bidder is waiving any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code;

(J) Consummation. Each Bid must include a statement that the Bidder is prepared to consummate the transaction, upon entry of an order of this Court approving the Sale to the Successful Bidder (the “Sale Order”);

(K) Irrevocability. Each Bid must include a statement that, in the event the Bidder becomes the Successful Bidder or the Back-up Bidder (as defined below), such Qualified Bidder’s offer is irrevocable until two (2) business days after the closing of the sale of the Assets;

(L) Actual Value. The Bid must state the proposed actual value of such Bidder’s bid to the Debtors’ estates.

(iii) As Is, Where Is. The sale of the Assets shall be on an “as is, where is” and “with all defects” basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents, or estates, except to the extent set forth in the Proposed Agreement of the Successful Bidder.

(iv) Good Faith Deposit. Each Bid must be accompanied by a cash deposit in an amount equal to 5% of the aggregate value of the cash consideration of the Bid to be held in an escrow account to be identified and established by the Debtors (the “Deposit”).

(v) Binding Effect. By submitting its Bid, each Bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of the Bidding Procedures and to refrain from submitting a Qualified Bid or seeking to reopen the Auction after conclusion of the Auction.

(vi) Time Frame for Closing. A Bid by a Bidder must be reasonably likely to be consummated, if selected as the Successful Bid, within a time frame acceptable to the Debtors, but in no event later than thirty (30) Business Days following the date upon which the Sale Order becomes a Final Order.

A Bid received before the Bid Deadline will be considered a “Qualified Bid” and each Bidder that submits a Qualified Bid will be considered a “Qualified Bidder” if the Debtors determines that such Bid meets the requirements above for a Bid as set forth in these Bid Procedures.

**Bid Deadline**. The Debtors must receive a Bid in writing, on or before \_\_\_\_\_ at 5:00 p.m. (prevailing Eastern Time) or such later date as may be agreed to by the Debtors (the “**Bid Deadline**”). Bids must be sent to the following by the Bid Deadline to be considered: the counsel

to the Debtors, Pack Law, at 51 NE 24th Street, #108, Miami, Florida 33137, joe@packlaw.com and jessey@packlaw.com.

Within two (2) business days after the Bid Deadline, the Debtors will notify each Qualified Bidder whether such party is a Qualified Bidder and shall provide the Notice Parties, as well as the Stalking Horse Bidder with a copy of each Qualified Bid.

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

Prior to the Auction, the Debtors and their advisors will evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors' reasonable business judgment, the highest or otherwise best bid (the "Baseline Bid" and the Bidder making such Baseline Bid, the "Baseline Bidder"), and shall notify the Stalking Horse Bidder and all Qualifying Bidders with Qualifying Bids of the Baseline Bid no later than the opening of the Auction.

## **2. Credit Bid**

The Stalking Horse Bidder, to the extent the same is the Debtors' debtor in possession lender ("DIP Lender"), shall be deemed to be a Qualified Bidder and is not required to make any Good Faith Deposit in excess of the Deposit contemplated in the Stalking Horse Agreement and/or the DIP Credit Agreement. To the fullest extent permissible under Bankruptcy Code § 363(k), the Stalking Horse Bidder will be allowed to credit bid its secured claim, the maximum amount of such credit bid to be the amount of the Post-Petition Obligations (as defined in the DIP Credit Agreement) owed thereto under the DIP Credit Agreement, in its sole and absolute discretion (the "Credit Bid").

## **K. Auction**

If more than one Qualified Bid is received by the Bid Deadline (including the Stalking Horse Agreement), the Debtors will conduct the Auction to determine the highest and best Qualified Bid or combination of Qualified Bids. This determination shall take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to the estates, including, *inter alia*, the following: (a) the amount and nature of the consideration; (b) the ability of the Qualified Bidder to close the proposed Transaction and the conditions related thereto, and the timing thereof; (c) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (d) any purchase price adjustments; (e) the impact of the transaction on any actual or potential litigation; (f) the net after-tax consideration to be received by the Debtors' estates; (g) the tax consequences of such Qualified Bid; and (h) the consent of the parties

in interest and/or the cost and expense to the Debtors of resolving sale issues before Closing (collectively, the “Bid Assessment Criteria”).

If no Qualified Bids other than the Stalking Horse Bid are received prior to the Bid Deadline, then the Auction will not occur, the Stalking Horse Agreement shall be deemed the Successful Bid, and, subject to the termination rights under the Stalking Horse Agreement, the Debtors will pursue entry of an order by the Bankruptcy Court authorizing the Sale to the Stalking Horse Bidder as soon as practicable.

### **Procedures for Auction**

The Auction, if necessary, will take place virtually on \_\_\_\_ at [\_\_]:00 [\_\_].m. (**prevailing Eastern Time**) or such later time on such day or other place as the Debtors shall notify all Bidders who have submitted Qualified Bids.

#### **1. The Debtors Shall Conduct the Auction**

The Debtors and their professionals shall direct and preside over the Auction and the Auction shall be transcribed or videotaped. Prior to the commencement of the Auction, the Debtors shall determine which of the Qualified Bids, at such time, is the highest and best bid for purposes of constituting the opening bid of the Auction, and shall promptly notify the Stalking Horse Purchaser and all Qualified Bidders with Qualified Bids of the Baseline Bid.

The Debtors and their professionals shall have the right to adjourn or cancel the Auction at or prior to the Auction, without the need for further approval by the Bankruptcy Court.

All Bids made after the start of the Auction shall be Overbids (as defined below), and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all Bidders who have submitted Qualified Bids. The Debtors shall maintain a transcript of all bids made and announced at the Auction, including the Starting Bid and all Overbids.

#### **2. Terms of Overbids**

An “Overbid” is any Bid made at the Auction subsequent to the Debtors’ announcement of the Starting Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

##### **(1) Minimum Overbid Increment**

Any Overbid after the Baseline Bid shall be made in increments of at least bidding on the Assets must be in initial minimum overbid increments of at least \$250,000.00, which increment may be reduced as appropriate (the “Minimum Overbid Increment”). Additional consideration in excess of the amount set forth in the Starting Bid may include cash and/or non-cash consideration; *provided, however* that the value for such non-cash consideration shall be determined by the Debtors in their reasonable business judgment.

**(2) Stalking Horse Credit Bid Rights**

As part of any Overbid made by the Stalking Horse Bidder, the Stalking Horse Bidder shall be entitled to credit bid: (a) to the fullest extent possible under section 364(k) of the Bankruptcy Code, all DIP Financing Obligations which may be owed to the Stalking Horse Bidder, and (b) the Break-Up Fee and Expense Reimbursement.

**(3) Remaining Terms Are the Same as for Qualified Bids**

Except as modified herein, an Overbid must comply with the conditions for a Qualified Bid set forth above; *provided, however*, the Bid Deadline shall not apply, and no additional Good Faith Deposit shall be required beyond the Deposit previously submitted by a Qualified Bidder. Any Overbid must include, in addition to the amount and form of consideration of the Overbid, a description of all changes (if any) requested by the Qualified Bidder to the Stalking Horse Agreement or a previously submitted Modified Purchase Agreement, in connection therewith (including any changes to the designated assigned contracts and leases and assumed liabilities). Any Overbid must remain open and binding on the Bidder until and unless the Debtors accept a higher Overbid.

**(4) No Collusion; Good-Faith *Bona Fide* Offer**

Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction (i) it has not engaged in any collusion with respect to the Sale or bidding (including it has no agreement with any other Bidder or Qualified Bidder to control the price) and (ii) its Qualified Bid is the good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bidder.

**(5) Backup Bidder**

Notwithstanding anything in the Bid Procedures to the contrary, if an Auction is conducted, the party(ies) with the second highest or second best Qualified at the Auction, as determined by the Debtors, in the exercise of their business judgment, shall be required to serve as backup bidder (the “Backup Bidder”). The Backup Bidder shall be required to keep its initial Bid(s) (or if the Backup Bidder submitted one or more Overbids at the Auction, its final Overbid) (the “Backup Bid”) open and irrevocable until two (2) business days after the closing of the sale of the Assets (the “Outside Backup Date”).

**3. Closing the Auction**

The Auction shall continue until there is only one Qualified Bid or combination of Qualified Bids that the Debtors determine, in their reasonable business judgment, is the highest and best Qualified Bid(s) at the Auction (the “Successful Bid” and the Bidder(s) submitting such Successful Bid, the “Successful Bidder”). In making this decision, the Debtors, in consultation with their financial and legal advisors, shall consider the Bid Assessment Criteria. The Auction shall not close unless and until all Bidders who have submitted Qualified Bids have been given a reasonable opportunity, in the Debtors’ discretion, to submit an Overbid at the Auction to the then-existing Overbid and the Successful Bidder has submitted fully executed Transaction Documents memorializing the terms of the Successful Bid.

The Auction shall close when the Successful Bidder submits fully executed sale and transaction documents memorializing the terms of the Successful Bid.

Promptly following the Debtors' selection of the Successful Bid and the conclusion of the Auction, the Debtors shall announce the Successful Bid and Successful Bidder and shall file with the Bankruptcy Court notice of the Successful Bid and Successful Bidder.

The Debtors shall not consider any Bids submitted after the conclusion of the Auction.

#### **L. Sale Hearing**

The Bankruptcy Court has scheduled a hearing (the "Sale Hearing") on \_\_\_\_\_, at \_\_\_\_:\_\_\_\_**.m. (prevailing Eastern Time)**, at which hearing the Debtors may, in their discretion, seek approval of the Sale with the Successful Bidder. Objections to the sale of the Assets to the Successful Bidder or Backup Bidder must be filed, comply with the Bankruptcy Rules and Local Rules, and be served so they are actually received by no later than **5:00 p.m. (prevailing Eastern Time)** on \_\_\_\_\_ (except for any objection that arises at the Auction).

#### **M. Reservation of Rights**

The Debtors reserve their rights to modify these Bid Procedures in its reasonable business judgment in any manner that will best promote the goals of the bidding process. Notwithstanding the foregoing and subject in all respects to the Stalking Horse Agreement, the Debtors may not impair or modify the Stalking Horse Bidder's rights and obligations under the Stalking Horse Agreement.

**Exhibit 2 to Bid Procedures Order**

**Sale Notice**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:	)	
	)	
Banyan Cay Resort & Golf, LLC, <i>et al.</i> <sup>1</sup>	)	Chapter 11
	)	Case No. 23-12368
	)	
Debtors.	)	(Jointly Administered)
	)	

**NOTICE OF BID PROCEDURES, AUCTION, HEARING AND DEADLINES  
RELATING TO THE SALE OF CERTAIN PROPERTY OF THE DEBTORS' ESTATES**

**PLEASE TAKE NOTICE** that on \_\_\_\_, the above-captioned debtors and debtors in possession (the “Debtors”) in the above-captioned cases (the “Bankruptcy Cases”), filed a Motion [Docket No. \_\_\_\_] (the “Bid Procedures and Sale Motion”) seeking, *inter alia*, approval of certain bid procedures, setting the date for an auction of certain property substantively consolidated with the Debtors’ estates, and setting the date for a hearing to approve of such sale.<sup>2</sup> The Debtors seek to complete a sale (the “Sale”) of nearly all of their real property, as well as other assets related thereto (the “Assets”) to a prevailing bidder or bidders (the “Successful Bidder”) at an auction free and clear of all liens, claims, encumbrances and other interests pursuant to Bankruptcy Code section 363 (the “Auction”).

**PLEASE TAKE FURTHER NOTICE** that, on [\_\_\_\_], 2023 the Bankruptcy Court entered an order [Docket No. \_\_\_\_] (the “Bid Procedures Order”) approving the Bid Procedures set forth in the Bid Procedures and Sale Motion (the “Bid Procedures”), which set the key dates and times related to the sale of the Assets. **All interested bidders should carefully read the Bid Procedures.** To the extent there are any inconsistencies between the Bid Procedures and the summary description of its terms and conditions contained in this notice, the terms of the Bid Procedures shall control.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Bid Procedures, the Debtors must receive a Qualified Bid from interested bidders in writing, on or before [\_\_\_\_] **at 5:00 p.m. (prevailing Eastern Time)** or such later date as may be agreed to by the Debtors (the “Bid Deadline”). To be considered, Qualified Bids must be sent to the following at or before the Bid

<sup>1</sup> The Debtors are: (i) Banyan Cay Investment, LLC; (ii) Banyan Cay Mezzanine Borrower, LLC; (iii) Banyan Cay Resort & Golf LLC; (iv) Banyan Cay Dev. LLC; (v) Banyan Cay Villas, LLC; and (vi) Banyan Cay Maintenance, LLC. The address of the Debtors is 1900 Banyan Club Road, West Palm Beach, Florida 33401.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Bid Procedures and Sale Motion.



Deadline: the counsel to the Debtors, Pack Law, at 51 NE 24th Street, #108, Miami, Florida 33137, joe@packlaw.com and jessey@packlaw.com.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the terms of the Bid Procedures, if the Debtors receive one or more Qualified Bids (other than the Stalking Horse Agreement) by the Bid Deadline, the Auction will be conducted virtually on [ ] at [ ]:00 [ ].m. (**prevailing Eastern Time**), or at such other place, date and time as may be designated by the Debtors.

**PLEASE TAKE FURTHER NOTICE** that a hearing will be held to approve the sale of the Assets to the Successful Bidder (the “Sale Hearing”) before the Honorable Erik P. Kimball, U.S. Bankruptcy Court for the Southern District of Florida, on [ ] at [ ] a.m./p.m. (**prevailing Eastern Time**), or at such time thereafter as counsel may be heard or at such other time as the Bankruptcy Court may determine. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or on the agenda for such Sale Hearing. Objections to the sale of the Assets to the Successful Bidder must be filed and served so they are received no later than **5:00 p.m. (prevailing Eastern Time)** on [ ].

**PLEASE TAKE FURTHER NOTICE** that the Debtors are seeking to waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d) in order for the Sale to close immediately upon entry of the Sale Order by this Court.

**PLEASE TAKE FURTHER NOTICE** that this notice is subject to the full terms and conditions of the Bid Procedures and Sale Motion, the Bid Procedures Order, and the Bid Procedures, which shall control in the event of any conflict, and the Debtors encourage parties in interest to review such documents in their entirety. A copy of the Bid Procedures and Sale Motion, the Bid Procedures, and the Bid Procedures Order may be obtained for free by contacting the Debtors’ undersigned counsel.

Dated: [ ], 2023

Respectfully submitted,

**PACK LAW**

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

51 Northeast 24th Street, Suite 108  
Miami, Florida 33137  
Telephone: (305) 916-4500

By: /s/ [DRAFT]

Joseph A. Pack

Email: joe@packlaw.com

Florida Bar No. 117882

Jessey J. Krehl

Email: jessey@packlaw.com

Florida Bar No. 1025848

**Exhibit 3 to Bid Procedures Order**

**Post-Auction Notice**

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Bid Procedures and Sale Motion.

**PLEASE TAKE FURTHER NOTICE** that the Sale Hearing to consider the approval of the Sale of the Assets to the Successful Bidder free and clear of all liens, claims, interests, and encumbrances, in accordance with section 363(f) of the Bankruptcy Code, will be held before the Honorable Erik P. Kimball, United States Bankruptcy Judge for the Southern District of Florida, on [ ] at [ ].

**PLEASE TAKE FURTHER NOTICE** that the Sale Hearing may be adjourned from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court or by notice filed on the docket in the above-captioned case.

**PLEASE TAKE FURTHER NOTICE** that, at the Sale Hearing, the Debtors will seek Bankruptcy Court approval of the Successful Bid and the Backup Bid (if any). Unless the Bankruptcy Court orders otherwise, the Sale Hearing shall be an evidentiary hearing on matters relating to the Sale and there will be no further bidding at the Sale Hearing. In the event that the Successful Bidder cannot or refuses to consummate the Sale because of a breach or failure on the part of the Successful Bidder, the Backup Bidder will be deemed the new Successful Bidder and the Debtors shall be authorized to close with the Backup Bidder on the Backup Bid without further order of the Bankruptcy Court.

**PLEASE TAKE FURTHER NOTICE** that this Notice is subject to the terms and conditions of the Motion, the Bid Procedures Order, and the Bid Procedures, and the Debtors encourage parties in interest to review such documents in their entirety. Parties with questions regarding this Notice should contact the Debtors' counsel at the contact information provided herein.

Dated: [ ], 2023

Respectfully submitted,

**PACK LAW**

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

51 Northeast 24th Street, Suite 108

Miami, Florida 33137

Telephone: (305) 916-4500

By: /s/ [DRAFT]

Joseph A. Pack

Email: joe@packlaw.com

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Jessey J. Krehl

Email: jessey@packlaw.com

Florida Bar No. 1025848

**Exhibit C to Motion**

**Proposed Sale Order**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

_____	)	
In re:	)	
	)	Chapter 11
Banyan Cay Resort & Golf, LLC, <i>et al.</i> <sup>1</sup>	)	
	)	Case No. 23-12368
	)	
Debtors.	)	(Jointly Administered)
_____	)	

**ORDER (I) AUTHORIZING AND APPROVING THE SALE OF CERTAIN  
PROPERTY OF THE DEBTORS, FREE AND CLEAR OF LIENS, CLAIMS,  
ENCUMBRANCES AND INTERESTS AND (II) GRANTING RELATED RELIEF**

**THIS MATTER** came on before the Court for final hearing on [\_\_] at \_\_\_\_\_  
a.m./p.m. (the “Sale Hearing”) upon the Motion of the above-captioned debtors and debtors in  
possession (the “Debtors”), pursuant to 11 U.S.C. §§105, 363, Fed. R. Bankr. P. 2002, 6004 and  
9014 and Local Rules 2002-1(C)(2) and 6004-1 for the entry of an order approving, *inter alia*, the

<sup>1</sup> The Debtors are: (i) Banyan Cay Investment, LLC; (ii) Banyan Cay Mezzanine Borrower, LLC; (iii) Banyan Cay Resort & Golf LLC; (iv) Banyan Cay Dev. LLC; (v) Banyan Cay Villas, LLC; and (vi) Banyan Cay Maintenance, LLC. The address of the Debtors is 1900 Banyan Club Road, West Palm Beach, Florida 33401.

sale of certain property of the Debtors' estates. The Sale Hearing was conducted pursuant to the Court's Order approving such hearing and approving the bid procedures for the Sale (the "Bid Procedures Order") [Docket No. [\_\_]].

Pursuant to the Bid Procedures Order, the Debtors conducted an auction (the "Auction") of the Assets<sup>2</sup> on [\_\_] (the "Auction Date"). The Auction was conducted at [\_\_].

The highest and best bids submitted in connection with the Auction for the Assets was submitted by \_\_\_\_\_ (collectively, the "Successful Bidder"). Pursuant to the Bid Procedures Order, the Debtors, through their CRO, Gerard McHale of McHale, P.A., have determined the Successful Bidder's bid was the highest and best offer to purchase the Assets.

The Court, having read and considered the Motion, the Bid Procedures Order, having obtained proffers on the record at the Sale Hearing from the Debtors' CRO and [\_\_] of Keen-Summit, which proffers were subject to the right of cross-examination and which were accepted by the Court, having considered the statements of counsel for the Debtors on the record at the Sale Hearing, having noted no objections to the Bid Procedures Order or the Auction, and having considered all other matters of record in the instant case, after due deliberation, has determined that the relief requested in the Motion is in the best interests of the Debtors' estates and their creditors, and that good and sufficient cause has been shown in support of such relief, and it appearing that due and appropriate notice of the Motion, the Bid Procedures Order, the Bid Procedures, the Auction and the Sale Hearing having been given, and it appearing that no other notice of the relief granted by this Order need be given, and the Court having conducted the Sale Hearing, at which time all parties in interest were offered an opportunity to be heard with respect to the Motion and the Sale, and the Debtors' CRO and Keen-Summit having conducted a marketing

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<sup>2</sup> All capitalized terms used herein shall have the same meaning ascribed to them in the Motion, unless otherwise defined.

process in compliance with the Bid Procedures Order and determined that the Successful Bidder has submitted the highest and best bids for the Assets, and all parties in interest having been heard, or having had the opportunity to be heard, regarding entry of this Order and the approval and confirmation of the Successful Bidder's bid and the Sale to the Successful Bidder, this Court, based upon the arguments, testimony and evidence presented to it, makes the following findings of fact and conclusions of law:<sup>3</sup>

A. This Court has jurisdiction to hear and determine the Motion and to grant the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

C. This proceeding is a "core proceeding" within the meaning of 28 U.S.C. § 157(b)(2)(A), (N) and (O).

D. The statutory predicates for the relief requested in the Motion are sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.

E. As evidenced by the certificates of service filed with the Court, and based upon the representations of counsel at the Sale Hearing, (i) proper, timely and adequate notice of the Motion,

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<sup>3</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.



the Bid Procedures Order, the Sale Hearing, the Sale, the Auction, and the Bid Deadline has been provided in accordance with Bankruptcy Rules 2002, 6004, 9007 and 9014, (ii) such notice was good, sufficient and appropriate under the circumstances, and (iii) no other or further notice of the Motion, the Bid Procedures Order, the Sale Hearing, the Sale, the Auction or the Bid Deadline is necessary or shall be required.

F. In compliance with the Bid Procedures Order, actual written notice of the Motion and the Sale Hearing and a reasonable opportunity to object or be heard with respect to the Motion and the Sale has been afforded to all interested persons and entities, including, without limitation: (i) the Office of the United States Trustee for the Southern District of Florida; (ii) counsel to the Successful Bidder; (iii) all entities known to have asserted any lien, interest, or encumbrance upon the Assets; (iv) appropriate state regulatory agencies; and (v) all other parties who filed requests for notice under Bankruptcy Rule 2002 in this case.

G. Notice, as specified in the preceding paragraphs and as evidenced by the certificates of service filed with the Court, has been provided in the form and manner specified in the Motion and required by the Bid Procedures Order, and the Court finds that notice is adequate and sufficient in all respects to bind all creditors and parties in interest in this proceeding.

H. The process for the sale of the Assets was conducted in accordance with the Bid Procedures Order and in a non-collusive, fair and good faith manner.

I. Prior to the Auction, the Debtors solicited offers to purchase the Assets from a wide variety of parties. In so doing, the Debtors' CRO and Keen-Summit afforded potential bidders with confidential due diligence access to provide any such bidders an opportunity to submit Qualified Bids.

L. The Bid Procedures were designed to obtain the highest value for Assets for the Debtors and their estates. The Successful Bidder's bid represents the highest and best offer for the Assets. The Debtors' determination that the Successful Bidder's bid constitute the highest and best offer for the Assets, was a reasonable, valid and sound exercise of the Debtors' business judgment.

M. The Successful Bidder is purchasing the Assets in good faith and is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, and is, therefore, entitled to the protection of that provision. The Successful Bidder has proceeded in good faith in all respects in connection with these chapter 11 cases in that, *inter alia*, (i) the Successful Bidder recognized that the Debtors were free to deal with any other party interested in acquiring the Assets; (ii) the Assets were all subject to the competitive bidding procedures set forth in the Bid Procedures Order; (iii) all payments to be made by the Successful Bidder in connection with the Sale and chapter 11 cases, if any, have been disclosed; and (iv) the Successful Bidder has not violated section 363(n) of the Bankruptcy Code by any action or inaction.

N. The Asset Purchase Agreement (the "APA") attached hereto as **Exhibit A** was negotiated, proposed and entered into by the Debtors and the Successful Bidder without collusion, in good faith and from arms-length bargaining positions. Neither the Debtors nor the Successful Bidder has engaged in any conduct that would cause or permit the Sale or any part of the transactions contemplated by the APA to be avoidable under section 363(n) of the Bankruptcy Code.

O. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing; and (ii) the representations of counsel made on the record at the Sale Hearing,

the Debtors afforded interested potential purchasers a full and fair opportunity to qualify as Qualified Bidders under the Bid Procedures and to submit an offer for the Assets.

P. The consideration provided by the Successful Bidder, as the successful bidder for the Assets pursuant to the APA: (i) is fair and reasonable; (ii) is the highest and best offer for the Assets; and (iii) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, Florida's Uniform Fraudulent Transfer Act and all other applicable laws.

Q. The Debtors have demonstrated a sufficient basis and compelling circumstances to support the sale of the Assets under section 363 of the Bankruptcy Code pursuant thereto. Furthermore, such actions are appropriate exercises of the Debtors' sound business judgment inasmuch as they are in the best interests of the Debtors, their estates, and their creditors.

R. The marketing and bidding processes implemented by the Debtors' CRO and Keen-Summit, as set forth in the Motion, were fair, proper, and reasonably calculated to result in the best value received for the Assets.

S. The Successful Bidder would not have entered into the APA and would not consummate the Sale, thus adversely affecting the Debtors, their estates, and creditors, if the Assets were not sold to it free and clear of all liens, claims, security interests and encumbrances (collectively, "Claims and Encumbrances"), or if the Successful Bidder would, or in the future could, be held liable for any such liens, claims, security interests and/or encumbrances against the Debtors or the Assets, other than those liens, claims, security interests and encumbrances which the Successful Bidder has agreed to.

T. The provisions of section 363(f) of the Bankruptcy Code have been satisfied.

BASED ON THE FOREGOING, IT IS ORDERED, ADJUDGED AND DECREED, EFFECTIVE IMMEDIATELY, AS FOLLOWS:

1. The relief requested in the Motion is granted and approved in all respects. The Debtors' entry into the APA and the consummation of the Sale is hereby approved in all respects. Any objections to the relief sought in the Motion that have not been previously resolved or withdrawn are hereby overruled on their merits.

2. The Debtors and the Successful Bidder are authorized and directed to take any and all actions necessary or appropriate to: (i) consummate the Sale in accordance with the Motion, the APA and this Order, and (ii) perform, consummate, implement and close fully the Sale, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA. After the date of entry of this Order, the Debtors and the Successful Bidder may enter into any amendment, supplement, or modification to the APA that is not material or adverse to the Debtors' estates without the need of further notice and hearing or Court order.

3. The holders of Claims and Encumbrances and other non-Debtor parties who did not object are deemed to have consented to this Order, the Bid Procedures Order, the Sale and the APA pursuant to section 363(f)(2) of the Bankruptcy Code and are enjoined from taking any action against the Successful Bidder, its affiliates, any agent of the foregoing or the Assets to recover any claim which such person or entity has solely against Debtors or any of their affiliates, including the Claims and Encumbrances.

4. Upon closing of the Sale of the Assets to the Successful Bidder (the "Closing"), the Assets transferred, sold and delivered to the Successful Bidder shall be free and clear of all Claims and Encumbrances of any person or entity. The transfer of the Assets to the Successful Bidder

constitutes a legal, valid, and effective transfer and conveyance of the Assets and shall vest the Successful Bidder with all of the Debtors' right, title, and interest in and to the Assets described in and required by the APA and this Order.

5. The Successful Bidder reserves the right to object to any Claim or Encumbrance that it has agreed to pay, if any, including, without limitation, the claims of the Palm Beach County Tax Collector and the claims of any state or federal agency related to any amounts owed in connection with the Debtors' licenses, permits, registrations, and governmental authorizations or approvals. To the extent necessary, the Debtors agree to cooperate with the Successful Bidder in bringing an objection to any Claim or Encumbrance. The Successful Bidder agrees to provide additional funding to the Debtors' estates solely for the reasonable fees incurred by Debtors' counsel in bringing an objection to a Claim or Encumbrance at the direction of the Successful Bidder.

6. Upon the Closing of the Assets by the Successful Bidder, this Order shall be construed as, and shall constitute for any and all purposes, a full and complete general assignment, conveyance and transfer of the Assets to the Successful Bidder, pursuant to the terms of the APA.

7. As set forth in the APA, the Assets include, but are not limited to, the real property described therein.

8. Effective on the date of entry of this Order, all entities, including, but not limited to, the Debtors and their creditors, employees, former employees, members, equity owners, as well as administrative agencies, tax and regulatory authorities, governmental agencies, secretaries of state, federal, state and local officials, and their respective successors or assigns, including, but not limited to, persons asserting any Claim and Encumbrances against the Debtors or the Assets, shall be permanently and forever barred, restrained and enjoined from commencing or continuing in

any manner any action or other proceeding of any kind against the Assets or the Successful Bidder (or its members, representatives, or affiliates) as alleged successor or purchaser, with respect to:

- (i) any Claims and Encumbrances on, in respect of or against the Debtors, the Assets; and
- (ii) recovering on any claim which such person or entity had or may have against the Debtors.

9. Each and every term, provision and exhibit of the APA, together with the terms and provisions of this Order, shall be binding in all respects upon all entities, including, but not limited to the Debtors, the Successful Bidder, creditors, and members, equity holders, administrative agencies, governmental agencies, secretaries of state, federal, state and local officials and their respective successors or assigns, including but not limited to, persons asserting any Claim and Encumbrance against or interest in the Debtors' estates or the Assets, including any subsequent appointment of a trustee or other fiduciary under any section of the Bankruptcy Code.

10. Upon the Closing, all entities holding a Claim and Encumbrance of any kind and nature, including but not limited to mechanic's lien claims against the Assets hereby are barred from asserting such Claim and Encumbrance against the Successful Bidder and/or the Assets.

11. This Order: (i) is and shall be effective as a determination that, upon Closing, all Claims and Encumbrances, including but not limited to mechanic's lien claims, existing as to the Assets conveyed to the Successful Bidder have been and hereby are adjudged to be unconditionally released, discharged and terminated: and (ii) shall be binding upon and govern the acts of all entities, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies or units, governmental agencies or units, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required

to report or insure any title or state of title in or to any of the Assets conveyed to the Successful Bidder. All Claims and Encumbrances of record as of the date of this Order shall be removed and stricken as against the Assets in accordance with the foregoing.

12. If any person or entity which has filed financing statements, mortgages, notices of lis pendens, construction liens, judgments, or other documents or agreements evidencing any Claim and Encumbrance encumbering the Assets shall not have delivered to the Debtors prior to Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements and any other documents necessary for the purpose of documenting the release of all Claims and Encumbrances which the person or entity has or may assert with respect to the Assets, then to the extent this Order does not do so without the need of further action of any party, the Debtors and/or the Successful Bidder are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Assets. Upon Closing of the Sale, the Debtors' creditors are authorized and directed to execute such documents and take all such actions as may be necessary to release their respective Claims and Encumbrances against the Assets.

13. Upon Closing, the Successful Bidder shall not be deemed to be: (a) a successor-in-interest to the Debtors; (b) a party to a *de facto* merger of the Successful Bidder and the Debtors; or (c) a mere continuation of the Debtors. Without limiting the generality of the foregoing, and except as specifically provided in the APA, the Successful Bidder shall not be liable for any claims against the Debtors or any of their predecessors, other than as expressly provided for in such APA or this Order. Further, except as expressly provided in the APA or in this Order, the Successful Bidder is not assuming nor shall it in any way be liable or responsible, as successor or otherwise, for any claims, liabilities, debts, obligations, or Claims or Encumbrances of the Debtors or their

estates of any kind or character in any way whatsoever relating to or arising from the Assets or the Debtors' operation or use of the Assets prior to the Closing, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, under the laws of the United States, any state, territory, or possession of the United States, the District of Columbia, or any other country or foreign jurisdiction.

14. The provisions of this Order and the APA and any actions taken pursuant hereto or thereto shall survive entry of any order which may be entered: (i) confirming or consummating any plan of liquidation of Debtors; (ii) converting Debtors' bankruptcy case from chapter 11 to chapter 7; (iii) dismissing Debtors' bankruptcy case; or (iv) appointing a chapter 11 trustee or examiner, and the terms and provisions of the APA as well as the rights and interests granted pursuant to this Order and the APA shall continue in this or any superseding case and shall be binding upon the Debtors, the Successful Bidder, and their respective successors and permitted assigns.

15. Each and every federal, state and local governmental agency or department and any other person or entity is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA and a copy of this Order may be filed in any place where federal, state, or local law permits filing or recording.

16. The consideration provided by the Successful Bidder for the Assets under the APA constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Florida Uniform Fraudulent Transfer Act, and all other applicable laws.

17. Nothing contained in any order of any type or kind entered in these chapter 11 cases or any related proceeding subsequent to entry of this Order, nor in any chapter 11 plan confirmed in these chapter 11 cases, shall conflict with or derogate from the provisions of the APA or the



terms of this Order, which shall be expressly preserved under the terms of such plan. Further, the provisions of this Order and any actions taken pursuant hereto shall survive the entry of an order confirming any plan of liquidation of the Debtors or any other party, the conversion of Debtors' bankruptcy cases from chapter 11 to a case under chapter 7 of the Bankruptcy Code or the dismissal of Debtors' bankruptcy cases.

18. The APA is authorized and approved in its entirety. The failure specifically to include any particular provisions of the APA in this Order shall not diminish or impair the efficacy of such provisions, it being the intent of the Court that the APA (and any amendments thereto executed subsequent to the date of this Order) and each and every provision, term and condition thereof be, and therefore is, authorized and approved in its entirety.

19. To the extent anything contained in this Order conflicts with a provision in the APA, this Order shall govern and control.

20. The Successful Bidder is purchasing Assets in good faith and is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to the full rights, benefits, privileges and protections of that provision. The consideration provided by the Successful Bidder for the Assets is fair and reasonable, and the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

21. This Court retains jurisdiction, even after conversion of Debtors' chapter 11 cases to cases under chapter 7 (should such conversion occur), to: (i) interpret, implement and enforce the terms and provisions of this Order (including any injunctive relief provided in this Order) and the terms of the APA, all amendments thereto and any waivers and consents thereunder and of each of the agreements executed in connection therewith; (ii) protect the Successful Bidder and the Assets from and against any of the Claims and Encumbrances; (iii) resolve any disputes arising

under or related to the APA or the Sale; (iv) adjudicate all issues concerning Claims and Encumbrances and any other interest(s) in and to Assets; and (v) adjudicate any and all issues and/or disputes relating to Debtors' right, title or interest in the Assets, the Motion and/or the APA.

22. From and after the date hereof, the Debtors and the Successful Bidder shall act in accordance with the terms of the APA and execute and deliver all documents in connection therewith.

23. This Order and the APA with the Successful Bidder shall be binding in all respects upon all creditors and equity holders (whether known or unknown) of the Debtors, all successors and assigns of the Successful Bidder, the Debtors and their affiliates, the Assets, and any subsequent trustees appointed in the Debtors' chapter 11 cases or chapter 7 cases or upon: (i) a conversion of the Debtors' chapter 11 cases to cases under chapter 7; or (ii) dismissal of the Debtors' bankruptcy cases.

24. [The Successful Bidder is not assuming any contracts or leases and for the avoidance of doubt shall further not be responsible for any obligations to pay any contractors or materialmen under any contracts for any labor, materials or otherwise with respect to any contracts related to any construction relating to Assets and Successful Bidders only purchasing the rights to any warranties related to the Assets and/or the completed construction.]<sup>4</sup>

25. The provisions of this Order are non-severable and mutually dependent.

26. This Sale Order shall take effect immediately and shall not be stayed pursuant to Bankruptcy Rules 6004(g), 6004(h), 6006(d), 7062, or otherwise.

27. The automatic stay pursuant to section 362(a) of Bankruptcy Code is hereby modified, lifted, and annulled with respect to the Debtors and the Successful Bidder, to the extent

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<sup>4</sup> [This paragraph shall be revised to the extent the APA contains Assumed Contracts.]

necessary, without further order of this Court, to (a) allow the Successful Bidder to deliver any notice provided for in the APA, and (b) allow the Successful Bidder to take any and all actions permitted under the APA or this Sale Order.

28. This Court shall retain jurisdiction to interpret, implement and enforce the terms and provisions of this Sale Order, the APA, all amendments thereto, and any waivers and consents thereunder, and each other document or agreement executed in connection therewith.

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**Submitted by:**

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**Exhibit 1 to Sale Order**

**APA Between Debtors and Successful Bidder**