

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

In re:

THE BON-TON STORES, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-10248 (\_\_\_)

(Joint Administration Requested)

**Hearing Date: TBD**

**Objection Deadline: TBD**

**DEBTORS' MOTION FOR ENTRY OF (A) AN ORDER (I) SCHEDULING A HEARING ON THE APPROVAL OF THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES, AND THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (II) APPROVING CERTAIN BIDDING PROCEDURES, ASSUMPTION AND ASSIGNMENT PROCEDURES, AND THE FORM AND MANNER OF NOTICE THEREOF, AND (III) GRANTING RELATED RELIEF; AND (B) AN ORDER (I) APPROVING ASSET PURCHASE AGREEMENT, (II) AUTHORIZING THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES, (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the "Debtors" or the "Company") hereby submit this motion (this "Motion"), pursuant to sections 105, 363, 365, 503 and 507 of title 11 of the United States Code (the "Bankruptcy Code"), for the entry of: (a) an order, substantially in the form attached hereto as Exhibit A (the "Bidding Procedures Order"), (i) scheduling a hearing (the "Sale Hearing") on approval of the sale of all or substantially all of the Debtors' assets (collectively, the "Assets"), or subsets thereof, free and clear of all liens, claims, encumbrances, and other interests (collectively, the "Encumbrances"),

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: The Bon-Ton Stores, Inc. (5229); The Bon-Ton Department Stores, Inc. (9309); The Bon-Ton Giftco, LLC (2805); Carson Pirie Scott II, Inc. (2140); Bon-Ton Distribution, LLC (5855); McRIL, LLC (5548); Bonstores Holdings One, LLC (8574); Bonstores Realty One, LLC (8931); Bonstores Holdings Two, LLC (8775); and Bonstores Realty Two, LLC (9075). The headquarters for the above-captioned Debtors is 2801 East Market Street, Bldg. E, York, Pennsylvania 17402.

and authorizing the assumption and assignment of certain executory contracts and unexpired leases (each, an “Assumed Contract,” and collectively, the “Assumed Contracts”) in connection therewith; (ii) authorizing and approving certain bidding procedures for the sale (collectively, the “Bidding Procedures,” a copy of which is attached as Exhibit 1 to the Bidding Procedures Order), certain procedures for the assumption and assignment of the Assumed Contracts (collectively, the “Assumption and Assignment Procedures”), and the form and manner of notice thereof; and (iii) granting related relief; and (b) an order (i) authorizing and approving the Debtors’ entry into an asset purchase agreement or agreements for the Assets (each, a “Purchase Agreement”);<sup>2</sup> (ii) authorizing and approving the sale of the Debtors’ assets (the “Sale”), free and clear of all Encumbrances other than those permitted by the subject Purchase Agreement; (iii) authorizing and approving the assumption and assignment of the Assumed Contracts in connection therewith; and (iv) granting related relief. In support of this Motion, the Debtors respectfully state as follows:

**PRELIMINARY STATEMENT**<sup>3</sup>

1. The Company is a leading hometown department store retailer focused on delivering better brands at favorable price-points to consumers in approximately 256 department stores across twenty-three (23) states in the Northeast, Midwest and upper Great Plains, encompassing approximately 24 million square feet. The Debtors own twenty-two (22) stores, have ground leases on seven (7) stores and lease 227 stores. In 2017, the Company generated approximately \$2.55 billion in total revenue. The Company operates under some of the oldest

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<sup>2</sup> A form Purchase Agreement is available in the confidential Data Room (as defined herein) available to interested parties. A proposed form of sale order shall be docketed upon selection of a Stalking Horse Purchaser, as applicable, or following the Bid Deadline and receipt of Qualified Bids.

<sup>3</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Day Declaration (as defined below) or the Baird Declaration (as defined below).

and best known retail nameplates in the country: Bon-Ton, Bergner's, Boston Store, Carson's, Elder-Beerman, Herberger's and Younkers.

2. Like many other department store and retail companies, the Debtors have faced adverse trends in the retail industry. Responding to these headwinds, the Debtors engaged financial and restructuring advisors in early 2017. While proactively managing their liquidity to operate their business, the Debtors developed a turn-around Business Plan to serve as the foundation for a value maximizing restructuring alternative. The unique history of the Company, its strong ties to the communities in which it operates, and its loyal employees and customer base, among other things, make the Debtors a viable restructuring opportunity.

3. Towards that end, the Debtors are filing this Motion to execute their restructuring objectives. First and foremost, the Debtors are seeking to reorganize under a chapter 11 plan that would keep the Debtors' business intact (the "Reorganization Path"). The Reorganization Path contemplates converting a substantial portion of the Second Lien Notes into equity of the reorganized Debtors and the conversion of the remainder into new second lien notes. The Reorganization Path, however, requires a third party strategic sponsor to invest new capital, alongside a new money investment by the Second Lien Noteholders, to assume majority ownership of the reorganized Debtors.

4. To preserve and maximize the value of the Debtors' estates, in the event that the Debtors cannot find a strategic sponsor, the Debtors are simultaneously pursuing a sale of all or substantially all of their businesses (the "Sale Path"). Ideally, the Sale Path will result in a value-maximizing going concern sale of the entire company pursuant to section 363 of the Bankruptcy Code. However, the Debtors are offering all of their assets for sale in any number of

combinations and quantities.<sup>4</sup> Through the marketing and sales process described below, the Debtors seek to solicit interest in their assets, on a broad scale and through all viable channels, in an effort to generate the highest and best return for creditors and estate constituents.

5. In the event that the Debtors determine, however, in consultation with the Consultation Parties (as defined below), that a Restructuring Term Sheet (as defined below) represents the highest and best offer for their assets, the Debtors intend to pursue such restructuring and, as appropriate, defer consideration of standalone sale opportunities to the extent they are implicated thereby.

### **JURISDICTION AND VENUE**

6. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The statutory and legal predicates for the relief sought herein are sections 105, 363, 365, 503 and 507 of the Bankruptcy Code, Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

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<sup>4</sup> Separately, the Debtors, in consultation with their advisors, selected and analyzed approximately 100 of the Debtors’ lower-performing stores and determined that closure or divestiture of approximately forty-two (42) leased and owned stores (the “Closing Stores”) was warranted, based on key common characteristics including (a) stores with continually declining financial metrics, and (b) stores which were poorly geographically situated and suffering from overwhelming competitive pressure. The liquidation of the Closing Stores is proceeding pursuant to a separate motion.

### **BACKGROUND**

8. On the date hereof (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committees have been appointed in these chapter 11 cases and no request has been made for the appointment of a trustee or an examiner.

9. Additional information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the filing of these chapter 11 cases is set forth in the *Declaration of Michael Culhane in Support of Debtors’ Chapter 11 Petitions and First-Day Motions* (the “First Day Declaration”).

10. Contemporaneously herewith, the Debtors have filed the *Declaration of James H. Baird in Support of the Debtors’ Motion for Entry of (A) an Order (I) Scheduling a Hearing on the Approval of the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Encumbrances, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures, Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, and (III) Granting Related Relief; and (B) an Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* (the “Baird Declaration”) in support of the relief requested herein and the sale timeline set forth in the Bidding Procedures Order.

### **RELIEF REQUESTED**

11. By this Motion, the Debtors seek entry of: (a) the Bidding Procedures Order, (i) scheduling a date for the Sale Hearing, (ii) authorizing and approving the Bidding

Procedures and the Assumption and Assignment Procedures, and the form and manner of notice thereof, and (iii) granting related relief; and (b) the Sale Order, (i) authorizing and approving the Debtors' entry into any Purchase Agreement with a Successful Bidder, (ii) authorizing and approving the Sale, free and clear of all Encumbrances, (iii) authorizing and approving the assumption and assignment of the Assumed Contacts to any Successful Bidder; and (iv) granting related relief.

12. The auction process is for (a) a restructuring transaction that contemplates a cash investment from a third party sponsor(s), strategic or otherwise, in return for equity in a reorganized enterprise, or (b) a sale of substantially all of their assets (collectively, the "Assets") including, but not limited to, (i) going concern offers for the Assets, or components thereof, including but not limited to the Debtors' inventory, leases of nonresidential real property, fee-owned real properties, other personal property and intellectual property, and (ii) bids put forth by liquidators interested in commencing and implementing liquidation initiatives in the Debtors' retail stores and through their ecommerce platform, as applicable.

13. **All due diligence inquiries regarding the Assets should be directed to the Debtors' investment banking advisors, PJT Partners LP, by contacting Jamie Baird (212-364-5300; baird@pjtpartners.com), Jon Walters (212-364-1992; walters@pjtpartners.com); and Vinit Kothary (212-364-7947; Kothary@pjtpartners.com). All due diligence inquiries solely regarding the Debtors' real estate, including fee-owned real properties and nonresidential real property leases, should be directed to the Debtors' real estate consultant, A&G Realty Partners, LLC, by contacting Andrew Graiser (516-946-8982; Andy@agrealtypartners.com) and Michael Jerbich (773-294-5354; Michael@agrealtypartners.com)**

**A. Sale Process**

14. Following the meeting on January 10, 2018, at which the Ad Hoc Group articulated the terms of the Restructuring Path, PJT Partners began to contact potential third-party sponsors for a new money equity investment consistent with the framework discussed among the Ad Hoc Group and the Credit Facility lenders. The Ad Hoc Group advisors reviewed the list of parties that PJT Partners planned to contact, and supplemented the list. PJT Partners has contacted twenty-eight (28) potential sponsors, including certain parties that were previously contacted in the Initial Third-Party M&A Process. PJT has signed fifteen (15) additional confidentiality agreements in the continued marketing process. Currently, there are multiple parties active in the continued process, including a number of merchants and landlords that have expressed interest in participating in a potential transaction.

15. The Debtors intend to continue these discussions with these potential investors, and perhaps others, post-petition through a Court-approved sale process. The Debtors believe that the process proposed hereby is designed to generate maximum interest in the Assets by offering maximum flexibility with respect to restructuring or sale proposals. The Debtors developed the Bidding Procedures in consultation with their professional advisors, and designed the Bidding Procedures to preserve flexibility in this marketing process, solicit a full spectrum of value-maximizing alternatives, and generate the greatest level of interest and the highest or best value for the Assets.

16. Additionally, by establishing global dates for submitting bids (including stalking horse bids), conducting auctions, and approving the Sale, the Bidding Procedures will provide clarity regarding the bidding and auction process to all interested parties, and create an appropriate timetable for the Sale, consistent with the case milestones under the *Debtors' Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Post-Petition Secured*

*Financing; (II) Authorizing the Debtors' Use of Cash Collateral; (III) Granting Adequate Protection to Prepetition Secured Creditors; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief* (the "DIP Motion") and the Debtors' current liquidity position.

**B. Stalking Horse Purchaser**

17. By this Motion and in connection with the Bidding Procedures, the Debtors request authority, but not direction, to enter into an agreement (a "Stalking Horse Agreement") with an interested bidder to serve as the stalking horse bidder for the Assets (the "Stalking Horse Purchaser"), with the consent of Bank of America, N.A. as administrative agent (in such capacity, the "DIP Administrative Agent"), as administrative agent for the Debtors' postpetition lenders under the DIP Documents (as defined in the DIP Motion), on or before March 19, 2018.

18. Stalking Horse Agreement Content. A Stalking Horse Agreement may include, among other things:

- (a) offers, memorialized in reasonably-detailed and supported term sheet(s), from strategic or alternative investors interested in acquiring an equity stake in the Debtors on terms acceptable to, among others, the DIP Administrative Agent;
- (b) going concern buyers interested in acquiring substantially all of the Assets, or a subset(s) thereof, including, but not limited to, individual leases, fee-owned real property, other personal property and intellectual property held by the Debtors; and
- (c) liquidators (or joint ventures thereof) interested in putting forth an equity bid for substantially all of the Assets or a subset thereof.

19. Stalking Horse Agreement Notice. In the event that the Debtors enter into any Stalking Horse Agreement that the Debtors determine, in consultation with the Consultation Parties (as defined in the Bidding Procedures) is in the best interests of the Debtors and their estates, the Debtors will file with the Court, and serve on the Sale Notice Parties (as defined

below), a notice (a “Stalking Horse Notice”) that shall include the following: (a) the identification of the Stalking Horse Purchaser; (b) a copy of the Stalking Horse Agreement(s); (c) the purchase price provided for in the Stalking Horse Agreement (the “Stalking Horse Purchase Price”); and (d) the deposit paid by the Stalking Horse Purchaser.

20. Stalking Horse Bid Protections. If, as a condition to providing the Stalking Horse Bid, the Stalking Horse Purchaser requests reasonable bid protections, and the Debtors, in an exercise of their business judgment, deem such protections appropriate, necessary and value-additive to the process under the circumstances, the Debtors will seek expedited consideration by the Court of appropriate bid protections, including a reasonable break-up fee and expense reimbursement for the Stalking Horse Purchaser, prior to the Bid Deadline. Such motion, for the avoidance of doubt, may serve as the Stalking Horse Notice described herein.

21. Restructuring Term Sheet. In the event that the Debtors determine, in consultation with the Consultation Parties, to pursue a restructuring term sheet (the “Restructuring Term Sheet”) as a result of bids received by the Stalking Horse Deadline, the Debtors will file a notice setting forth the material terms of such Restructuring Term Sheet prior to the Bid Deadline. If, as a condition to providing a Restructuring Term Sheet, an investor sponsoring such Restructuring Term Sheet requests reasonable bid protections, and the Debtors, in an exercise of their business judgment, deem such protections appropriate, necessary and value-additive to the process under the circumstances, the Debtors will seek expedited consideration by the Court of appropriate bid protections, including a reasonable break-up fee and expense reimbursement for such proposed investor, prior to the Bid Deadline. Such motion, for the avoidance of doubt, may serve as the Stalking Horse Notice described herein.

C. **Bidding Procedures**<sup>5</sup>

22. The Bidding Procedures describe, among other things, (i) the Assets available for sale and the means by which interested parties may obtain additional information with respect thereto, (ii) the manner in which bids become “qualified,” (iii) the coordination of diligence efforts among the bidders and the Debtors, (iv) the receipt and negotiation of bids received, (v) the conduct of any Auction(s), and (vi) the selection and approval of the Successful Bidder and the selection of the Back-Up Bidder. Certain of the key terms of the Bidding Procedures, which shall apply to each Potential Bidder, the Qualifying Bidders, the submission, receipt, and analysis of all bids relating to the Sale or restructuring transaction, and the conduct of the Sale and the Auction, are included below:

- (a) **Qualification as Bidder**: Any person or entity that wishes to participate in the bidding process for the Assets (each, a “Potential Bidder”) must first become a “Qualifying Bidder”.

To become a Qualifying Bidder (and thus being able to conduct due diligence and gain access to the Debtors’ confidential electronic data room concerning the Assets (the “Data Room”)), a Potential Bidder must submit to the Debtors and their advisors: (i) documentation identifying the interested party, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction; (ii) an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors, which by its terms will inure to the benefit of the Successful Bidder; (iii) a statement and other factual support demonstrating to the Debtors’ reasonable satisfaction, after consultation with the Consultation Parties, that the interested party has a *bona fide* interest in consummating a sale or restructuring transaction; and (iv) sufficient information, as determined by the Debtors, to allow the Debtors, after consultation with the Consultation Parties, to determine that the interested party (x) has, or can obtain, the financial wherewithal and any required internal corporate, legal or other authorizations to close a sale or restructuring transaction, including, but not limited to, current audited financial statements of

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<sup>5</sup> Any summary of the Bidding Procedures contained herein is qualified in its entirety by the actual terms and conditions of the Bidding Procedures as provided for in the Bidding Procedures Order. To the extent that there is any conflict between any summary contained herein and the actual terms and conditions of the Bidding Procedures as provided for in the Bidding Procedures Order, the actual terms and conditions of the Bidding Procedures as provided for in the Bidding Procedures Order shall control. Capitalized terms used but not defined in this summary of the Bidding Procedures shall have the meanings ascribed to such terms in the Bidding Procedures.

the interested party (or such other form of financial disclosure acceptable to the Debtors in their discretion), and (y) can provide adequate assurance of future performance under any executory contracts and unexpired leases to be assumed by the Debtors and assigned to such bidder, pursuant to section 365 of the Bankruptcy Code, in connection with the Sale or restructuring transaction.

A Qualifying Bidder may be a joint venture or more than one party, provided however, that such combination of bidders must together, and individually, satisfy the qualifying conditions set forth above.

Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bidding Procedures: (i) any designated Stalking Horse Purchaser shall be considered a Qualifying Bidder, and a Stalking Horse Agreement shall be considered a Qualifying Bid (as defined below); and (ii) in determining whether the Potential Bidders constitute Qualifying Bidders, the Debtors may consider a combination of bids for the Assets.

- (b) **Due Diligence:** The Debtors will provide any Qualifying Bidder with reasonable access to the Data Room and any other additional information that the Debtors believe to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to: Jamie Baird (212-364-5300; [baird@pjtpartners.com](mailto:baird@pjtpartners.com)), Jon Walters (212-364-1992; [walters@pjtpartners.com](mailto:walters@pjtpartners.com)); and Vinit Kothary (212-364-7947; [Kothary@pjtpartners.com](mailto:Kothary@pjtpartners.com)). Due diligence requests that relate solely to the Debtors' real estate shall be directed to Andrew Graiser (516-946-8982; [Andy@agrealtypartners.com](mailto:Andy@agrealtypartners.com)) and Michael Jerbich (773-294-5354; [Michael@agrealtypartners.com](mailto:Michael@agrealtypartners.com)).

The due diligence period shall extend through and including the Bid Deadline. The Debtors may, but shall not be obligated to, in their sole discretion, furnish any due diligence information after the Bid Deadline. Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality or similar provisions relating to any due diligence information, the Debtors and their estates shall be authorized to provide due diligence information to Qualifying Bidders provided that such Qualifying Bidders have delivered an executed confidentiality agreement in form and substance acceptable to the Debtors. The Debtors and their estates are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualifying Bidders in connection with the Bidding Procedures and the Sale.

(c) **Bid Requirements:**

- i. *Qualifying Bid.* Other than in the case of (i) a bid submitted by the Stalking Horse Purchaser or (ii) a credit bid submitted by the DIP Administrative Agent or Prepetition ABL Administrative Agent, to be deemed a "Qualifying Bid," a bid must be received from a Qualifying Bidder on or before the Bid Deadline and satisfy each of the following

requirements, as determined by the Debtors, in consultation with the Consultation Parties (each, a “Bid Requirement”):

- a. be in writing;
- b. fully disclose the identity of the Qualifying Bidder (and any other party participating in the bid) and provide the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the bid submitted by the Qualifying Bidder;
- c. set forth the purchase price to be paid by such Qualifying Bidder or the material terms of a Restructuring Term Sheet;
- d. in the case of a proposed purchase of the Assets, not propose payment in any form other than cash (except as otherwise expressly set forth in these Bidding Procedures);
- e. state the liabilities proposed to be paid or assumed by such Qualifying Bidder;
- f. specify the Assets that are included in the bid and, to the extent a Stalking Horse Purchaser is designated, state that such Qualifying Bidder offers to purchase the Assets, or a number or combination of the Assets, upon substantially the same terms as, or terms more favorable to the Debtors and their estates than, the terms set forth in the Stalking Horse Agreement, as applicable;
- g. state that such Qualifying Bidder’s offer is formal, binding and unconditional and is irrevocable until two (2) business days after the closing of the Sale (as applicable to Sales, only);
- h. state that such Qualifying Bidder is financially capable of consummating the transactions contemplated by the bid and provide written evidence in support thereof;
- i. contain such financial and other information to allow the Debtors to make a reasonable determination as to the Qualifying Bidder’s financial and other capabilities to close the transactions contemplated by the proposal, including, without limitation, such financial and other information supporting the Qualifying Bidder’s ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code, including the Qualifying Bidder’s financial wherewithal and willingness to perform under any contracts and leases that are assumed and assigned to the Qualifying Bidder, in a form that allows the Debtors to serve, within one (1) business day after such receipt,

such information upon any counterparties to any contracts or leases being assumed and assigned in connection with the Sale that have requested, in writing, such information;

- j. identify with particularity each and every executory contract and unexpired lease the assumption and assignment of which is a condition to close the contemplated transaction(s);
- k. specify whether the Qualifying Bidder intends to operate all or a portion of the Debtors' business as a going concern, intends a full-chain liquidation, or contemplates the ongoing operations of certain stores and the closing of others;
- l. in the case of a bid that contemplates a full-chain liquidation, a commitment to commence such liquidation by April 13, 2018, and in the case of a bid that contemplates a going concern sale, a commitment to close the transactions contemplated by the proposal by April 16, 2018;
- m. except to the extent submitted as part of a Stalking Horse bid, not request or entitle such Qualifying Bidder to any break-up fee, termination fee, expense reimbursement or similar type of fee or payment;
- n. in the event that there is a Stalking Horse Purchaser, the aggregate consideration proposed by the Qualifying Bidder must equal or exceed the sum of the amount of (A) any Stalking Horse Purchase Price, (B) any Break-Up Fee, (C) any Expense Reimbursement, and (D) \$200,000.
- o. not contain any contingencies of any kind, including, without limitation, contingencies related to financing, internal approval or due diligence;
- p. contain a written acknowledgement and representation that the Qualifying Bidder (i) has had an opportunity to conduct any and all due diligence regarding the Assets, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and other information in making its Qualifying Bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any documents or other information provided in connection with the Bidding Procedures and the Sale;
- q. sets forth (i) a statement or evidence that the Qualifying Bidder has made or will make in a timely manner all necessary filings under

the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, if applicable, and pay the fees associated with such filings and (ii) any regulatory and third-party approval required for the Qualifying Bidder to close the contemplated transactions, and the time period within which the Qualifying Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than five (5) days following execution and delivery of such Qualifying Bidder's Purchase Agreement, those actions the bidder will take to ensure receipt of such approval(s) as promptly as possible); provided that a Qualifying Bidder agrees that its legal counsel will coordinate in good faith with Debtors' legal counsel to discuss and explain Qualifying Bidder's regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable; provided, further that the offer contains a covenant to cooperate with the Debtors to provide pertinent factual information regarding the bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements;

- r. provides for the Qualifying Bidder to serve as a backup bidder (the "Back-Up Bidder") if the Qualifying Bidder's bid is the next highest and best bid (the "Back-Up Bid") after the Successful Bid (as defined below);
- s. includes written evidence of authorization and approval from the Qualifying Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the subject term sheet;
- t. provides a good faith cash deposit (the "Deposit") in an amount equal to ten percent (10%) of the purchase price provided for in the proposal (or such additional amount as may be determined by the Debtors in their reasonable discretion and in consultation with the Consultation Parties) to be deposited, prior to the Bid Deadline, with an escrow agent selected by the Debtors (the "Escrow Agent") pursuant to the escrow agreement to be provided by the Debtors to the Qualifying Bidders (the "Escrow Agreement"); and
- u. provides for liquidated damages in the event of the Qualifying Bidder's breach of, or failure to perform under, the Modified Purchase Agreement equal to the amount of the Deposit.

The Debtors reserve the right, in consultation with the Consultation Parties, to negotiate with any Qualifying Bidder in advance of the Auction

to cure any deficiencies in a bid that is not initially deemed a Qualifying Bid.

Each Qualifying Bidder submitting a bid shall be deemed to: (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures; and (b) have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures, and the Sale.

- ii. *Bid Deadline.* A Qualifying Bidder, other than any Stalking Horse Purchaser, the DIP Administrative Agent or the Prepetition ABL Administrative Agent, that desires to make a bid shall deliver a written and electronic copy of its bid in both PDF and MS-WORD format to the Notice Parties and the Consultation Parties so as to be received on or before **April 2, 2018 at 5:00 p.m. (ET)** (the “Bid Deadline”); provided that the Debtors, with the consent of the DIP Administrative Agent, may extend the Bid Deadline without further order of the Court, subject to providing notice to the Consultation Parties. **Any party that does not submit a bid by the Bid Deadline will not be allowed to (a) submit any offer after the Bid Deadline, or (b) participate in the Auction.**
- iii. *Evaluation of Qualifying Bids.* The Debtors will deliver, within one (1) business day after receipt thereof, copies of all bids from Qualifying Bidders to the following: (i) counsel to the Official Committee of Unsecured Creditors appointed in these chapter 11 cases; (ii) counsel to the DIP Administrative Agent; (iii) counsel to the DIP Tranche A-1 Documentation Agent; and (iv) counsel to the Ad Hoc Noteholder Group (collectively, the “Consultation Parties”).

The Debtors, in consultation with the Consultation Parties, shall make a determination regarding whether a timely submitted bid from a Qualifying Bidder is a Qualifying Bid, and shall notify all Qualifying Bidders whether their bids have been determined to be a Qualifying Bid by no later than two business (2) days prior to the Auction Date.

In the event that a bid is determined not to be a Qualifying Bid, the Qualifying Bidder shall be notified by the Debtors and shall have until **April 4, 2018 at 5:00 p.m.** to modify its bid to increase the purchase price or otherwise improve the terms of the Qualifying Bid for the Debtors; provided that any Qualifying Bid may be improved at the Auction as set forth herein. One (1) business day prior to the Auction Date, the Debtors shall determine, in consultation with the Consultation Parties, which of the Qualifying Bids, at such time, is the highest or best bid for purposes of constituting the opening bid of the Auction (the “Baseline Bid” and the Qualifying Bidder submitting the Baseline Bid, the “Baseline Bidder”),

and shall promptly notify any Stalking Horse Purchaser and all Qualifying Bidders with Qualifying Bids of the Baseline Bid.

- iv. *No Qualifying Bids.* If no timely Qualifying Bids other than any Stalking Horse Purchaser's Qualifying Bid are submitted on or before the Bid Deadline, the Debtors shall not hold an Auction and shall request at the Sale Hearing that the Stalking Horse Purchaser be deemed the "Successful Bidder" (as defined below) and that the Court approve the Stalking Horse Agreement and the transactions contemplated thereunder.
- (b) **Right to Credit Bid.** Any Qualified Bidder that has a valid and perfected lien on any Assets of the Debtors' estates (a "Secured Creditor") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claim within the meaning of section 363(k) of the Bankruptcy Code; provided, that a Secured Creditor shall have the right to credit bid its claim only with respect to collateral by which the Secured Creditor is secured. Notwithstanding anything to the contrary contained herein, each of the DIP Administrative Agent and the ABL Administrative Agent shall have the right to credit bid all or any portion of the aggregate amount of its applicable outstanding secured obligations pursuant to section 363(k) of the Bankruptcy Code, and any such credit bid will be considered a Qualified Bid.
- (c) **Auction:** If the Debtors timely receive one or more Qualifying Bids other than any Stalking Horse Purchaser's Qualifying Bid, then the Debtors shall conduct an auction (the "Auction"). Following the Auction, the Debtors will determine, in consultation with the Consultation Parties, which Qualifying Bid is the highest or best bid for the Assets, which will be determined by considering, among other things, the following non-binding factors:
  - i. the terms of proposals submitted by each bidder;
  - ii. the extent to which such terms are likely to delay closing of the Sale and the cost to the Debtors and their estates of delay;
  - iii. the total consideration to be received by the Debtors and their estates;
  - iv. the transaction structure and execution risk, including conditions to, timing of and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, and required governmental or other approval;
  - v. the net benefit to the Debtors' estates, taking into account any Stalking Horse Purchaser's rights to any Break-Up Fee and any Expense Reimbursement, if applicable;
  - vi. the impact on employees, trade creditors and landlords; and

- vii. any other factors the Debtors may reasonably deem relevant.

The Auction shall be governed by the following procedures:

- i. the Auction shall commence on **April 9, 2018** (the “Auction Date”), at a time and location to be determined and announced by a filing on the docket of these chapter 11 cases, or such other date and time as the Debtors, after consultation with the Consultation Parties, may notify Qualifying Bidders who have submitted Qualifying Bids; provided that such other date and time is no earlier than two (2) business days following the delivery of such notice;
- ii. only a Stalking Horse Purchaser, a Secured Party and the other Qualifying Bidders with Qualifying Bids (collectively, the “Auction Bidders”) shall be entitled to make any subsequent bids at the Auction;
- iii. the Auction Bidders shall appear in person at the Auction, or through a duly authorized representative;
- iv. only the Debtors, the Auction Bidders, the Consultation Parties, the Debtors’ landlords, and all creditors of the Debtors, together with the professional advisors to each of the foregoing parties, may attend the Auction; provided that any such landlords and creditors provide counsel for the Debtors one (1) day’s written notice of their intent to attend the Auction;
- v. the Debtors and their professional advisors shall direct and preside over the Auction, which shall be transcribed;
- vi. the Auction Bidders shall confirm that they have not engaged in any collusion with respect to the Bidding Procedures, the Auction or the Sale;
- vii. bidding shall commence at the amount of the Baseline Bid, and the Auction Bidders may submit successive bids in increments of at least 2% of the Baseline Bid, provided that: (i) each such successive bid must be a Qualifying Bid; (ii) if the then-highest and best bid was made by any Stalking Horse Purchaser, such bid shall be deemed to include the sum of the amount of (A) any Break-Up Fee and (B) any Expense Reimbursement, if applicable; (iii) any successive bid made by any Stalking Horse Purchaser shall only be required to equal the sum of the amount of (A) the Baseline Bid or the then-highest and best bid, as applicable, and (B) 2% of the Baseline Bid, less the sum of the amount of (C) any Break-Up Fee and (D) any Expense Reimbursement, if applicable; and (iv) the Debtors shall retain the right to modify the bid increment requirements at the Auction;

- viii. the Auction may include individual negotiations with any of the Auction Bidders, but all bids shall be made on the record and in the presence of all of the Auction Bidders;
- ix. all material terms of the bid that is deemed to be the highest and best bid for each round of bidding shall be fully disclosed to the Auction Bidders, and the Debtors shall use reasonable efforts to clarify any and all questions that the Auction Bidders may have regarding the Debtors' announcement of the then-current highest and best bid;
- x. the Debtors and their professional advisors, in consultation with the Consultation Parties, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time allotted to make subsequent bids) for conducting the Auction, provided that such rules are (i) not inconsistent with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or any applicable order of the Court entered in connection with these chapter 11 cases, including, without limitation, the Bidding Procedures Order and the DIP Order (as defined in the Bidding Procedures Order), and (ii) disclosed to the Auction Bidders;
- xi. each Auction Bidder shall (i) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating to the Bidding Procedures, the Sale, the Auction and the construction and enforcement of the contemplated transaction documents of the Auction Bidders, (ii) bring any such action or proceeding in the Court, and (iii) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law;
- xii. the Auction Bidders shall have the right to make additional modifications to their respective Purchase Agreements or any Stalking Horse Agreement, as applicable, in conjunction with each Qualifying Bid submitted in each round of bidding during the Auction, provided that (i) any such modifications on an aggregate basis and viewed in whole, shall not, in the Debtors' discretion, in consultation with the Consultation Parties, be less favorable to the Debtors and their estates than the terms of the Auction Bidders' respective Purchase Agreements or any Stalking Horse Agreement, as applicable, and (ii) each Qualifying Bid shall constitute an irrevocable offer and shall be binding on the Auction Bidder

submitting such bid until such party shall have submitted a subsequent Qualifying Bid at the Auction or the conclusion of the Sale Hearing, whichever occurs sooner, unless such bid is selected as the Successful Bid or the Back-Up Bid, which shall remain binding as provided for herein;

- xiii. the Debtors and the Consultation Parties shall have the right to request any additional financial information that will allow the Debtors and the Consultation Parties to make a reasonable determination as to an Auction Bidder's financial and other capabilities to consummate the transactions contemplated by their proposal or any Stalking Horse Agreement, as applicable, as may be amended during the Auction, and any further information that the Debtors may believe is reasonably necessary to clarify and evaluate any bid made by an Auction Bidder during the Auction;
- xiv. upon the conclusion of the Auction, the Debtors shall determine, in consultation with the Consultation Parties, and subject to Court approval, the offer or offers for the Assets that is or are the highest or best from among the Qualifying Bids submitted at the Auction, which may be a Stalking Horse Agreement (the "Successful Bid").

In making this decision, the Debtors shall consider, in consultation with the Consultation Parties, the amount of the purchase price, the likelihood of the bidder's ability to close a transaction and the timing thereof, the nature and impact of any variances from the form Purchase Agreement requested by each bidder, and the net benefit to the Debtors' estates. The bidder submitting such Successful Bid, which may be the Stalking Horse Purchaser, shall become the "Successful Bidder," and shall have such rights and responsibilities of the purchaser as set forth in the subject Purchase Agreement, as applicable. The Debtors may, in their sole discretion, designate Back-Up Bids (and the corresponding Back-Up Bidders) to purchase the Assets in the event that the Successful Bidder does not close the Sale. The terms of the Successful Bid and the Back-Up Bid shall be acceptable to the DIP Administrative Agent and shall, among other things, provide for cash proceeds of the Sale in an amount sufficient to repay in full in cash all of the Debtors' obligations under the DIP Documents (as defined in the DIP Order) and all of the Debtors' obligations under the Prepetition ABL Documents (as defined in the DIP Order) to the extent that any Prepetition ABL Obligations (as defined in the DIP Order) are still outstanding; and

- xv. prior to the Sale Hearing, the Successful Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

**THE SUCCESSFUL BID AND ANY BACK-UP BIDS SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE SUCCESSFUL BIDDER AND THE BACK-UP BIDDER, RESPECTIVELY, FROM THE TIME THE BID IS SUBMITTED UNTIL TWO (2) BUSINESS DAYS AFTER THE SALE HAS CLOSED. EACH QUALIFYING BID THAT IS NOT THE SUCCESSFUL BID OR BACK-UP BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.**

- (d) **Sale Hearing:** The Successful Bid and any Back-Up Bid (or if no Qualifying Bid other than that of any Stalking Horse Purchaser is received, then the Stalking Horse Agreement) will be subject to approval by the Court. If the Successful Bid does not contemplate a going concern sale, then the Sale Hearing to approve such Successful Bid and any Back-Up Bid shall take place, subject to the Court's availability, on April 11, 2018. If the Successful Bid contemplates a going concern sale, then the Sale Hearing to approve such Successful Bid and any Back-Up Bid (or if no Qualifying Bid other than that of any Stalking Horse Purchaser is received, then the Stalking Horse Agreement) shall take place, subject to the Court's availability, on April 16, 2018.

The Sale Hearing may be adjourned by the Debtors from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, or by filing a hearing agenda or notice on the docket of the Debtors' chapter 11 cases. **For the avoidance of doubt, by no later than the time of announcement of the Baseline Bid for the Auction, the Debtors may determine, in consultation with the Consultation Parties, to withdraw the Assets or any subset thereof, including but not limited to fee-owned real properties, nonresidential real property leases and intellectual property, from the Auction and Sale process, and adjourn the Sale Hearing with respect to these assets—and any others—on the terms set forth** herein; provided, however, that any changes to the dates and deadlines set forth in the Bidding Procedures shall (i) comply with the milestones contained in the DIP Order or (ii) shall be made only with the consent of the DIP Administrative Agent.

At the Sale Hearing, the Debtors will seek entry of an order that, among other things:

- (i) authorizes and approves the Sale to the Successful Bidder, pursuant to the terms and conditions set forth in the Stalking Horse Agreement or such subject Purchase Agreement executed by the Successful Bidder, as applicable;
- (ii) finds that the Stalking Horse Purchaser or Successful Bidder, as applicable, is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code;

(iii) as appropriate, exempts the Sale(s) and conveyance(s) of the Assets from any transfer tax, stamp tax or similar tax, or deposit under any applicable bulk sales statute; and

(iv) unless otherwise ordered by the Court, directs that all cash proceeds generated from the sale of any Assets shall be paid to the DIP Administrative Agent upon the closing of such sale(s) for application against the obligations owing by the Debtors to the DIP Administrative Agent in accordance with the terms and conditions of the DIP Order and the DIP Documents (as defined in the DIP Order), and, thereafter, application against the obligations owing by the Debtors under the Prepetition ABL Documents (to the extent any such obligations are still outstanding) in accordance with the terms and conditions of the Prepetition ABL Documents, until such time as the DIP Obligations and the Prepetition ABL Obligations have been paid in full in cash in accordance with the terms and conditions of the DIP Documents, the DIP Order, or the Prepetition ABL Documents, as applicable.

- (e) **Back-Up Bidder:** Notwithstanding any of the foregoing, in the event that the Successful Bidder fails to (i) in the case of a going concern sale, to close the sale by April 16, 2018 (or such date as may be extended by the Debtors with the consent of the DIP Administrative Agent and the agreement of the Back-Up Bidder) or (ii) in the case of a full-chain liquidation, to commence a liquidation by April 13, 2018 (or such date as may be extended by the Debtors with the consent of the DIP Administrative Agent, together with the agreement of the Back-Up Bidder), the Back-Up Bid will be deemed to be the Successful Bid, the Back-Up Bidder will be deemed to be the Successful Bidder, and the Debtors will be authorized, but not directed, to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any interested parties.
- (f) **Return of Deposits:** All Deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder or the Back-Up Bidder(s) no later than five (5) business days following the closing of the Sale. The deposit of the Successful Bidder or, if the Sale is closed with the Back-Up Bidder, the deposit of the Back-Up Bidder, shall be applied to the purchase price for the Sale. If the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up 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 subject Purchase Agreement or any Stalking Horse Agreement, as applicable, the Debtors and their estates shall be entitled to retain the Deposit of the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) as part of the damages resulting to the Debtors and their estates for such breach or failure to perform.

- (g) **Reservation of Rights.** Notwithstanding any of the foregoing, the Debtors and their estates reserve the right to, after consultation with the Consultation Parties, modify these Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, allow for bidding on only a portion of the Assets and not all of them, modify bidding increments, waive terms and conditions set forth herein with respect to any or all potential bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all Potential Bidders, adjourn or cancel the Auction at or prior to the Auction, and adjourn the Sale Hearing with respect to all or a portion of the Assets; provided, however, that any changes to the dates and deadlines set forth herein shall (i) comply with the milestones contained in the DIP Order or (ii) shall be made only with the consent of the DIP Administrative Agent. In the event that certain of the Assets are withheld from the Sale process, the Debtors reserve the right, in accordance with the terms of the DIP Order, to establish procedures consistent with those approved by the Bidding Procedures Order as may be necessary to obtain the highest and best bids for such withheld Assets.
  
- (h) **DIP Order.** Notwithstanding anything to the contrary contained in the Bidding Procedures or otherwise: (i) the right of the DIP Administrative Agent to consent to the sale of any portion of its collateral, including, without limitation, any Assets, on terms and conditions acceptable to the DIP Administrative Agent, are hereby expressly reserved and not modified, waived or impaired in any way by the Bidding Procedures; (ii) unless otherwise ordered by the Court, all cash proceeds generated from the sale of any Assets shall be paid to the DIP Administrative Agent upon the closing of such sale for application against the obligations owing by the Debtors under the DIP Documents in accordance with the terms and conditions of the DIP Order and the DIP Documents, and thereafter against the obligations owing by the Debtors under the Prepetition ABL Documents (to the extent that any such obligations are still outstanding), in accordance with the terms and conditions of the Prepetition ABL Documents, until such time as all DIP Obligations and Prepetition ABL Obligations have been paid in full in cash in accordance with the terms and conditions of the DIP Documents and the DIP Order, and the Prepetition ABL Documents, as applicable; and (iii) nothing in the Bidding Procedures shall amend, modify, or impair any provision of the DIP Order, or the rights of the Debtors or the DIP Administrative Agent thereunder.

20. The Bidding Procedures establish the following key dates for the sale

process:

<b><u>Date</u></b>	<b><u>Deadline</u></b>
<b>March 19, 2018</b>	Assumption Notice deadline

<b>March 19, 2018</b>	Deadline to Designate Proposed Stalking Horse Bid(s) (with Consent of the DIP Administrative Agent)
<b>April 2, 2018 at 5:00 p.m. (ET)</b>	Bid Deadline
<b>April 4, 2018 at 5:00 p.m. (ET)</b>	Deadline for Qualifying Bidder to Submit Revised Bid if its Initial Bid was Not Deemed a Qualifying Bid
<b>April 6, 2018</b>	Deadline for Debtors to Designate Baseline Bid
<b>April 9, 2018 at 4:00 p.m. (ET)</b>	Contract Objection Deadline <sup>6</sup>
<b>April 9, 2018</b>	Auction, at a time and location to be determined, or such other date and time as the Debtors, after consultation with the Baseline Bidder and the Consultation Parties, may notify Qualifying Bidders who have submitted Qualifying Bids; provided that such other date and time is no earlier than two (2) business days following the delivery of such notice
<b>April 9, 2018 at 4:00 p.m. (ET)</b>	Sale Objection Deadline
<b>As Soon as Reasonably Practicable Upon Completion of Auction</b>	Deadline to File Notice of Successful Bidder
<b>April 11, 2018</b>	Deadline to Serve Notice of Successful Bidder and Successful Bidder's Adequate Assurance Information
<b>April 11, 2018</b>	Sale Hearing (if Successful Bid is for a full-chain liquidation)
<b>April 12, 2018 at 12:00 Noon (ET)</b>	Debtors' Deadline to Reply to Sale Objections

<sup>6</sup> This objection deadline applies to all objections to the sale of the Assets, including all objections to the assumption and assignment of the Assumed Contracts (with the exception of objections related to adequate assurance of future performance by a Successful Bidder other than a Stalking Horse Bidder).

<b>Not later than two (2) hours prior to the commencement of the Sale Hearing</b>	Adequate Assurance Objection Deadline for Successful Bidders Other Than the Stalking Horse Bidders and for Additional Contracts
<b>April 16, 2018</b>	Sale Hearing (if the Successful Bid is for a going concern sale)

21. The Debtors respectfully submit that the timeline set forth in the Bidding Procedures is reasonable and necessary under the circumstances of these chapter 11 cases. As set forth in the Baird Declaration, this timeline provides over eight weeks between the filing of this Motion and the Bid Deadline, on top of the diligence period offered prepetition, which will allow parties in interest sufficient time to formulate bids for the Assets. Moreover, relevant information regarding the Debtors' Assets has been made available in the Data Room during the Debtors' marketing process, allowing potential bidders to conduct due diligence. To the extent that any potential bidder has not previously conducted such diligence, such bidder will have immediate access to, subject to the execution of an appropriate confidentiality agreement, the information regarding the Debtors' Assets contained in the Data Room.

**D. Notice Procedures for the Sale, Bidding Procedures, Auction and Sale Hearing**

22. The Debtors also request approval of the sale notice (the "Sale Notice"), substantially in the form attached to the Bidding Procedures Order as Exhibit 3.

23. The Debtors will serve the Sale Notice by email, mail, or facsimile within two (2) business days upon entry of the Bidding Procedures Order upon: (1) the Office of the United States Trustee for the District of Delaware; (2) counsel to the DIP Administrative Agent; (3) counsel to the Ad Hoc Noteholder Group (as defined in the DIP Order); (4) all parties known by the Debtors to assert a lien on any of the Assets; (5) all persons known or reasonably believed to have expressed an interest in acquiring all or a substantial portion of the Assets in the Debtors

within the six (6) months prior to the Petition Date; (6) the Office of the United States Attorney for the District of Delaware; (7) the Office of the Attorney General in each state in which the Debtors operate; (8) the Office of the Secretary of State in each state in which the Debtors operate or are organized; (9) all taxing authorities having jurisdiction over any of the Assets, including the Internal Revenue Service; (10) all environmental authorities having jurisdiction over any of the Assets, including the Environmental Protection Agency; (11) the Federal Trade Commission; (12) the United States Attorney General/Antitrust Division of Department of Justice; (13) all non-Debtor parties to any of the Assumed Contracts; (14) all of the Debtors' other known creditors and equity security holders; and (15) all other parties that had filed a notice of appearance and demand for service of papers in these chapter 11 cases as of the service date (collectively, the "Sale Notice Parties").

24. The Debtors will cause the Sale Notice to be published once in the national edition of *USA Today* as soon as practicable after entry of the Bidding Procedures Order.

25. The Debtors will also post the Sale Notice and the Bidding Procedures Order on the website of the Debtors' claims and noticing agent.

**E. Assumption and Assignment Procedures**

26. To facilitate the Sale, the Debtors seek authority to assume and assign to any Successful Bidder the Assumed Contracts in accordance with the Assumption and Assignment Procedures.

27. The Assumption and Assignment Procedures are as follows:

- (a) On or before March 19, 2018 (the "Assumption Notice Deadline"), the Debtors shall file with the Court and serve on each counterparty (each, a "Counterparty," and collectively, the "Counterparties") to an Assumed Contract a notice, substantially in the form attached to the Bidding Procedures Order as **Exhibit 3** (the "Assumption Notice").

- (b) The Assumption Notice shall include, without limitation, the cure amount (each, a “Cure Amount”), if any, that the Debtors believe is required to be paid to the applicable Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code for each of the Assumed Contracts. If a Counterparty objects to (i) the Cure Amount for its Assumed Contract or (ii) the provision of adequate assurance of future performance, the Counterparty must file with the Court and serve on the Objection Notice Parties (as defined below) a written objection (a “Contract Objection”).
- (c) The Debtors shall provide by overnight mail, email or facsimile the Adequate Assurance Information (as defined below) of all parties that submit a bid as soon as practicable after receipt thereof and not later than one (1) business day after the date of the Bid Deadline, to all Counterparties whose Assumed Contracts are included in such bid and that are the subject of the Assumption Notice.
- (d) Any Contract Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, together with proof of service, **on or before 4:00 p.m. (ET) on April 9, 2018** (the “Contract Objection Deadline”); (iv) be served, so as to be actually received on or before the Contract Objection Deadline, upon the Objection 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 section 365(b)(1)(A) and (B) of the Bankruptcy Code for the Assumed 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. If any Stalking Horse Purchaser is designated the Successful Bidder in accordance with the Bid Procedures, any objections to adequate assurance of performance by such Stalking Horse Purchaser shall be filed by the Contract Objection Deadline. Any objections to adequate assurance of future performance by a Successful Bidder other than a Stalking Horse Purchaser shall be filed in accordance with subparagraph (g) below.
- (e) The “Objection Notice Parties” are as follows: (i) counsel to the Debtors, Paul, Weiss, Rifkind & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019-6064 (Attn: Kelley A. Cornish, Elizabeth R. McCole and Alexander Woolverton) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Pauline K. Morgan, Sean T. Greecher and Andrew L. Magaziner); (ii) proposed counsel to any official committee of unsecured creditors appointed in the Debtors’ chapter 11 cases; (iii) counsel to the DIP Administrative Agent, Morgan, Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110-726 (Attn: Julia

Frost-Davies and Amelia C. Joiner) and Richards Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins and Joseph C. Barsalona II); (iv) counsel to the Ad Hoc Noteholder Group, Jones Day LLP, 250 Vesey Street, New York, New York 10281-1047 (Attn: Bruce Bennett and Sidney P. Levinson); (iv) the Office of the United States Trustee for the District of Delaware, 855 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Mark Kenney and Brya Keilson); and (v) counsel to the Stalking Horse Purchaser, if any.

- (f) If after the Assumption Notice Deadline additional executory contracts or unexpired leases of the Debtors are determined to be Assumed Contracts (such additional contracts, the “Additional Contracts”), as soon as practicable thereafter and in no event less than two (2) business days before the date of the Sale Hearing, the Debtors shall file with the Court and serve, by overnight delivery, on the Counterparties an Assumption Notice, and such Counterparties shall file any Contract Objections not later than: (i) the Contract Objection Deadline in the event that such Assumption Notice was filed and served within five (5) days of the Assumption Notice Deadline and (ii) two (2) hours prior to the commencement of the Sale Hearing in the event that such Assumption Notice was filed and served more than five (5) days after the Assumption Notice Deadline.
- (g) As soon as reasonably practicable after the conclusion of the Auction, the Debtors shall file with the Court a notice identifying the Successful Bidder (a “Notice of Successful Bidder”), which shall set forth, among other things, (i) the Successful Bidder and Back-Up Bidder (if any), (ii) the Selected Assumed Contracts (as defined below), (iii) the proposed assignee(s) of such Selected Assumed Contracts, and (iv) a certification by the Debtors that the Debtors have provided, or will provide, in coordination with the proposed assignee, the Successful Bidder’s Adequate Assurance Information to each affected Counterparty on a confidential basis.
- (h) No later than one (1) business day after conclusion of the Auction, the Debtors will cause to be served by overnight mail upon each affected Counterparty and its counsel (if known): (i) the Notice of Successful Bidder and (ii) the Successful Bidder’s Adequate Assurance Information (to the extent not previously provided); provided, however, that the Debtors shall provide the Adequate Assurance Information of a Qualifying Bidder that submitted a Qualifying Bid, as soon as practicable after receipt thereof, to such Counterparty that submits a written request to receive the Adequate Assurance Information by email that specifically identifies each property for which such Counterparty would like to receive Adequate Assurance Information. The Counterparties shall file any Contract Objections solely on the basis of adequate assurance of future performance

not later than two (2) hours prior to the commencement of the Sale Hearing.

- (i) At the Sale Hearing, the Debtors will seek Court approval of their assumption and assignment to any Successful Bidder of only those Assumed Contracts that have been selected by any Successful Bidder to be assumed and assigned (each, a “Selected Assumed Contract,” and collectively, the “Selected Assumed Contracts”). The Debtors and their estates reserve any and all rights with respect to any Assumed Contracts that are not ultimately designated as Selected Assumed Contracts.
- (j) If no Contract Objection is timely received with respect to a Selected Assumed Contract: (i) the Counterparty to such Selected Assumed Contract shall be deemed to have consented to the assumption by the Debtors and assignment to the Successful Bidder of the Selected Assumed Contract, and 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 Selected Assumed Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code; and (iii) the Cure Amount for such Selected Assumed Contract shall be controlling, notwithstanding anything to the contrary in such Selected 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 Selected Assumed Contract against the Debtors and their estates or any Successful Bidder, or the property of any of them, that existed prior to the entry of the Sale Order.
- (k) 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 section 365(b)(1)(A) and (B) of the Bankruptcy Code (any such dispute, a “Cure Dispute”), such Contract Objection will be adjudicated at the Sale Hearing or at such other date and time as may be determined by the Debtors or fixed by the Court; provided, however, that if the Contract Objection relates solely to a Cure Dispute, the Selected Assumed Contract may be assumed by the Debtors and assigned to any Successful Bidder, provided that the cure amount that the Counterparty asserts is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code (or such lower amount as agreed to by the Counterparty) is deposited in a segregated account by the Debtors or the Successful Bidder, pending the Court’s adjudication of the Cure Dispute or the parties’ consensual resolution of the Cure Dispute.

- (1) Notwithstanding anything to the contrary herein, if after the Sale Hearing or the entry of the Sale Order additional executory contracts or unexpired leases of the Debtors are determined to be Assumed Contracts, as soon as practicable thereafter, the Debtors shall file with the Court and serve, by overnight delivery, on the Counterparties an Assumption Notice, and such Counterparties shall file any Contract Objections not later than fourteen (14) days thereafter. If no Contract Objection is timely received, the Debtors shall be authorized to assume and assign such Assumed Contracts to any Successful Bidder, without further notice to creditors or other parties in interest and without the need for further order of the Court, and such assumption and assignment shall be subject to the terms of the Sale Order.

### **BASIS FOR RELIEF**

#### **A. Sufficient Business Justification Exists for Consummation of the Sale Under Sections 105(a) and 363(b) of the Bankruptcy Code**

28. Pursuant to section 105(a) of the Bankruptcy Code, a “[c]ourt may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 363(b) of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). Although section 363(b) does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts have required that such use, sale or lease be based upon the sound business judgment of the debtor. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (internal citation omitted); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070–71 (2d Cir. 1983); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147–48 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of *In re Lionel Corp.*); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175–76 (D. Del. 1991) (holding that the Third Circuit adopted the “sound business judgment” test in *Abbotts Dairies*); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (same).

29. The demonstration of a valid business justification by the debtor leads to a strong presumption “that in making [the] business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

30. The Debtors’ decision to consummate the Sale represents a reasonable exercise of the Debtors’ business judgment and, accordingly, the Sale should be approved under sections 105(a) and 363(b) of the Bankruptcy Code. The Debtors will continue to conduct an extensive process to market the Assets. The open and fair auction and sale process contemplated by the Bidding Procedures will ensure that the Debtors’ estates receive the highest or best value available for the Assets by allowing the market to determine the purchase price of the Assets, as well as the viability of a restructuring transaction, and will provide a greater recovery than would be provided by any other available alternative. Moreover, the Debtors and their advisors are committed to entertaining and pursuing all value-maximizing alternatives and, accordingly, will be soliciting interest in a Restructuring Term Sheet, a going concern sale, and liquidation opportunities on a parallel track. Furthermore, compliance with the Bidding Procedures will ensure the fairness and reasonableness of the consideration to be paid by the Stalking Horse Purchaser or other Successful Bidder, and establish that the Debtors and such bidder have proceeded in good faith.

31. Additionally, the Debtors believe that the notice procedures described above are reasonable and adequate under the circumstances. Bankruptcy Rules 2002(a) and (c) require the Debtors to notify creditors of the Sale, the terms and conditions of the Sale, the time

and place of the Auction, and the deadline for filing any objections. The Debtors believe that the proposed notice procedures fully comply with Bankruptcy Rule 2002, and are reasonably calculated to provide timely and adequate notice of any Stalking Horse Agreement, the Sale, Bidding Procedures, Auction, and Sale Hearing to the Debtors' creditors and all other parties in interest that are entitled to notice, as well as those parties that have expressed a *bona fide* interest in acquiring the Assets.

32. The Sale conducted in accordance with the Bidding Procedures represents the best path forward for maximizing recoveries to such estates, the Debtors' creditors, and all parties in interest, given both the open nature of the proposed process and the need for a Sale to occur given the Debtors' current financial circumstances as outlined in the First Day Declaration. Indeed, the Bidding Procedures will allow the Debtors and their advisors to determine, with market accuracy, whether a restructuring, going concern sale or liquidation will be in the best interest of the Debtors' estates and all interested parties. The Debtors submit that ample business justification exists for the consummation of Sale and, therefore, request that the Court approve such Sale.

**B. The Sale of the Assets Free and Clear of All Encumbrances Is Authorized Under Section 363(f) of the Bankruptcy Code**

33. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests and encumbrances if:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). This provision is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

34. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Assets “free and clear” of liens and interests. *See Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that because section 363(f) is written in the disjunctive, a court may approve a sale free and clear if any one subsection is met); *see also Mich. Emp’t Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (same); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same). Furthermore, a debtor possesses broad authority to sell assets free and clear of liens. *See In re Trans World Airlines, Inc.*, 322 F.3d 283, 289 (3d Cir. 2003).

35. The Debtors submit that, if it is determined that the sale of the Assets to a going concern buyer or liquidator(s) is in the best interest of the estates in order to attract the highest and best value for creditors, it is appropriate to sell their Assets on a final “as is” basis, free and clear of any and all Encumbrances (except as otherwise expressly set forth in the Sale Order and a Stalking Horse Agreement or a Purchase Agreement with a Successful Bidder, as applicable) in accordance with section 363(f) of the Bankruptcy Code because one or more of the tests of section 363(f) are satisfied with respect to such Sale.

36. In particular, the Debtors believe that section 363(f)(2) of the Bankruptcy Code will be met because the Debtors’ prepetition secured lenders are secured by, among other things, the Assets and have consented to the Sale, provided that, in the case of the DIP Administrative Agent, all cash proceeds generated from the sale of any Assets shall be paid to

the DIP Administrative Agent upon the closing of such sale for permanent application against the obligations owing by the Debtors under the DIP Documents in accordance with the terms and conditions of the DIP Documents and, thereafter, against the obligations of the Debtors owing under the Prepetition ABL Agreement (to the extent any such obligations are still outstanding) in accordance with the terms and conditions of the Prepetition ABL Documents, until such time as all DIP Obligations and Prepetition ABL Obligations have been paid in full in cash in accordance with the terms and conditions of the DIP Documents, the DIP Order, and the Prepetition ABL Documents, as applicable; and in the case of the holders of Second Lien Notes, all Encumbrances thereof attach to the cash proceeds of the Sale in the same order of priority, with the same validity, force, and effect that the such holders had prior to the Sale, subject to the terms of the Intercreditor Agreement and the Prepetition Documents (each as defined in the DIP Order).

37. Moreover, with respect to any other party asserting a lien, claim, or encumbrance against the Assets, the Debtors anticipate that they will be able to satisfy one or more of the conditions set forth in section 363(f) of the Bankruptcy Code. In particular, known lienholders will receive notice and will be given sufficient opportunity to object to the relief requested. Such lienholders that do not object to the Sale should be deemed to have consented. *See FutureSource LLC v. Reuters Ltd.*, 312 F.3d 281, 285-86 (7th Cir. 2002) (“[L]ack of objection (provided of course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in the bankrupt’s assets had to execute a formal consent before they could be sold.”) (internal citations omitted); *Hargrave v. Twp. of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (holding that creditor’s failure to object to sale free and clear of liens, claims and encumbrances

satisfies section 363(f)(2)); *In re Elliot*, 94 B.R. at 345 (same). Consistent with the foregoing, the Bidding Procedures Order provides that the absence of a timely objection to the sale of the Assets in accordance therewith shall be “consent” to such sale within the meaning of section 363(f)(2) of the Bankruptcy Code.

38. Furthermore, the Debtors propose that any Encumbrances asserted against the Assets be transferred to and attach to the proceeds of such Sale. Application of the proceeds generated by the Sale will be subject to any applicable provisions of the DIP Order.

**C. The Sale Should Be Subject to the Protections of Section 363(m) of the Bankruptcy Code**

39. Section 363(m) of the Bankruptcy Code provides, in part, that the reversal or modification on appeal of an authorization of a sale pursuant to section 363(b) or section 363(c) of the Bankruptcy Code does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. *See* 11 U.S.C. § 363(m). In approving the Sale free and clear of Encumbrances, the Debtors request that the Court find and hold that all purchasers of Assets purchased in accordance with the Bidding Procedures are entitled to the protections afforded by section 363(m) of the Bankruptcy Code. Such relief is appropriate in that selection of the Successful Bidder will be the result of a competitive bidding process and arm’s-length, good-faith negotiations, and parties in interest will have the opportunity to review and object to a proposed transaction. *See Esposito v. Title Ins. Co. of Pa. (In re Fernwood Mkts.)*, 73 B.R. 616, 620 (Bankr. E.D. Pa. 1987) (good faith purchasers are protected under section 363(m) where notice is provided to lienholders).

**D. The Court Should Approve the Bidding Procedures**

40. The key objective in any sale of property of a debtor's estate is to maximize the value received by the estate. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004) (finding that debtor "had a fiduciary duty to protect and maximize the estate's assets"); *Official Comm. of Unsecured Creditors of Cybergenics, Corp v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) (same). Procedures used to enhance competitive bidding support this objective and, therefore, are appropriate in the context of bankruptcy sales. *See In re O'Brien Envtl. Energy, Inc.*, 181 F.3d 527, 537 (3d Cir. 1999); *see also Integrated Res. Inc.*, 147 B.R. at 659 (stating that bidding procedures "encourage bidding and . . . maximize the value of the debtor's assets").

41. The Debtors have designed the Bidding Procedures to promote a competitive and fair bidding process and, thus, to maximize value for the Debtors' estates and creditors. The Bidding Procedures will allow the Debtors to conduct the Auction in a controlled, fair and open fashion that will encourage participation by financially capable bidders, thereby increasing the likelihood that the Debtors will receive the highest or best possible consideration for the Assets. Furthermore, the Bidding Procedures provide an appropriate framework for the Debtors to review, analyze and compare any bids received to determine which bids are in the best interests of the Debtors' estates and their creditors.

42. Moreover, the Debtors are required under the DIP Order to complete the auction and sale process on the timetable set forth in the Bidding Procedures, which timetable is fair and reasonable in light of the circumstances of these chapter 11 cases, including the Debtors' current liquidity position.

43. The Debtors submit that the Bidding Procedures are fair, transparent and will derive the highest or best bids for the Assets. Therefore, the Debtors request that the Court

approve the Bidding Procedures, including, without limitation, the dates established thereby for the Auction and the Sale Hearing.

**E. The Assumption and Assignment of the Assumed Contracts in Connection with the Sale Satisfies Section 365 of the Bankruptcy Code**

44. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). The Second Circuit has stated that “[t]he purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to ‘renounce title to and abandon burdensome property.’” *Orion Pictures Corp. v. Showtime Networks, Inc.* (*In re Orion Pictures Corp.*), 4 F.3d 1095, 1098 (2d Cir. 1993) (quoting 2 COLLIER ON BANKRUPTCY ¶ 365.01[1] (15th ed. 1993)).

45. The standard applied to determine whether the assumption of a contract or an unexpired lease should be authorized is the “business judgment” standard. *See In re AbitibiBowater Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (finding that a debtor’s decision to assume or reject an executory contract will stand so long as “a reasonable business person would make a similar decision under similar circumstances.”); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (stating a debtor’s decision to reject an executory contract is governed by the business judgment standard and can only be overturned if the decision was the product of bad faith, whim, or caprice). As described above, “[t]he business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company.’” *Integrated Res., Inc.*, 147 B.R. at 656 (quoting *Smith v. Van Gorkom*, 488 A.2d at 872).

46. The business judgment rule is crucial in chapter 11 cases and shields a debtor's management from judicial second-guessing. *See id.*; *see also Comm. of Asbestos Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor’s management decisions.”). Generally, courts defer to a debtor in possession’s business judgment to assume or reject an executory contract or lease. *See Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co., (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (stating that the business judgment test “requires only that the trustee [or debtor in possession] demonstrate that [assumption or] rejection of the executory contract will benefit the estate.”); *see also N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984); *Control Data Corp. v. Zelman (In re Minges)*, 602 F.2d 38, 42-43 (2d Cir. 1979); *In re Riodizio, Inc.*, 204 B.R. 417, 424-25 (Bankr. S.D.N.Y. 1997); *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994).

47. Here, the Debtors have exercised their sound business judgment in determining that assumption and assignment of the Assumed Contracts in connection with the Sale is in the best interests of the Debtors and their estates, and, accordingly, the Court should approve the proposed assumption under section 365(a) of the Bankruptcy Code. *See, e.g., In re Philadelphia Newspapers, LLC*, 424 B.R. 178, 182-83 (Bankr. E.D. Pa. 2010) (stating that if a debtor’s business judgment has been reasonably exercised, a court should approve the assumption or rejection of an executory contract or unexpired lease); *Westbury Real Estate Ventures, Inc. v. Bradlees, Inc. (In re Bradlees Stores, Inc.)*, 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996); *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D.

Utah 1981) (holding that, absent extraordinary circumstances, court approval of a debtor's decision to assume or reject an executory contract "should be granted as a matter of course").

48. As set forth above, the Sale will yield the maximum value for the Debtors' estates. To that end, the assumption, assignment and sale of the Assumed Contracts will be necessary for the Debtors to obtain the benefits of any Purchase Agreement. In addition, under section 365(k) of the Bankruptcy Code, a debtor's assignment of a contract or lease "relieves the trustee and the estate from any liability for any breach of such contract or lease occurring after such assignment." 11 U.S.C. § 365(k). Thus, following an assignment to the Successful Bidder of any Assumed Contract, the Debtors will be relieved from any liability for any subsequent breach associated therewith.

49. Furthermore, section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Assumed Contracts must be cured or that adequate assurance be provided that such defaults will be promptly cured. 11 U.S.C. § 365(b)(1). The Debtors propose to file with the Court, and serve on each Counterparty to an Assumed Contract, an Assumption Notice that indicates the proposed Cure Amount for each such contract. As such, each Counterparty will have the opportunity to object to the proposed assumption and assignment to the Successful Bidder and to the proposed Cure Amount, if applicable. Moreover, the payment or reserve of the applicable Cure Amount, as provided for in the Bidding Procedures, will be a condition to the Debtors' assumption and assignment of any Assumed Contract.

50. Relatedly, section 365(f)(2) of the Bankruptcy Code provides that a debtor may assign an executory contract or unexpired lease of nonresidential real property if "adequate assurance of future performance by the assignee of such contract or lease is provided." 11 U.S.C. § 365(f)(2). The words "adequate assurance of future performance" must be given a

“practical, pragmatic construction” in light of the facts and circumstances of the proposed assumption. *See In re Fleming Cos., Inc.*, 499 F.3d 300, 307 (3d Cir. 2007) (internal citation omitted); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (same); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (finding that adequate assurance of future performance does not mean absolute assurance that debtor will thrive and profit); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”).

51. Specifically, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (holding that adequate assurance of future performance is given where the assignee of lease has financial resources and expressed a willingness to devote sufficient funding to the business to ensure its success, and that in the leasing context, the chief determinant of adequate assurance is whether rent will be paid).

52. Here, the Successful Bidder will have provided adequate assurance of future performance with respect to any Assumed Contract. For its bid to be deemed a Qualifying Bid, each Qualifying Bidder will be required to provide evidence supporting its ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code (the “Adequate Assurance Information”), including: (a) the bidder’s financial wherewithal and willingness to perform under any contracts that are assumed and assigned to such potential bidder; (b) the name of the proposed tenant that will act as the assignee under any assigned real property lease; and (c) a

contact person for the proposed assignee that the Counterparty may directly contact in connection with the adequate assurance of future performance.

53. To the extent available, the Adequate Assurance Information may also include: (x) a corporate organization chart or similar disclosure identifying ownership and control of the proposed assignee; (y) the potential assignee's intended use for the space; and (z) financial statements, tax returns and annual reports. Furthermore, given that the Debtors will submit evidence at the Sale Hearing that all requirements for the assumption and assignment of such contracts have been satisfied, the Court and other interested parties will have the opportunity to evaluate the ability of each Successful Bidder to provide adequate assurance of future performance.<sup>7</sup>

54. Therefore, the Debtors respectfully request that the Court (a) approve the proposed assumption and assignment of the Assumed Contracts, and (b) find that all anti-assignment provisions of such contracts to be unenforceable under section 365(f) of the Bankruptcy Code.<sup>8</sup>

**F. Secured Parties Should Be Authorized to Credit Bid  
on the Assets under Section 363(k) of the Bankruptcy Code**

55. Section 363(k) of the Bankruptcy Code provides that, unless the court for cause orders otherwise, the holder of a claim secured by property that is the subject of a sale

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<sup>7</sup> The Debtors will also provide the Adequate Assurance Information to any Counterparty that submits a written request to receive the Adequate Assurance Information by email that specifically identifies each property for which such Counterparty would like to receive Adequate Assurance Information in accordance with the terms of the Bidding Procedure Order.

<sup>8</sup> Section 365(f)(1) provides that "notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease..." 11 U.S.C. § 365(f)(1). Section 365(f)(3) further provides that "notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee." 11 U.S.C. § 365(f)(3).

“may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.” 11 U.S.C. § 363(k). Even if a secured creditor is undersecured as determined in accordance with section 506(a) of the Bankruptcy Code, section 363(k) allows such secured creditor to bid the full face value of its claim and does not limit the credit bid to the claim’s economic value. *See Cohen v. KB Mezzanine Fund II, LP (In re Submicron Sys. Corp.)*, 432 F.3d 448, 459-60 (3d Cir. 2006).

56. As a result, the Debtors propose that the DIP Administrative Agent, the DIP Lenders, and Prepetition ABL Parties, each of which holds claims that are secured by valid, binding, enforceable, non-avoidable and perfected liens on and security interests in substantially all of the Assets pursuant to the terms of the Prepetition ABL Documents, the DIP Documents, and the DIP Order, be entitled to credit bid all or a portion of the DIP Obligations or the Prepetition ABL Obligations (as applicable) under section 363(k) of the Bankruptcy Code and as provided for in the DIP Order and the Bidding Procedures.

**WAIVER OF STAY UNDER  
BANKRUPTCY RULE 6004(H) AND 6006(D)**

57. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Furthermore, Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d).

58. As set forth throughout this Motion, and further detailed in the Baird Declaration, any delay in the Debtors’ ability to consummate the Sale—should the Debtors determine it is the best or only viable disposition of the Assets—would be detrimental to the

Debtors, their creditors and estates, and would impair the Debtors' ability to maximize value in the Assets through an expeditious closing of the Sale.

59. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen day stay imposed by Bankruptcy Rule 6004(h) and 6006(d), to the extent applicable.

**NOTICE**

60. Notice of this Motion has been provided to: (1) the Office of the United States Trustee for the District of Delaware; (2) counsel to the DIP Administrative Agent; (3) counsel to the Ad Hoc Noteholder Group; (4) all parties known by the Debtors to assert a lien on any of the Assets; (5) all persons known or reasonably believed to have expressed an interest in acquiring all or a substantial portion of the Assets in the Debtors within the six (6) months prior to the Petition Date; (6) the Office of the United States Attorney for the District of Delaware; (7) the Office of the Attorney General in each state in which the Debtors operate; (8) the Office of the Secretary of State in each state in which the Debtors operate or are organized; (9) all taxing authorities having jurisdiction over any of the Assets, including the Internal Revenue Service; (10) all environmental authorities having jurisdiction over any of the Assets, including the Environmental Protection Agency; (11) the Federal Trade Commission; (12) the United States Attorney General/Antitrust Division of Department of Justice; (13) Debtors' forty (40) largest unsecured creditors (excluding insiders); and (14) all of the landlords for the Debtors' stores. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

**CONCLUSION**

WHEREFORE, the Debtors request entry of the Bidding Procedures Order and the Sale Order, granting the relief requested herein and such other and further relief as is just and proper.

Dated: February 4, 2018  
Wilmington, Delaware

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Debtors in Possession*

**EXHIBIT A**

Bidding Procedures Order

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

In re:

THE BON-TON STORES, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-10248 (\_\_\_\_)

(Jointly Administered)

Ref. Docket No. \_\_\_\_

**ORDER (I) SCHEDULING A HEARING ON THE APPROVAL OF THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, AND THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (II) APPROVING CERTAIN BIDDING PROCEDURES AND ASSUMPTION AND ASSIGNMENT PROCEDURES, AND THE FORM AND MANNER OF NOTICE THEREOF, AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for the entry of: (a) an order, (i) scheduling a hearing (the "Sale Hearing") on approval of the Sale of all or substantially all of the Debtors' Assets, or a subset(s) thereof, free and clear of all liens, claims, Encumbrances, and other interests, and authorizing the assumption and assignment of certain Assumed Contracts in connection therewith; (ii) authorizing and approving certain bidding procedures for the Sale, attached hereto as Exhibit 1 (collectively, the "Bidding Procedures"), authorizing and approving certain Assumption and Assignment Procedures provided for herein, and authorizing and

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: The Bon-Ton Stores, Inc. (5229); The Bon-Ton Department Stores, Inc. (9309); The Bon-Ton Giftco, LLC (2805); Carson Pirie Scott II, Inc. (2140); Bon-Ton Distribution, LLC (5855); McRIL, LLC (5548); Bonstores Holdings One, LLC (8574); Bonstores Realty One, LLC (8931); Bonstores Holdings Two, LLC (8775); and Bonstores Realty Two, LLC (9075). The headquarters for the above-captioned Debtors is 2801 East Market Street, Bldg. E, York, Pennsylvania 17402.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings given them in the Bidding Procedures (as defined below), or to the extent not defined therein, the Motion.

approving the form and manner of each of the foregoing; and (iii) granting related relief; and (b) a Sale Order (i) authorizing and approving the Debtors' entry into a Purchase Agreement or Agreements for the Assets (or a subset(s) thereof); (ii) authorizing and approving the Sale, free and clear of all Encumbrances other than those permitted by the subject Purchase Agreement; (iii) authorizing and approving the assumption and assignment of the Assumed Contacts in connection therewith; and (iv) granting related relief; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having reviewed the Motion; and upon the Baird Declaration; and this Court having found and determined that the relief sought in the Motion as to the Bidding and Auction Process (as defined below) is in the best interests of the Debtors, their estates and creditors, and all parties in interest and that the legal and factual bases set forth in the Motion, the Baird Declaration and at any hearing in connection with 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:**<sup>3</sup>

A. This Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order.

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<sup>3</sup> The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

C. The statutory and legal predicates for the relief requested in the Motion and provided for herein are sections 105(a), 363, 365, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

D. The Debtors have demonstrated that good and sufficient notice of the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and all other interested parties.

E. The Stalking Horse Notice is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of: (i) the identification of any Stalking Horse Purchaser; (ii) a copy of any Stalking Horse Agreement; (iii) any Stalking Horse Purchase Price; (iv) the deposit paid by any Stalking Horse Purchaser; and (v) the amount of bid protections provided for in the Stalking Horse Agreement. No other or further notice is required of the foregoing.

F. Notice of the hearing for approval of this Order and the Sale Notice (defined below) are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of this Order, the Bidding Procedures, the Auction, the Sale, and the Sale Hearing, and any and all objection deadlines related thereto, and no other or further notice is required of the foregoing.

G. The Bidding Procedures are (i) fair, reasonable, and appropriate; and (ii) designed to maximize recovery with respect to the Assets.

H. The Assumption and Assignment Procedures provided for herein and the Assumption Notice (as defined below) are reasonable and appropriate and consistent with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006. The Assumption and Assignment Procedures and the Assumption Notice have been tailored to provide an adequate opportunity for all Counterparties (as defined below) to assert any Contract Objections (as defined below).

I. Entry of this Order is in the best interests of the Debtors, their estates and creditors and all other interested parties.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Those portions of the Motion seeking approval of (a) the Bidding Procedures, (b) the Assumption and Assignment Procedures, (c) the procedures regarding entry into a Stalking Horse Agreement, (d) the date and time of the Sale Hearing, and (e) the noticing and objection procedures related to each of the foregoing, including, without limitation, the Stalking Horse Notice (as defined below), the notice of the Debtors' potential assumption and assignment of the Assumed Contracts, substantially in the form attached hereto as Exhibit 2 (the "Assumption Notice"), and the notice of the entry of this Order, substantially in the form attached hereto as Exhibit 3 (the "Sale Notice") (subclauses (a) – (e) above, collectively, the "Bidding and Auction Process"), are hereby GRANTED to the extent set forth herein.

2. Any objections to the Motion as it pertains to the Bidding and Auction Process or the relief granted by this Order that have not been withdrawn, waived or settled, and

all reservations of rights included therein, are hereby overruled and denied on the merits with prejudice.

3. In the event that the Debtors enter into a Stalking Horse Agreement, as soon as reasonably practicable thereafter, the Debtors shall file with the Court and serve by overnight mail, email or facsimile on (i) the Consultation Parties; (ii) all persons known or reasonably believed to have expressed interest in acquiring all or a substantial portion of the Assets within the six months prior to the Petition Date, (iii) all non-Debtor parties to any of the Assumed Contracts; and (iv) all parties that have requested notice in these chapter 11 cases as of the date thereof a notice (the "Stalking Horse Notice") that shall include the following: (i) the identification of the Stalking Horse Purchaser; (ii) a copy of the Stalking Horse Agreement(s); (iii) the purchase price provided for in the Stalking Horse Agreement; (iv) the deposit paid by the Stalking Horse Purchaser; and (v) (if approved by a separate order of this Court) the amount of any Bid Protections provided for in the Stalking Horse Agreement. Within two (2) business days after filing the Stalking Horse Notice, the Debtors shall provide, in coordination with the Stalking Horse Purchaser, the Adequate Assurance Information (as defined below) for such Stalking Horse Purchaser to all Counterparties (and their counsel, if known) whose Assumed Contracts are included in the Stalking Horse Agreement and that are the subject of an Assumption Notice on a confidential basis; provided that the Counterparties (and their counsel, if known) use and disclosure of the Adequate Assurance Information shall be subject to the restrictions set forth in this Order.

4. The Bidding Procedures are hereby approved. The failure to specifically include or reference any particular provision of the Bidding Procedures in the Motion or this Order shall not diminish or otherwise impair the effectiveness of such procedures, it being this

Court's intent that the Bidding Procedures are approved in their entirety, as if fully set forth in this Order. The Debtors are hereby authorized to conduct the Auction pursuant to the terms of the Bidding Procedures and this Order.

5. Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality or similar provisions relating to any due diligence information, the Debtors and their estates shall be authorized to provide due diligence information to Qualifying Bidders provided that such Qualifying Bidders have delivered an executed confidentiality agreement in form and substance acceptable to the Debtors. The Debtors and their estates are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualifying Bidders in connection with the Bidding Procedures or the Sale, provided that the information was provided in accordance with this Order.

6. For all purposes under the Bidding Procedures: (a) any designated Stalking Horse Purchaser shall be considered a Qualifying Bidder, and any Stalking Horse Agreement shall be considered a Qualifying Bid; (b) should it decide to credit bid, applicable parties holding a perfected security interest in the Assets may seek to credit bid some or all of their claims that are not subject to a *bona fide* dispute for those Assets that constitute their collateral, in accordance with section 363(k) of the Bankruptcy Code; and (c) in determining whether the Potential Bidders constitute Qualifying Bidders, the Debtors may consider a combination of bids for the Assets.

7. The Bidding Procedures shall apply to the Potential Bidders, the Qualifying Bidders, the submission, receipt, and analysis of all bids relating to the Sale, and the conduct of the Sale and the Auction.

8. The following “Assumption and Assignment Procedures” are hereby approved:

(a) On or before March 19, 2018 (the “Assumption Notice Deadline”), the Debtors shall file with the Court and serve on each counterparty (each, a “Counterparty,” and collectively, the “Counterparties”) to an Assumed Contract an Assumption Notice.

(b) The Assumption Notice shall include, without limitation, the cure amount (each, a “Cure Amount”), if any, that the Debtors believe is required to be paid to the applicable Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code for each of the Assumed Contracts. If a Counterparty objects to (i) the Cure Amount for its Assumed Contract or (ii) the provision of adequate assurance of future performance, the Counterparty must file with the Court and serve on the Objection Notice Parties (as defined below) a written objection (a “Contract Objection”).

(c) The Debtors shall provide by overnight mail, email or facsimile the Adequate Assurance Information (as defined below) of all parties that submit a bid as soon as practicable after receipt thereof and not later than one (1) business day after the date of the Bid Deadline, to all Counterparties whose Assumed Contracts are included in such bid and that are the subject of the Assumption Notice.

(d) Any Contract Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, together with proof of service, **on or before 4:00 p.m. (ET) on April 9, 2018** (the “Contract Objection Deadline”); (iv) be served, so as to be actually received on or before the Contract Objection Deadline, upon the Objection 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 section 365(b)(1)(A) and (B) of the Bankruptcy Code for the Assumed 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. If any Stalking Horse Purchaser is designated the Successful Bidder in accordance with the Bid Procedures, any objections to adequate assurance of performance by such Stalking Horse Purchaser shall be filed by the Contract Objection Deadline. Any objections to adequate assurance of future performance by a Successful Bidder other than a Stalking Horse Purchaser shall be filed in accordance with subparagraph (g) below.

(e) The “Objection Notice Parties” are as follows: (i) counsel to the Debtors, Paul, Weiss, Rifkind & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019-6064 (Attn: Kelley A. Cornish, Elizabeth R. McColm and

Alexander Woolverton) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Pauline K. Morgan, Sean T. Greecher and Andrew L. Magaziner); (ii) proposed counsel to any official committee of unsecured creditors appointed in the Debtors' chapter 11 cases; (iii) counsel to the DIP Administrative Agent, Morgan, Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110-726 (Attn: Julia Frost-Davies and Amelia C. Joiner) and Richards Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins and Joseph C. Barsalona II); (iv) counsel to the DIP Tranche A-1 Documentation Agent, Choate, Hall & Stewart LLP, Two International Place, Boston, MA 02110 (Attn: John F. Ventola) (v) counsel to the Ad Hoc Noteholder Group, Jones Day LLP, 250 Vesey Street, New York, New York 10281-1047 (Attn: Bruce Bennett and Sidney P. Levinson) and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801 (Attn: Norman L. Pernick and J. Kate Stickles; (vi) the Office of the United States Trustee for the District of Delaware, 855 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Mark Kenney, Esq.); and (vii) counsel to the Stalking Horse Purchaser, if any.

(f) If after the Assumption Notice Deadline additional executory contracts or unexpired leases of the Debtors are determined to be Assumed Contracts, as soon as practicable thereafter and in no event less than two (2) business days before the date of the Sale Hearing, the Debtors shall file with the Court and serve, by overnight delivery, on the Counterparties an Assumption Notice, and such Counterparties shall file any Contract Objections not later than: (i) the Contract Objection Deadline in the event that such Assumption Notice was filed and served within five (5) days of the Assumption Notice Deadline and (ii) two (2) hours prior to the commencement of the Sale Hearing in the event that such Assumption Notice was filed and served more than five (5) days after the Assumption Notice Deadline.

(g) As soon as reasonably practicable after the conclusion of the Auction, the Debtors shall file with the Court a notice identifying the Successful Bidder (a "Notice of Successful Bidder"), which shall set forth, among other things, (i) the Successful Bidder and Back-Up Bidder (if any), (ii) the Selected Assumed Contracts (as defined below), (iii) the proposed assignee(s) of such Selected Assumed Contracts, and (iv) a certification by the Debtors that the Debtors have provided, or will provide, in coordination with the proposed assignee, the Successful Bidder's Adequate Assurance Information to each affected Counterparty on a confidential basis.

(h) No later than one (1) business day after conclusion of the Auction, the Debtors will cause to be served by overnight mail upon each affected Counterparty and its counsel (if known): (i) the Notice of Successful Bidder and (ii) the Successful Bidder's Adequate Assurance Information (to the extent not previously provided); provided, however, that the Debtors shall provide the Adequate Assurance Information of a Qualifying Bidder that submitted a

Qualifying Bid, as soon as practicable after receipt thereof, to such Counterparty that submits a written request to receive the Adequate Assurance Information by email that specifically identifies each property for which such Counterparty would like to receive Adequate Assurance Information. The Counterparties shall file any Contract Objections solely on the basis of adequate assurance of future performance not later than two (2) hours prior to the commencement of the Sale Hearing.

(i) At the Sale Hearing, the Debtors will seek Court approval of their assumption and assignment to any Successful Bidder of only those Assumed Contracts that have been selected by any Successful Bidder to be assumed and assigned (each, a “Selected Assumed Contract,” and collectively, the “Selected Assumed Contracts”). The Debtors and their estates reserve any and all rights with respect to any Assumed Contracts that are not ultimately designated as Selected Assumed Contracts.

(j) If no Contract Objection is timely received with respect to a Selected Assumed Contract: (i) the Counterparty to such Selected Assumed Contract shall be deemed to have consented to the assumption by the Debtors and assignment to the Successful Bidder of the Selected Assumed Contract, and 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 Selected Assumed Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code; and (iii) the Cure Amount for such Selected Assumed Contract shall be controlling, notwithstanding anything to the contrary in such Selected 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 Selected Assumed Contract against the Debtors and their estates or any Successful Bidder, or the property of any of them, that existed prior to the entry of the Sale Order.

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

(1) Notwithstanding anything to the contrary herein, if after the Sale Hearing or the entry of the Sale Order additional executory contracts or unexpired leases of the Debtors are determined to be Assumed Contracts, as soon as practicable thereafter, the Debtors shall file with the Court and serve, by overnight delivery, on the Counterparties an Assumption Notice, and such Counterparties shall file any Contract Objections not later than fourteen (14) days thereafter. If no Contract Objection is timely received, the Debtors shall be authorized to assume and assign such Assumed Contracts to any Successful Bidder, without further notice to creditors or other parties in interest and without the need for further order of the Court, and such assumption and assignment shall be subject to the terms of the Sale Order.

9. The Debtors' decision to assume and assign the Assumed Contracts to the Successful Bidder is subject to this Court's approval and the closing of the Sale. Accordingly, absent this Court's approval and the closing of the Sale, the Assumed Contracts shall not be deemed assumed or assumed and assigned, and shall in all respects be subject to further administration by the Debtors and their estates under the Bankruptcy Code in connection with these chapter 11 cases.

10. The Assumption and Assignment Procedures are appropriate and fair to all Counterparties and comply in all respects with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules. The Assumption Notice is: (a) reasonably calculated to (i) provide sufficient, effective notice to all Counterparties and any other affected parties of the Debtors' intent to assume and assign to any Successful Bidder some or all of the Assumed Contracts and (ii) afford the Counterparties the opportunity to exercise any rights affected by the Motion and the relief granted by this Order pursuant to Bankruptcy Rules 2002(a)(2), 6004 and 6006; and (b) hereby approved.

11. The inclusion of a contract, lease or other agreement on an Assumption Notice shall not constitute or be deemed a determination or admission by the Debtors and their estates or any other party in interest that such contract, lease or other agreement is, in fact, an

executory contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights of the Debtors and their estates with respect thereto shall be reserved.

12. The Stalking Horse Notice, the Assumption Notice, the Sale Notice, the Bidding Procedures, the Auction, the Sale Hearing, and the Assumption and Assignment Procedures and the objection periods associated with each of the foregoing are reasonably calculated to provide notice to any affected party and afford the affected party the opportunity to exercise any rights affected by the Motion as it relates to the Bidding Procedures, Auction, the Sale, the Sale Hearing, and the assumption and assignment to the Successful Bidder, of the Assumed Contracts pursuant to Bankruptcy Rules 2002(a)(2), 6004 and 6006, and such notice and objection periods are hereby approved.

13. Within two (2) business days of the entry of this Order, the Debtors shall serve the Sale Notice on (1) the Office of the United States Trustee for the District of Delaware; (2) counsel to the DIP Administrative Agent; (3) counsel to the Ad Hoc Noteholder Group; (4) counsel to the DIP Tranche A-1 Documentation Agent; (5) counsel to the Indenture Trustee under the Second Lien Indenture (as defined in the DIP Order); (6) all parties known by the Debtors to assert a lien on any of the Assets; (7) all persons known or reasonably believed to have asserted an interest in any of the Assets; (8) all persons known or reasonably believed to have expressed an interest in acquiring all or a substantial portion of the Assets in the Debtors within the six (6) months prior to the Petition Date; (9) the Office of the United States Attorney for the District of Delaware; (10) the Office of the Attorney General in each state in which the Debtors operate; (11) the Office of the Secretary of State in each state in which the Debtors operate or are organized; (12) all taxing authorities having jurisdiction over any of the Assets, including the Internal Revenue Service; (13) all environmental authorities having jurisdiction

over any of the Assets, including the Environmental Protection Agency; (14) the Federal Trade Commission; (15) the United States Attorney General/Antitrust Division of Department of Justice; (16) all non-Debtor parties to any of the Assumed Contracts; (17) all of the Debtors' other known creditors and equity security holders; and (18) all other parties that had filed a notice of appearance and demand for service of papers in these chapter 11 cases as of the service date (collectively, the "Sale Notice Parties").

14. In addition, the Debtors shall publish the Sale Notice once in the national edition of *USA Today* as soon as practicable after the entry of this Order. Publication of the Sale Notice as described in this Order conforms to the requirements of Bankruptcy Rules 2002(l) and 9008, and is reasonably calculated to provide notice to any affected party, including any Potential Bidders, and afford the affected party the opportunity to exercise any rights affected by the Motion and the relief granted by this Order.

15. The Debtors shall post any Stalking Horse Notice, the Sale Notice and this Order on the website of the Debtors' claims and noticing agent, at <https://cases.primeclerk.com/bonton>.

16. Any objections to the Sale or the relief requested in connection with the Sale (a "Sale Objection"), other than a Contract Objection, which shall be governed by the Assumption and Assignment Procedures, must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) set forth the specific basis for the Sale Objection; (d) be filed with the Clerk of this Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, together with proof of service, **on or before 4:00 p.m. (ET) on April 9, 2018** (the "Sale Objection Deadline"); and (e) be served, so as to be actually received on or before the Sale Objection Deadline, upon the Objection Notice Parties. If a Sale Objection is not filed and

served on or before the Sale Objection Deadline in accordance with the foregoing requirements, the objecting party shall be barred from objecting to the Sale and shall not be heard at the Sale Hearing, and this Court may enter the Sale Order without further notice to such party.

17. 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 contemplated by a Purchase Agreement with a 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.

18. The Administrative Agent, the DIP Lenders (as defined in the DIP Order) and the Prepetition ABL Parties (as defined in the DIP Order) shall be entitled to credit bid all or a portion of the DIP Obligations or Prepetition ABL Obligations (as defined in the DIP Order), as applicable, in accordance with section 363(k) of the Bankruptcy Code.

19. A Qualifying Bidder, other than any Stalking Horse Purchaser, that desires to make a bid shall deliver a written and electronic copy of its bid in both PDF and MS-WORD format to the Notice Parties so as to be received on or before **April 2, 2018 at 5:00 p.m. (ET)** (the “Bid Deadline”); provided that the Debtors, with the consent of the DIP Administrative Agent, may extend the Bid Deadline without further order of the Court, subject to providing notice to the Consultation Parties. To the extent that the Bid Deadline is extended for all parties, the Debtors shall file a notice on the docket in these chapter 11 cases indicating the same. Any party, other than any Stalking Horse Purchaser, that does not submit a bid by the Bid Deadline will not be allowed to (a) submit any offer after the Bid Deadline and (b) participate in the Auction.

20. All persons or entities submitting a bid are deemed to have submitted to the exclusive jurisdiction of this Court with respect to all matters related to the Auction and the terms and conditions of the sale or transfer of the Assets identified under the applicable APA.

21. As part of its bid, each Qualifying Bidder must provide the Debtors, the other Notice Parties, the Consultation Parties and the Counterparties to any Assumed Contracts included in its bid information supporting the Qualifying Bidder's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code (the "Adequate Assurance Information"), including (a) the Qualifying Bidder's financial wherewithal and willingness to perform under any contracts and leases that are assumed and assigned to such Qualifying Bidder; (b) the name of the proposed tenant that will act as the assignee under any assigned nonresidential real property lease; (c) a contact person for the proposed assignee that the applicable Counterparty may directly contact in connection with the adequate assurance of future performance; and (d) the potential assignee's intended use for the space. To the extent available, the Adequate Assurance Information may also include: (x) a corporate organization chart or similar disclosure identifying ownership and control of the proposed assignee; and (y) financial statements, tax returns and annual reports. The Debtors, the other Notice Parties and the Consultation Parties shall keep confidential all Adequate Assurance Information provided to them under this Paragraph and shall be permitted to use and disclose such Adequate Assurance Information only as provided in this Order unless the Qualifying Bidder that provided such Adequate Assurance Information otherwise consents in writing.

22. Each Counterparty in receipt of Adequate Assurance Information shall review the Adequate Assurance Information received on a confidential basis and shall not

disclose the Adequate Assurance Information except as expressly provided in this Paragraph. Such Counterparty may not use or disclose, except to representatives, attorneys, advisors and financing sources (collectively, "Representatives"), any confidential Adequate Assurance Information for any purpose other than: (a) evaluating whether adequate assurance of future performance as required under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code has been provided; (b) in support of any objection (the "Assignment Objection") (subject to the limitations on disclosure set forth herein) by such Counterparty relating to adequate assurance of future performance; and (c) except for any Stalking Horse Purchaser, if the proposed assignee is successful and becomes the tenant under the applicable lease, on a confidential basis, in the ordinary course of the landlord tenant relationship. Any Assignment Objection which includes confidential, non-public Adequate Assurance Information must be filed under seal unless disclosure of such confidential, non-public information is authorized by the Debtors and the applicable assignee(s). This Order authorizes the filing of any such Assignment Objections under seal, and on the docket with such non-public information redacted, without further order of this Court; provided, that unredacted versions of such Assignment Objections shall be served upon the Debtors and Consultation Parties, with a copy to the Court's chambers. Any Representative receiving Adequate Assurance Information shall be notified and shall agree to be bound by the restrictions set forth in this Order.

23. If no timely Qualifying Bids other than any Stalking Horse Purchaser's Qualifying Bid are submitted on or before the Bid Deadline, the Debtors shall not hold an Auction and shall request at the Sale Hearing that this Court approve the Stalking Horse Agreement and the transactions contemplated thereunder. In the event that the Debtors timely receive one or more Qualifying Bids other than any Stalking Horse Purchaser's Qualifying Bid

(if applicable), the Debtors shall conduct the Auction on **April 9, 2018**, at the offices of [\_\_\_\_\_], or such other date and time as the Debtors, after consultation with the Consultation Parties, may notify Qualifying Bidders who have submitted Qualifying Bids; provided that such other date and time is no earlier than two (2) business days following the delivery of such notice.

24. Each Auction Bidder shall confirm in writing that: (a) it has not engaged in any collusion with respect to the submission of any bid, the bidding or the Auction; and (b) its Qualifying Bid is a good faith *bona fide* offer that it intends to consummate if selected as a Successful Bidder. All proceedings at an Auction shall be transcribed.

25. Following the Auction, the Debtors will determine, in consultation with the Consultation Parties, which Qualifying Bid is the highest or best bid for the Assets, which will be determined by considering, among other things: (a) the terms of an applicable Purchase Agreement and any Stalking Horse Agreement requested by each bidder; (b) the extent to which such terms may delay closing of the Sale or the restructuring transaction and the cost to the Debtors and their estates of such modifications or delay; (c) the total consideration to be received by the Debtors and their estates; (d) the transaction structure and execution risk, including conditions to, timing of and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, and required governmental or other approval; (e) the net benefit to the Debtors' estates, taking into account any Stalking Horse Purchaser's rights to any Break-Up Fee and any Expense Reimbursement, if applicable; (f) the impact on employees, trade creditors and landlords; and (g) any other factors the Debtors may reasonably deem relevant.

26. The Debtors, subject to the terms of this Order and the Bidding Procedures, shall have the right as they may reasonably determine to be in the best interests of their estates to carry out the Bidding Procedures, including, without limitation, to: (a) determine which bidders are Qualifying Bidders; (b) determine which bids are Qualifying Bids; (c) determine which Qualifying Bid is a Baseline Bid; (d) determine which bids are the Successful Bid and Back-Up Bid, each as it relates to the Auction; (e) reject any bid 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 Debtors and their estates; (f) adjourn or cancel an Auction and/or the Sale Hearing in open court without further notice (other than the filing of a notice of such adjournment or cancellation on the docket of these chapter 11 cases, which notice may be the hearing agenda in the case of a Sale Hearing) or as provided in this Order and in the Bidding Procedures; (g) modify the Bidding Procedures consistent with their fiduciary duties and bankruptcy law; and (h) withdraw the Motion at any time with or without prejudice. The terms of each Successful Bid and Back-Up Bid shall be acceptable to the DIP Administrative Agent. In the event that certain of the Assets are withheld from the Sale process, the Debtors reserve the right, in accordance with the terms of the DIP Order, to establish procedures consistent with those approved by the Bidding Procedures Order as may be necessary to obtain the highest and best bids for such withheld Assets.

27. Notwithstanding anything to the contrary contained in this Order or otherwise: (i) the right of the DIP Administrative Agent to consent to the sale of any portion of its collateral, including, without limitation, any Assets, on terms and conditions acceptable to the DIP Administrative Agent are hereby expressly reserved and not modified, waived or impaired in any way by this Order; (ii) unless otherwise ordered by the Court, all cash proceeds generated

from the sale of any Assets shall be paid to the DIP Administrative Agent upon the closing of such sale for permanent application against the obligations owing by the Debtors under the DIP Documents, in accordance with the terms and conditions of the DIP Documents and the [*FINAL DIP ORDER*] [Docket No. \*] (the “DIP Order”), and thereafter, against the obligations owing by the Debtors under the Prepetition ABL Document (to the extent any such obligations remain outstanding), in accordance with the terms and conditions of the Prepetition ABL Documents, until such time as all DIP Obligations and Prepetition ABL Obligations have been paid in full in accordance with the terms and conditions of the DIP Documents, the DIP Order and the Prepetition ABL Documents; (iii) nothing in this Order shall amend, modify, or impair any provision of the DIP Order, or the rights of the Debtors or the DIP Administrative Agent thereunder; and (iv) the Debtors shall consult with the Consultation Parties prior to employing any additional procedures rules at any Auction.

28. The Debtors shall have until **April 12, 2018** to file and serve a reply to any objection filed in connection with the Sale, including any Sale Objection or Contract Objection.

29. If the Successful Bid is for a full-chain liquidation, the Sale Hearing shall be held in this Court on **April 11, 2018 at \_\_\_\_\_ .m. (ET)**; if the Successful Bid is for a going concern sale, the Sale Hearing shall be held by this Court on **April 16, 2018 at \_\_\_\_\_ .m. (ET)**, unless otherwise determined by this Court. The Debtors may adjourn or reschedule the Sale Hearing without notice or with limited and shortened notice to parties, including by: (a) an announcement of such adjournment at the Sale Hearing or at the Auction; or (b) filing a hearing agenda or notice on the docket of the Debtors’ chapter 11 cases prior to the commencement of the Sale Hearing.

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

31. In the event that there is a conflict between: (a) this Order or the Bidding Procedures, on the one hand, and the Motion, a Purchase Agreement or a Stalking Horse Agreement, on the other hand, this Order and the Bidding Procedures shall control and govern; and (b) the DIP Order on the one hand, and this Order or the Bidding Procedures on the other hand, the DIP Order shall control.

32. Prior to mailing the Assumption Notice and the Sale Notice, as applicable, the Debtors may fill in, or cause to be filled in, any missing dates and other information, correct any typographical errors, conform the provisions thereof to the provisions of this Order, and make such other, non-material changes as the Debtors deems necessary or appropriate.

33. All persons or entities that participate in the bidding process shall be deemed to have knowingly and voluntarily: (a) consented to the entry of a final order by this Court in connection with the Motion or this Order (including any disputes relating to the bidding process, the Auction and/or any Sale) to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution; and (b) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

34. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in these chapter 11 cases, any subsequent chapter 7 or chapter 11 case of the Debtors, or any related proceeding subsequent to entry of this Order, shall conflict with or derogate from the provisions of this Order; provided that nothing in this Order shall amend, modify, or impair any provision of the DIP Order, or the rights of the Debtors or the DIP

Administrative Agent. This Order shall be binding on any trustees, examiners, or other fiduciary under any section of the Bankruptcy Code, if any, subsequently appointed in any of the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code of the Debtors' cases.

35. This Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rules 6004(h) or 6006(d) or any other provision of the Bankruptcy Code, the Bankruptcy Rules or the Local Rules is expressly waived. The Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and may, in their sole discretion and without further delay, take any action and perform any act authorized or approved under this Order.

36. The requirements set forth in Local Rules 6004-1, 9006-1 and 9013-1 are hereby satisfied or waived.

37. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation or interpretation of the Order.

Dated: \_\_\_\_\_, 2018  
Wilmington, Delaware

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United States Bankruptcy Judge

**Exhibit 1**

Bidding Procedures

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

In re:

THE BON-TON STORES, INC., *et al.*,<sup>1</sup>  
  
Debtors.

Chapter 11

Case No. 18-10248 (\_\_\_)

(Jointly Administered)

Ref. Docket No. \_\_\_\_

**BIDDING PROCEDURES**

On February 4, 2018, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

On March \_\_\_\_ 2018, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order [Docket No. \*] (the “Bidding Procedures Order”), which, among other things, authorized the Debtors to solicit bids and approved these procedures (collectively, these “Bidding Procedures”) to be employed by the Debtors in connection with the proposed sale (the “Sale”) of all or substantially all of the Debtors’ assets (the “Assets”), or subset(s) thereof, free and clear of all liens, claims, encumbrances, and other interests other than those permitted by an applicable Stalking Horse Agreement (as defined below) (collectively, the “Encumbrances”), to a potential stalking horse purchaser (a “Stalking Horse Purchaser”) or, absent a Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder (as defined below), pursuant to a Purchase Agreement with such Successful Bidder. A successful Stalking Horse Purchaser is referred to herein as a “Successful Bidder” for ease of reference. The Bidding Procedures also contemplate solicitation of restructuring proposals, which shall be solicited on a parallel track and on the timeline contemplated hereby.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: The Bon-Ton Stores, Inc. (5229); The Bon-Ton Department Stores, Inc. (9309); The Bon-Ton Giftco, LLC (2805); Carson Pirie Scott II, Inc. (2140); Bon-Ton Distribution, LLC (5855); McRIL, LLC (5548); Bonstores Holdings One, LLC (8574); Bonstores Realty One, LLC (8931); Bonstores Holdings Two, LLC (8775); and Bonstores Realty Two, LLC (9075). The headquarters for the above-captioned Debtors is 2801 East Market Street, Bldg. E, York, Pennsylvania 17402.

**ANY PARTY INTERESTED IN BIDDING ON THE ASSETS SHOULD CONTACT:**

- (A) **JAMIE BAIRD (212-364-5300; BAIRD@PJTPARTNERS.COM), JON WALTERS (212-364-1992; WALTERS@PJTPARTNERS.COM); AND VINIT KOTHARY (212-364-7947; KOTHARY@PJTPARTNERS.COM)**
  
- (B) **ALL DUE DILIGENCE INQUIRIES SOLELY REGARDING THE DEBTORS' REAL ESTATE, INCLUDING FEE-OWNED REAL PROPERTIES AND NONRESIDENTIAL REAL PROPERTY LEASES, SHOULD BE DIRECTED TO THE DEBTORS' REAL ESTATE CONSULTANT, A&G REALTY PARTNERS, LLC, BY CONTACTING ANDREW GRAISER (516-946-8982; ANDY@AGREALTYPARTNERS.COM) AND MICHAEL JERBICH (773-294-5354; MICHAEL@AGREALTYPARTNERS.COM)**

**Summary of Important Dates and Deadlines**

<u>Date</u>	<u>Deadline</u>
<b>March 19, 2018</b>	<b>Assumption Notice deadline</b>
<b>March 19, 2018</b>	<b>Deadline to Designate Proposed Stalking Horse Bid(s) (With Consent of DIP Administrative Agent)</b>
<b>April 2, 2018 at 5:00 p.m.</b>	<b>Bid Deadline</b>
<b>April 4, 2018 at 5:00 p.m.</b>	<b>Deadline for Qualifying Bidder to Submit Revised Bid if its Initial Bid was Not Deemed a Qualifying Bid</b>
<b>April 6, 2018</b>	<b>Deadline for Debtors to Designate Baseline Bid</b>
<b>April 9, 2018 at 4:00 p.m. (ET)</b>	<b>Contract Objection Deadline<sup>2</sup></b>
<b>April 9, 2018</b>	<b>Auction, at a time and location to be determined, or such other date and time as the Debtors, after consultation with the Baseline Bidder and the Consultation Parties, may notify Qualifying Bidders who have submitted Qualifying Bids; provided that such other date and time is no earlier than two (2) business days following the delivery of such notice</b>

<sup>2</sup> This objection deadline applies to all objections to the sale of the Assets, including all objections to the assumption and assignment of the Assumed Contracts (with the exception of objections related to adequate assurance of future performance by a Successful Bidder other than a Stalking Horse Bidder).

<b>April 9, 2018 at 4:00 p.m. (ET)</b>	<b>Sale Objection Deadline</b>
<b>As Soon as Reasonably Practicable Upon Completion of Auction</b>	<b>Deadline to File Notice of Successful Bidder</b>
<b>April 11, 2018</b>	<b>Deadline to Serve Notice of Successful Bidder and Successful Bidder's Adequate Assurance Information</b>
<b>April 11, 2018</b>	<b>Sale Hearing (to the extent the Successful Bid contemplates a full-chain liquidation)</b>
<b>April 12, 2018 at 12:00 Noon (ET)</b>	<b>Debtors' Deadline to Reply to Sale Objections</b>
<b>Not later than two (2) hours prior to the commencement of the Sale Hearing</b>	<b>Adequate Assurance Objection Deadline for Successful Bidders Other Than the Stalking Horse Bidders and for Additional Contracts</b>
<b>April 16, 2018</b>	<b>Sale Hearing (to the extent the Successful Bid contemplates a going concern sale)</b>

**1. [Stalking Horse Purchaser]**

Pursuant to the Bidding Procedures Order, the Debtors are authorized to enter into a Purchase Agreement with a Stalking Horse (a "Stalking Horse Agreement") not later than two (2) business days prior to the Bid Deadline (as defined below). In the event that the Debtors enter into a Stalking Horse Agreement, the Debtors will file with the Court and serve on the Sale Notice Parties (as defined in the Bidding Procedures Order) a notice that includes the following: (a) the identification of the Stalking Horse Purchaser; (b) a copy of the Stalking Horse Agreement; (c) the purchase price provided for in the Stalking Horse Agreement (the "Stalking Horse Purchase Price"); (d) the deposit paid by the Stalking Horse Purchaser; and (e) the amount of any Break-Up Fee or any Expense Reimbursement (each, as defined below). Notwithstanding the foregoing, nothing herein or in the Bidding Procedures Order is intended or shall be deemed to approve, or authorize the Debtors to pay, any such Break-Up Fee or Expense Reimbursement, and approval of, and authorization for the Debtors to pay, any such Break-Up Fee and Expense Reimbursement, shall be subject to further order of the Court and, unless otherwise agreed by the parties or unless the Stalking Horse Purchaser is the Successful Bidder, subject to the Court's consideration at the appropriate time.]

## 2. Assets to be Sold

The Debtors shall offer for sale the Assets, provided that the Debtors, in consultation with the Consultation Parties, determine that the aggregate consideration offered by any bid, or combination of bids, for the Assets, satisfies the requirements set forth in these Bidding Procedures, including, without limitation, cash proceeds in an amount sufficient to pay in full in cash all outstanding obligations owed by the Debtors under the DIP Documents (as defined in the DIP Order) and all obligations under the Prepetition ABL Documents (as defined in the DIP Order), to the extent any Prepetition ABL Obligations (as defined in the DIP Order) are still outstanding. Potential Bidders may bid on all or any number or combination of the Assets.

More specifically, the Debtors will entertain, and pursue as appropriate, proposals that include, without limitation, Qualified Bids in the form of a Restructuring Term Sheet that provides for an appropriate cash infusion, in return for new equity in the reorganized Debtors, going concern bids for the Assets or a subset thereof, including with respect to leases and personal property, and bids put forth by liquidators seeking to liquidate the Debtors on an enterprise-wide level.

The available Assets are fully described in the Data Room maintained by the Debtors' investment banking advisors, which is accessible on the terms described herein.

## 3. Participation Requirements

Any person or entity that wishes to participate in the bidding process for the Assets (each, a "Potential Bidder") must first become a "Qualifying Bidder". To become a Qualifying Bidder (and thus being able to conduct due diligence and gain access to the Debtors' confidential electronic data room concerning the Assets (the "Data Room")), a Potential Bidder must submit to the Debtors and their advisors:

- (a) documentation identifying the interested party, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- (b) an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors, which by its terms will inure to the benefit of the Successful Bidder;
- (c) a statement and other factual support demonstrating to the Debtors' reasonable satisfaction, after consultation with the Consultation Parties (as defined below), that the interested party has a *bona fide* interest in consummating a sale restructuring transaction, as appropriate; and
- (d) sufficient information, as determined by the Debtors, to allow the Debtors, after consultation with the Consultation Parties, to determine that the interested party
  - (i) has, or can obtain, the financial wherewithal and any required internal corporate, legal or other authorizations to close a sale or restructuring transaction, including, but not limited to, current audited financial statements of the interested party (or such other form of financial disclosure acceptable to the Debtors in their

discretion) and (ii) can provide adequate assurance of future performance under any executory contracts and unexpired leases to be assumed by the Debtors and assigned to such bidder, pursuant to section 365 of the Bankruptcy Code, in connection with the Sale.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtors, each of the Consultation Parties, or their advisors regarding the ability of such Potential Bidder, as applicable, to consummate its contemplated transaction.

Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bidding Procedures: (i) any designated Stalking Horse Purchaser shall be considered a Qualifying Bidder, and a Stalking Horse Agreement shall be considered a Qualifying Bid (as defined below); (ii) the administrative Agent (the “DIP Administrative Agent”) and the Prepetition ABL Agent (as defined in the DIP Order) shall be Qualifying Bidders and their credit bids, if any, will be considered Qualifying Bids; and (iii) in determining whether the Potential Bidders constitute Qualifying Bidders, the Debtors may consider a combination of bids for the Assets.

#### **4. Bankruptcy Court Jurisdiction**

Any Potential Bidders and Qualifying Bidders shall: (a) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction (as defined below) and the construction and enforcement of the contemplated transaction documents of such parties, (b) bring any such action or proceeding in the Court, and (c) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

#### **5. Form of Agreement**

As set forth below, Potential Bidders intending to submit bids must include with their bids:

- (a) a statement that such Potential Bidder offers to purchase the Assets, or a number or combination of the Assets, upon substantially the same terms as, or terms more favorable to the Debtors and their estates than, the terms set forth in a Stalking Horse Agreement, if applicable; and
- (b) a term sheet that reflects material deviations from a Stalking Horse Agreement, if applicable, or in the alternative, material terms of a proposed restructuring or sale transaction. In the case of a sale transaction, such term sheet must be unequivocally binding, as set forth below.

## 6. Due Diligence

The Debtors will provide any Qualifying Bidder with reasonable access to the Data Room and any other additional information that the Debtors believe to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to: Jamie Baird (212-364-5300; [baird@pjtpartners.com](mailto:baird@pjtpartners.com)), Jon Walters (212-364-1992; [walters@pjtpartners.com](mailto:walters@pjtpartners.com)); and Vinit Kothary (212-364-7947; [Kothary@pjtpartners.com](mailto:Kothary@pjtpartners.com)). All due diligence inquiries that relate solely the Debtors' real estate, including fee-owned real properties and nonresidential real property leases, should be directed to the Debtors' real estate consultant, A&G Realty Partners, LLC, by contacting Andrew Graiser (516-946-8982; [Andy@agrealtypartners.com](mailto:Andy@agrealtypartners.com)) and Michael Jerbich (773-294-5354; [Michael@agrealtypartners.com](mailto:Michael@agrealtypartners.com))

The due diligence period shall extend through and including the Bid Deadline. The Debtors may, but shall not be obligated to, in their sole discretion, furnish any due diligence information after the Bid Deadline.

The Debtors reserve the right, in their reasonable discretion, to withhold or limit access to any due diligence information that the Debtors determine is business-sensitive or otherwise not appropriate for disclosure to a Qualifying Bidder; provided that the Debtors shall notify the Consultation Parties of any decision to withhold such information. Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality or similar provisions relating to any due diligence information, the Debtors and their estates shall be authorized to provide due diligence information to Qualifying Bidders provided that such Qualifying Bidders have delivered an executed confidentiality agreement in form and substance acceptable to the Debtors. The Debtors and their estates are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualifying Bidders in connection with the Bidding Procedures and the Sale.

## 7. Bid Requirements

Other than in the case of (i) a bid submitted by the Stalking Horse Purchaser or (ii) a credit bid submitted by the DIP Administrative Agent or Prepetition ABL Administrative Agent, to be deemed a "Qualifying Bid," a bid must be received from a Qualifying Bidder on or before the Bid Deadline and satisfy each of the following requirements, as determined by the Debtors in consultation with the Consultation Parties (each, a "Bid Requirement"):

- a. be in writing;
- b. fully disclose the identity of the Qualifying Bidder (and any other party participating in the bid) and provide the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the bid submitted by the Qualifying Bidder;
- c. set forth the purchase price to be paid by such Qualifying Bidder or the material terms of a Restructuring Term Sheet;

- d. in the case of a proposed purchase of the Assets, not propose payment in any form other than cash (except as otherwise expressly set forth in these Bidding Procedures);
- e. state the liabilities proposed to be paid or assumed by such Qualifying Bidder;
- f. specify the Assets that are included in the bid and, to the extent a Stalking Horse Purchaser is designated, state that such Qualifying Bidder offers to purchase the Assets, or a number or combination of the Assets, upon substantially the same terms as, or terms more favorable to the Debtors and their estates than, the terms set forth in the Stalking Horse Agreement, as applicable;
- g. state that such Qualifying Bidder's offer is formal, binding and unconditional and is irrevocable until two (2) business days after the closing of the Sale (as applicable to Sales, only);
- h. state that such Qualifying Bidder is financially capable of consummating the transactions contemplated by the bid and provide written evidence in support thereof;
- i. contain such financial and other information to allow the Debtors to make a reasonable determination as to the Qualifying Bidder's financial and other capabilities to close the transactions contemplated by the proposal, including, without limitation, such financial and other information supporting the Qualifying Bidder's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code, including the Qualifying Bidder's financial wherewithal and willingness to perform under any contracts and leases that are assumed and assigned to the Qualifying Bidder, in a form that allows the Debtors to serve, within one (1) business day after such receipt, such information on any counterparties to any contracts or leases being assumed and assigned in connection with the Sale that have requested, in writing, such information;
- j. identify with particularity each and every executory contract and unexpired lease the assumption and assignment of which is a condition to close the contemplated transaction(s);
- k. specify whether the Qualifying Bidder intends to operate all or a portion of the Debtors' business as a going concern, intends a full-chain liquidation, or contemplates the ongoing operation of certain stores and the closing of others;
- l. in the case of a bid that contemplates a full-chain liquidation, a commitment to commence such liquidation by April 13, 2018, and in the case of a bid that anticipates a going concern sale, a commitment to close the transactions contemplated by the proposal by April 16, 2018;

- m. not request or entitle such Qualifying Bidder to any break-up fee, termination fee, expense reimbursement or similar type of fee or payment;
- n. in the event that there is a Stalking Horse Purchaser, the aggregate consideration proposed by the Qualifying Bidder must equal or exceed the sum of the amount of (A) any Stalking Horse Purchase Price, (B) any Break-Up Fee, (C) any Expense Reimbursement, and (D) \$200,000.
- o. not contain any contingencies of any kind, including, without limitation, contingencies related to financing, internal approval or due diligence;
- p. contain a written acknowledgement and representation that the Qualifying Bidder (i) has had an opportunity to conduct any and all due diligence regarding the Assets, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and other information in making its Qualifying Bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any documents or other information provided in connection with the Bidding Procedures and the Sale;
- q. sets forth (i) a statement or evidence that the Qualifying Bidder has made or will make in a timely manner all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, if applicable, and pay the fees associated with such filings and (ii) any regulatory and third-party approval required for the Qualifying Bidder to close the contemplated transactions, and the time period within which the Qualifying Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than five (5) days following execution and delivery of such Qualifying Bidder's Purchase Agreement, those actions the bidder will take to ensure receipt of such approval(s) as promptly as possible); provided that a Qualifying Bidder agrees that its legal counsel will coordinate in good faith with Debtors' legal counsel to discuss and explain Qualifying Bidder's regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable; provided, further that the offer contains a covenant to cooperate with the Debtors to provide pertinent factual information regarding the bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements;
- r. provides for the Qualifying Bidder to serve as a backup bidder (the "Back-Up Bidder") if the Qualifying Bidder's bid is the next highest and best bid (the "Back-Up Bid") after the Successful Bid (as defined below);
- s. includes written evidence of authorization and approval from the Qualifying Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the subject term sheet;

t. provides a good faith cash deposit (the “Deposit”) in an amount equal to ten percent (10%) of the purchase price provided for in the proposal (or such additional amount as may be determined by the Debtors in their reasonable discretion and in consultation with the Consultation Parties) to be deposited, prior to the Bid Deadline, with an escrow agent selected by the Debtors (the “Escrow Agent”) pursuant to the escrow agreement to be provided by the Debtors to the Qualifying Bidders (the “Escrow Agreement”); and

u. provides for liquidated damages in the event of the Qualifying Bidder’s breach of, or failure to perform under, the modified Purchase Agreement equal to the amount of the Deposit.

The Debtors reserve the right, in consultation with the Consultation Parties, to negotiate with any Qualifying Bidder in advance of the Auction to cure any deficiencies in a bid that is not initially deemed a Qualifying Bid.

Each Qualifying Bidder submitting a bid shall be deemed to: (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures; and (b) have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures, and the Sale.

#### **8. Bid Deadline**

A Qualifying Bidder, other than any Stalking Horse Purchaser or the DIP Administrative Agent, that desires to make a bid shall deliver a written and electronic copy of its bid in both PDF and MS-WORD format to the Notice Parties and Consultation Parties so as to be received on or before **April 2, 2018 at 5:00 p.m. (ET)** (the “Bid Deadline”); provided that the Debtors, with the consent of the DIP Administrative Agent, may extend the Bid Deadline without further order of the Court, subject to providing notice to the Consultation Parties. To the extent that the Bid Deadline is extended for all parties, the Debtors shall file a notice on the docket of these chapter 11 cases indicating the same. **Any party that does not submit a bid by the Bid Deadline will not be allowed to (a) submit any offer after the Bid Deadline, or (b) participate in the Auction.**

#### **9. Evaluation of Qualifying Bids**

The Debtors will deliver, within one (1) business day after receipt thereof, copies of all bids from Qualifying Bidders to each of the Consultation Parties.

The Debtors, in consultation with the Consultation Parties, shall make a determination regarding whether a timely submitted bid from a Qualifying Bidder is a Qualifying Bid, and shall notify all Qualifying Bidders whether their bids have been determined to be a Qualifying Bid by no later than two (2) days prior to the Auction Date. In the event that a bid is determined not to be a Qualifying Bid, the Qualifying Bidder shall be notified by the Debtors and shall have until **April 4, 2018 at 5:00 p.m.** to modify its bid to increase the purchase price or otherwise improve the terms of the Qualifying Bid for the Debtors; provided that any Qualifying Bid may be improved at the Auction as set forth herein.

One (1) day prior to the Auction Date, the Debtors shall determine, in consultation with the Consultation Parties, which of the Qualifying Bids, at such time, is the highest or best bid for purposes of constituting the opening bid of the Auction (the “Baseline Bid” and the Qualifying Bidder submitting the Baseline Bid, the “Baseline Bidder”), and shall promptly notify any Stalking Horse Purchaser and all Qualifying Bidders with Qualifying Bids of the Baseline Bid.

**10. No Qualifying Bids**

If no timely Qualifying Bids other than any Stalking Horse Purchaser’s Qualifying Bid are submitted on or before the Bid Deadline, the Debtors shall not hold an Auction and shall request at the Sale Hearing that the Stalking Horse Purchaser be deemed the “Successful Bidder” (as defined herein) and that the Court approve the Stalking Horse Purchase Agreement and the transactions contemplated thereunder.

**11. Right to Credit Bid**

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

Each of the DIP Administrative Agent and the Prepetition ABL Administrative Agent shall have the right to credit bid all or any portion of the aggregate amount of its applicable outstanding secured obligations pursuant to section 363(k) of the Bankruptcy Code, and any such credit bid will be considered a Qualified Bid.

**12. Auction**

If Debtors timely receive one or more Qualifying Bids other than any Stalking Horse Purchaser’s Qualifying Bid, then the Debtors shall conduct an auction (the “Auction”). Following the Auction, the Debtors will determine, in consultation with the Consultation Parties, which Qualifying Bid is the highest or best bid for the Assets, which will be determined by considering, among other things, the following non-binding factors: (a) the terms of the APA and any Stalking Horse APA requested by each bidder; (b) the extent to which such terms are likely to delay closing of the Sale and the cost to the Debtors and their estates of such modifications or delay; (c) the total consideration to be received by the Debtors and their estates; (d) the transaction structure and execution risk, including conditions to, timing of and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, and required governmental or other approval; (e) the net benefit to the Debtors’ estates, taking into account any Break-Up Fee and any Expense Reimbursement provided for in any applicable Stalking Horse APA; (f) the impact on employees, trade creditors and landlords; and (g) any other factors the Debtors may reasonably deem relevant.

The Auction shall be governed by the following procedures:

- (a) the Auction shall commence on **April 9, 2018 at** \_\_\_\_\_ (the "Auction Date"), at [\_\_\_\_\_];
- (b) only a Stalking Horse Purchaser, the DIP Administrative Agent and the other Qualifying Bidders with Qualifying Bids (collectively, the "Auction Bidders") shall be entitled to make any subsequent bids at the Auction;
- (c) the Auction Bidders shall appear in person at the Auction, or through a duly authorized representative;
- (d) only the Debtors, the Auction Bidders, the Consultation Parties, the Debtors' landlords and all creditors of the Debtors, together with the professional advisors to each of the foregoing parties, may attend the Auction; provided that any such landlords and creditors provide counsel for the Debtors one (1) day's written notice of their intent to attend the Auction;
- (e) the Debtors and their professional advisors shall direct and preside over the Auction, which shall be transcribed;
- (f) the Auction Bidders shall confirm that they have not engaged in any collusion with respect to the Bidding Procedures, the Auction or the Sale;
- (g) bidding shall commence at the amount of the Baseline Bid, and the Auction Bidders may submit successive bids in increments of at least 2% of the Baseline Bid, provided that: (i) each such successive bid must be a Qualifying Bid; (ii) if the then-highest and best bid was made by any Stalking Horse Purchaser, such bid shall be deemed to include the sum of the amount of (A) any Break-Up Fee and (B) any Expense Reimbursement, if applicable; (iii) any successive bid made by any Stalking Horse Purchaser shall only be required to equal the sum of the amount of (A) the Baseline Bid or the then-highest and best bid, as applicable, and (B) 2% of the Baseline Bid, less the sum of the amount of (C) any Break-Up Fee and (D) any Expense Reimbursement, if applicable; and (iv) the Debtors shall retain the right to modify the bid increment requirements at the Auction;
- (h) the Auction may include individual negotiations with any of the Auction Bidders, but all bids shall be made on the record and in the presence of all of the Auction Bidders;
- (i) all material terms of the bid that is deemed to be the highest and best bid for each round of bidding shall be fully disclosed to the Auction Bidders, and the Debtors shall use reasonable efforts to clarify any and all questions that the Auction Bidders may have regarding the Debtors' announcement of the then-current highest and best bid;
- (j) the Debtors and their professional advisors, in consultation with the Consultation Parties, may employ and announce at the Auction additional procedural rules that

are reasonable under the circumstances (*e.g.*, the amount of time allotted to make subsequent bids) for conducting the Auction, provided that such rules are (i) not inconsistent with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or any applicable order of the Court entered in connection with these chapter 11 cases, including, without limitation, the Bidding Procedures Order and the DIP Order (as defined in the Bidding Procedures Order), and (ii) disclosed to the Auction Bidders;

- (k) each Auction Bidder shall (i) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction and the construction and enforcement of the contemplated transaction documents of the Auction Bidders, (ii) bring any such action or proceeding in the Court, and (iii) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law;
- (l) Auction Bidders shall have the right to make additional modifications to their respective Purchase Agreements or any Stalking Horse Agreement, as applicable, in conjunction with each Qualifying Bid submitted in each round of bidding during the Auction, provided that (i) any such modifications on an aggregate basis and viewed in whole, shall not, in the Debtors' discretion, in consultation with the Consultation Parties, be less favorable to the Debtors and their estates than the terms of the Auction Bidders' respective Purchase Agreements or any Stalking Horse Agreement, as applicable, and (ii) each Qualifying Bid shall constitute an irrevocable offer and shall be binding on the Auction Bidder submitting such bid until such party shall have submitted a subsequent Qualifying Bid at the Auction or the conclusion of the Sale Hearing, whichever occurs sooner, unless such bid is selected as the Successful Bid or the Back-Up Bid, which shall remain binding as provided for herein;
- (m) the Debtors and the Consultation Parties shall have the right to request any additional financial information that will allow the Debtors and the Consultation Parties to make a reasonable determination as to an Auction Bidder's financial and other capabilities to consummate the transactions contemplated by their proposal or any Stalking Horse Agreement, as applicable, as may be amended during the Auction, and any further information that the Debtors may believe is reasonably necessary to clarify and evaluate any bid made by an Auction Bidder during the Auction;
- (n) upon the conclusion of the Auction, the Debtors shall determine, in consultation with the Consultation Parties, and subject to Court approval, the offer or offers for the Assets that is or are the highest or best from among the Qualifying Bids submitted at the Auction, which may be a Stalking Horse Agreement (the

“Successful Bid”). In making this decision, the Debtors shall consider, in consultation with the Consultation Parties, the amount of the purchase price, the likelihood of the bidder’s ability to close a transaction and the timing thereof, the nature and impact of any variances from the form Purchase Agreement requested by each bidder, and the net benefit to the Debtors’ estates. The bidder submitting such Successful Bid, which may be the Stalking Horse Purchaser, shall become the “Successful Bidder,” and shall have such rights and responsibilities of the purchaser as set forth in the subject Purchase Agreement, as applicable. The Debtors may, in their sole discretion, designate Back-Up Bids (and the corresponding Back-Up Bidders) to purchase the Assets in the event that the Successful Bidder does not close the Sale. The terms of each Successful Bid and Back-Up Bid shall be acceptable to the DIP Administrative Agent and shall, among other things, provide for cash proceeds in an amount sufficient to repay in full in cash all of the Debtors’ obligations under the DIP Documents (as defined in in the DIP Order) and all of the Debtors’ obligations under the Prepetition ABL Documents (as defined in the DIP Order), to the extent any Prepetition ABL Obligations are still outstanding; and

- (o) prior to the Sale Hearing, the Successful Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

**THE SUCCESSFUL BID AND ANY BACK-UP BIDS SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE SUCCESSFUL BIDDER AND THE BACK-UP BIDDER, RESPECTIVELY, FROM THE TIME THE BID IS SUBMITTED UNTIL TWO (2) BUSINESS DAYS AFTER THE SALE HAS CLOSED. EACH QUALIFYING BID THAT IS NOT THE SUCCESSFUL BID OR BACK-UP BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.**

### **13. Sale Hearing**

The Successful Bid and any Back-Up Bid (or if no Qualifying Bid other than that of any Stalking Horse Purchaser is received, then the Stalking Horse Agreement) will be subject to approval by the Court. If the Successful Bid does not contemplate a going concern sale, then the hearing to approve such Successful Bid and any Back-Up Bid (the “Sale Hearing”) shall take place, subject to the Court’s availability, on **April 11, 2018** at \_\_\_\_\_ (ET). If the Successful Bid contemplates a going concern sale, then the Sale Hearing shall take place, subject to the Court’s availability, on **April 16, 2018** at \_\_\_\_\_ (ET). The Sale Hearing may be adjourned by the Debtors from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a hearing agenda or notice on the docket of the Debtors’ chapter 11 cases. **For the avoidance of doubt, by no later than the time of announcement of the Baseline Bid for the Auction, the Debtors may determine, in consultation with the Consultation Parties, to withdraw the Assets or any subset thereof, intellectual property, including owned real estate or nonresidential real property leases, from the Auction and Sale process, and adjourn the Sale Hearing with respect to these assets on the terms set forth herein.**

At the Sale Hearing, the Debtors will seek entry of an order that, among other things: (i) authorizes and approves the Sale to the Successful Bidder, pursuant to the terms and conditions set forth in the Stalking Horse Agreement or such subject Purchase Agreement executed by the Successful Bidder, as applicable; (ii) finding that the Stalking Horse Purchaser or Successful Bidder, as applicable, is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code; (iii) as appropriate, exempting the Sale(s) and conveyance(s) of the Assets from any transfer tax, stamp tax or similar tax, or deposit under any applicable bulk sales statute; and (iv) unless otherwise ordered by the Court, directing that all cash proceeds generated from the sale of any Assets shall be paid to the DIP Administrative Agent upon the closing of such sale(s) for application against the obligations owing by the Debtors under the DIP Documents in accordance with the terms and conditions of the DIP Order and the DIP Documents, and thereafter, against the obligations owing by the Debtors under the Prepetition ABL Documents (to the extent that such obligations are still outstanding), in accordance with the terms and conditions of the Prepetition ABL Documents, until such time as all DIP Obligations (as defined in the DIP Order) and Prepetition ABL Obligations have been paid in full in cash in accordance with the terms of the DIP Documents, the DIP Order, and the Prepetition ABL Documents, as applicable.

#### **14. Back-Up Bidder**

Notwithstanding any of the foregoing, in the event that the Successful Bidder fails (i) in the case of a going concern sale, to close the Sale by April 16, 2018 (or such date as may be extended by the Debtors with the agreement of the Back-Up Bidder and the consent of the DIP Administrative Agent) or (ii) in the case of a full-chain liquidation, to commence the liquidation by April 13, 2018 (or such date as may be extended by the Debtors with the agreement of the Back-Up Bidder and the consent of the DIP Administrative Agent), the Back-Up Bid will be deemed to be the Successful Bid, the Back-Up Bidder will be deemed to be the Successful Bidder, and the Debtors will be authorized, but not directed, to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any interested parties.

#### **15. Return of Deposits**

All Deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder no later than five (5) business days following the closing of the Sale. The deposit of the Successful Bidder or, if the Sale is closed with the Back-Up Bidder, the deposit of the Back-Up Bidder, shall be applied to the purchase price for the Sale. If the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up 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 any Stalking Horse Agreement, as applicable, the Debtors and their estates shall be entitled to retain the Deposit of the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) as part of the damages resulting to the Debtors and their estates for such breach or failure to perform

## 16. Notice and Consultation Parties

- (a) The term “Notice Parties” as used in these Bidding Procedures shall mean: (i) the Debtors (Attn: Holly Etlin, Chief Restructuring Officer; hetlin@alixpartners.com); (ii) counsel to the Debtors, (a) Paul, Weiss, Rifkind, Wharton & Garrison LLP (Attn: Kelley A. Cornish, Esq., Elizabeth R. McColm, Esq., and Alexander Woolverton, Esq.; kcornish@paulweiss.com; emccolm@paulweiss.com; awoolverton@paulweiss.com) and (b) Young Conaway Stargatt & Taylor, LLP (Attn: Pauline K. Morgan, Esq., Sean T. Greecher, Esq., and Andrew L. Magaziner., Esq; pmorgan@ycst.com, sgreecher@ycst.com, and amagaziner@ycst.com); and (iii) investment banking advisor to the Debtors, PJT Partners LP (Attn: Jamie Baird, Jon Walters, and Vinit Kothary; baird@pjtpartners.com, walters@pjtpartners.com, Kothary@pjtpartners.com).
- (b) The term “Consultation Parties” as used in these Bidding Procedures shall mean: (i) counsel to the official committee of unsecured creditors appointed in the Debtors’ chapter 11 cases (the “Creditors’ Committee”); (ii) counsel to the Administrative Agent; (iii) counsel to the DIP Tranche A-1 Documentation Agent; and (iv) counsel to the Ad Hoc Noteholder Group.

For the avoidance of doubt, any consultation rights provided to the Consultation Parties by these Bidding Procedures shall not limit the Debtors’ discretion in any way and shall not include the right to veto any decision made by the Debtors in the exercise of their business judgment; provided, however, that the foregoing shall not impact any consent rights that the DIP Administrative Agent may have under the DIP Order [Docket No. \_\_\_\_] and any related final order (together, the “DIP Order”), the DIP Documents (as defined in the DIP Order), or otherwise.

In the event that any Consultation Party or any member of the Creditors’ Committee or an affiliate of any of the foregoing submits a bid that is a Qualifying Bid, any obligation of the Debtors to consult with the bidding party established under these Bidding Procedures will be waived, discharged and released without further action; provided that the bidding party will have the same rights as any other Qualifying Bidder set forth above.

If a member of the Creditors’ Committee submits a Qualifying Bid, the Creditors’ Committee will continue to have consultation rights as set forth in these Bidding Procedures; provided that the Creditors’ Committee shall exclude such member from any discussions or deliberations regarding the sale of the Assets and shall not provide any information regarding the sale of the Assets to such member.

## 17. Reservation of Rights

Notwithstanding any of the foregoing, the Debtors and their estates reserve the right to, after consultation with the Consultation Parties, modify these Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, allow for bidding on only a portion of the Assets and not all of them, modify bidding increments,

waive terms and conditions set forth herein with respect to any or all potential bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all Potential Bidders, adjourn or cancel the Auction at or prior to the Auction, and adjourn the Sale Hearing; provided, however, that any changes to the dates and deadlines set forth herein shall (i) comply with the milestones contained in the DIP Order or (ii) shall be made only with the consent of the DIP Administrative Agent.

**18. DIP Order**

Notwithstanding anything to the contrary contained in these Bidding Procedures or otherwise: (i) the right of the DIP Administrative Agent to consent to the sale of any portion of its collateral, including, without limitation, any Assets, on terms and conditions acceptable to the DIP Administrative Agent, are hereby expressly reserved and not modified, waived or impaired in any way by these Bidding Procedures; (ii) unless otherwise ordered by the Court, all cash proceeds generated from the sale of any Assets shall be paid to the DIP Administrative Agent upon the closing of such sale for permanent application against the obligations owing by the Debtors under the DIP Documents in accordance with the terms and conditions of the DIP Order and the DIP Documents and thereafter, against the obligations owing by the Debtors under the Prepetition ABL Documents (to the extent any such obligations are still outstanding), in accordance with the terms and conditions of the Prepetition ABL Documents, until such time as all DIP Obligations and Prepetition ABL Obligations have been paid in full in cash in accordance with the terms and conditions of the DIP Documents, the DIP Order and the Prepetition ABL Documents, as applicable; and (iii) nothing in these Bidding Procedures shall amend, modify, or impair any provision of the DIP Order, or the rights of the Debtors or the DIP Administrative Agent thereunder.

**Exhibit 2**

Assumption Notice

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

In re:

THE BON-TON STORES, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-\_\_\_\_ (\_\_\_\_)

(Jointly Administered)

Ref. Docket No. \_\_\_\_

**NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT  
AND CURE AMOUNTS WITH RESPECT TO EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES OF THE DEBTORS**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), on February 4, 2018, in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). The Debtors are seeking to assume and assign certain of their executory contracts and unexpired leases in connection with the sale (the “Sale”) of all or substantially all of their assets (collectively, the “Assets”), or some subset(s) thereof. The Debtors are seeking Court approval of such Sale and assumptions and assignments pursuant to a motion, dated February 4, 2018 [Docket No. \*] (the “Motion”).

The Debtors will seek entry of an order approving the relief requested in the Motion (the “Bidding Procedures Order”),<sup>2</sup> and approval of certain Bidding Procedures that will govern the sale of the Debtors’ Assets to the highest or best bidders. Copies of the Motion and the Bidding Procedures Order are available for download at <https://cases.primeclerk.com/bonton> (the “Case Website”) or by calling the Debtors’ claims and noticing agent, Prime Clerk LLC, at 844-239-9269.

**You are receiving this Notice because you may be a party to an unexpired lease or an executory contract that is potentially to be assumed and assigned (collectively, the “Contracts”), in connection with such Sale. A list of the Contracts is attached hereto as Exhibit A.**

The Debtors have determined the current amounts owing (the “Cure Amounts”) under each Contract, and have listed the applicable Cure Amounts on Exhibit A attached hereto. The Cure Amounts are the only amounts proposed to be paid upon any assumption and assignment of the Contracts, in full satisfaction of all amounts outstanding under the Contracts.

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: The Bon-Ton Stores, Inc. (5229); The Bon-Ton Department Stores, Inc. (9309); The Bon-Ton Giftco, LLC (2805); Carson Pirie Scott II, Inc. (2140); Bon-Ton Distribution, LLC (5855); McRIL, LLC (5548); Bonstores Holdings One, LLC (8574); Bonstores Realty One, LLC (8931); Bonstores Holdings Two, LLC (8775); and Bonstores Realty Two, LLC (9075). The headquarters for the above-captioned Debtors is 2801 East Market Street, Bldg. E, York, Pennsylvania 17402.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Bidding Procedures Order.

To the extent that a Counterparty to a Contract objects to (i) the assumption and assignment of such party's Contract, (ii) the applicable Cure Amount, or (iii) the provision of adequate assurance of future performance, the Counterparty must file and serve an objection (a "Contract Objection"). Any Contract Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, together with proof of service, on or before 4:00 p.m. (ET) on April 9, 2018 (the "Contract Objection Deadline"); (iv) be served, so as to be actually received on or before the Contract Objection Deadline, upon the Objection 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 section 365(b)(1)(A) and (B) of the Bankruptcy Code for the Assumed 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. The "Objection Notice Parties" are as follows: (i) counsel to the Debtors, Paul, Weiss, Rifkind & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019-6064 (Attn: Kelley A. Cornish, Elizabeth R. McColm and Alexander Woolverton) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Pauline K. Morgan, Sean T. Greecher and Andrew L. Magaziner); (ii) proposed counsel to any official committee of unsecured creditors appointed in the Debtors' chapter 11 cases; (iii) counsel to the DIP Administrative Agent, Morgan, Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110-726 (Attn: Julia Frost-Davies and Amelia C. Joinder) and Richards Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins and Joseph C. Barsalona II); (iv) counsel to the DIP Tranche A-1 Documentation Agent, Choate, Hall & Stewart LLP, Two International Place, Boston, MA 02110 (Attn: John F. Ventola); (v) counsel to the Ad Hoc Noteholder Group, Jones Day LLP, 250 Vesey Street, New York, New York 10281-1047 (Attn: Bruce Bennett and Sidney P. Levinson) and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801 (Attn: Norman L. Pernick and J. Kate Stickles); (vi) the Office of the United States Trustee for the District of Delaware, 855 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Mark Kenney; and (vii) counsel to the Stalking Horse Purchaser, if any.

In connection with the proposed sale process, interested bidders may be subject to an expedited discovery process.

If no objection is timely received with respect to Cure Amount, (i) a non-Debtor party to a Contract shall be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Contract, (ii) the Cure Amount set forth on Exhibit A attached hereto shall be controlling, notwithstanding anything to the contrary in any Contract, or any other document, and the non-Debtor party to a Contract shall be deemed to have consented to the Cure Amount, and (iii) the non-Debtor party to a Contract shall be forever barred and estopped from asserting any other claims related to such Contract against the Debtors or the applicable transferee, or the property of any of them.

If no objection is received by the Contract Objection Deadline to any Stalking Horse Bidder's adequate assurance of future performance with respect to a Contract, a non-Debtor party to such Contract shall be deemed to have consented to the assumption, assignment, and/or transfer of the applicable Contract to the applicable Stalking Horse Bidder, and shall be forever barred and estopped from asserting or claiming that any conditions to such assumption, assignment, and/or transfer must be satisfied under such applicable Contract or that any related right or benefit under such applicable Contract cannot or will not be available to the applicable Stalking Horse Bidder.

Subject to the terms of the Bidding Procedures Order, an auction (the "Auction") for the Assets, including the Contracts, will be conducted on **April 9, 2018 at \*\*: \*m. (ET)** at the offices of [LOCATION]. As soon as reasonably practicable after the Auction, the Debtors will file and serve a notice that identifies the Successful Bidder for the Assets, including any Contracts. **If the Successful Bidder is not a Stalking Horse Bidder, then the deadline to object to adequate assurance of future performance with respect to such Successful Bidder will be extended to two (2) hours prior to the commencement of the Sale Hearing; provided that the deadline to object to the Cure Amounts with respect to such Contracts, and to otherwise object to the assumption and assignment of such Contracts, shall not be extended.**

The Debtors will seek to assume and assign the Contracts that have been selected by a Successful Bidder (collectively, the "Selected Assumed Contracts") at a hearing before the Honorable Judge \*, in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, \* (\*th) Floor, Courtroom #\*, Wilmington, Delaware 19801 (a "Sale Hearing") on **April 16, 2018 at \*\*: \*m. (ET), or such other date as determined by the Debtors in accordance with the terms of the Bidding Procedures Order.** 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 (any such dispute, a "Cure Dispute"), such Contract Objection will be adjudicated at the Sale Hearing or at such other date and time as may be determined by the Debtors or fixed by the Court; provided, however, that if the Contract Objection relates solely to a Cure Dispute, the Selected Assumed Contract may be assumed by the Debtors and assigned to the Successful Bidder, provided that the cure amount that the Counterparty asserts is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code (or such lower amount as agreed to by the Counterparty) is deposited in a segregated account by the Debtors or any Successful Bidder, pending the Court's adjudication of the Cure Dispute or the parties' consensual resolution of the Cure Dispute.

Dated: [March \_\_ 2018]  
Wilmington, Delaware

\_\_\_\_\_

Pauline K. Morgan (No. 3650)  
Sean T. Greecher (No. 4484)  
Andrew L. Magaziner (No. 5426)  
Elizabeth S. Justison (No. 5911)  
YOUNG CONAWAY STARGATT & TAYLOR, LLP  
Rodney Square  
1000 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253

-and-

Kelley A. Cornish  
Elizabeth R. McColm  
Claudia R. Tobler  
Alexander Woolverton  
PAUL, WEISS, RIFKIND, WHARTON & GARRISON  
LLP  
1285 Avenue of the Americas  
New York, New York 10019  
Telephone: (212) 373-3000  
Facsimile: (212) 757-3990

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

**Exhibit A to Assumption Notice**

**Exhibit 3**

Sale Notice

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

In re:

THE BON-TON STORES, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-\_\_\_\_ (\_\_\_\_)

(Jointly Administered)

Ref. Docket No. \_\_\_\_

**NOTICE OF ENTERED BIDDING PROCEDURES ORDER AND PROPOSED SALE**

**PLEASE TAKE NOTICE** that the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), on February 4, 2018 (the “Petition Date”), in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). The Debtors are seeking to sell (the “Sale”) all or substantially all of their assets (collectively, the “Assets”), or subset(s) thereof, free and clear of all liens, claims, encumbrances, and other interests.

**PLEASE TAKE FURTHER NOTICE** that by order dated March \_\_\_\_, 2018 [Docket No. \*] (the “Bidding Procedures Order”),<sup>2</sup> the Bankruptcy Court approved certain “Bidding Procedures” that govern the Sale. All interested parties should carefully read the Bidding Procedures Order and the Bidding Procedures. Copies of the Bidding Procedures Order and the Bidding Procedures are available upon request to the Debtors’ claims and noticing agent, Prime Clerk LLC, at 844-239-9269, and are available for download at <https://cases.primeclerk.com/bonton>. A separate notice will be provided to counterparties to executory contracts and unexpired leases with the Debtors that may be assumed and assigned in connection with the Sale. **Any interested bidder should contact the Debtors’ investment banking advisors, PJT Partners LP, by contacting Jamie Baird (212-364-5300; [baird@pjtpartners.com](mailto:baird@pjtpartners.com)), Jon Walters (212-364-1992; [walters@pjtpartners.com](mailto:walters@pjtpartners.com)); and Vinit Kothary (212-364-7947; [Kothary@pjtpartners.com](mailto:Kothary@pjtpartners.com)). All due diligence inquiries solely related to the Debtors’ real estate, including fee-owned real properties and nonresidential real property leases, should be directed to the Debtors’ real estate consultant, A&G Realty Partners, LLC, by contacting Andrew Graiser (516-946-8982; [Andy@agrealtypartners.com](mailto:Andy@agrealtypartners.com)) and Michael Jerbich (773-294-5354; [Michael@agrealtypartners.com](mailto:Michael@agrealtypartners.com)).**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: The Bon-Ton Stores, Inc. (5229); The Bon-Ton Department Stores, Inc. (9309); The Bon-Ton Giftco, LLC (2805); Carson Pirie Scott II, Inc. (2140); Bon-Ton Distribution, LLC (5855); McRIL, LLC (5548); Bonstores Holdings One, LLC (8574); Bonstores Realty One, LLC (8931); Bonstores Holdings Two, LLC (8775); and Bonstores Realty Two, LLC (9075). The headquarters for the above-captioned Debtors is 2801 East Market Street, Bldg. E, York, Pennsylvania 17402.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Bidding Procedures Order.

**PLEASE TAKE FURTHER NOTICE OF THE FOLLOWING INFORMATION AND IMPORTANT DEADLINES IN CONNECTION WITH THE SALE, WHICH DATES AND DEADLINES SUPERSEDE ANY DATES AND DEADLINES SET FORTH IN THE MOTION [DOCKET NO. \_\_\_\_\_] PREVIOUSLY FILED AND SERVED BY THE DEBTORS.**

- The deadline to submit a bid for any Assets is **April 2, 2018 at 5:00 p.m. (ET)**.
- Any objections to the Sale or the relief requested in connection with the Sale (a “Sale Objection”), other than a Contract Objection, which shall be governed by the Assumption and Assignment Procedures, must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) set forth the specific basis for the Sale Objection; (d) be filed with the Clerk of this Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, together with proof of service, **on or before 4:00 p.m. (ET) on April 9, 2018** (the “Sale Objection Deadline”); and (e) be served, so as to be actually received on or before the Sale Objection Deadline, upon the Objection Notice Parties. The “Objection Notice Parties” are as follows: (i) counsel to the Debtors, Paul, Weiss, Rifkind & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019-6064 (Attn: Kelley A. Cornish, Elizabeth R. McColm and Alexander Woolverton) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Pauline K. Morgan, Sean T. Greecher and Andrew L. Magaziner); (ii) proposed counsel to any official committee of unsecured creditors appointed in the Debtors’ chapter 11 cases; (iii) counsel to the DIP Administrative Agent, Morgan, Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110-726 (Attn: Julia Frost-Davies and Amelia C. Joiner) and Richards Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins and Joseph C. Barsalona II); (iv) counsel to the DIP Tranche A-1 Documentation Agent, Choate, Hall & Stewart LLP, Two International Place, Boston, MA 02110 (Attn: John F. Ventola); (v) counsel to the Ad Hoc Noteholder Group, Jones Day LLP, 250 Vesey Street, New York, New York 10281-1047 (Attn: Bruce Bennett and Sidney P. Levinson) and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801 (Attn: Norman L. Pernick and J. Kate Stickle); (vi) the Office of the United States Trustee for the District of Delaware, 855 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Mark Kenney, Esq.); and (vii) counsel to the Stalking Horse Purchaser, if any.
- An auction for the Assets, unless cancelled or adjourned in accordance with the Bidding Procedures Order, will be held on **April 9, 2018 at \_\_\_\_\_ (ET)**, at the offices of [LOCATION]
- Unless adjourned in accordance with the Bidding Procedures Order, the Bankruptcy Court will conduct a hearing (the “Sale Hearing”) to consider the Sale on **April 11, 2018 at \_\_\_\_\_ (ET)**, in the event the Successful Bid contemplates a full-chain liquidation of the Debtors’ stores, or on April 16, 2018 at \_\_\_\_\_ (ET) in the event the Successful Bid contemplates a going concern sale.

**PLEASE TAKE FURTHER NOTICE THAT IF A SALE OBJECTION IS NOT FILED AND SERVED ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE ENTERED BIDDING PROCEDURES ORDER, THE OBJECTING PARTY SHALL BE BARRED FROM OBJECTING TO THE SALE AND SHALL NOT BE HEARD AT THE SALE HEARING, AND THE BANKRUPTCY COURT MAY ENTER THE SALE ORDER WITHOUT FURTHER NOTICE TO SUCH PARTY.**

Dated: [March \_\_\_\_ 2018]  
Wilmington, Delaware

---

Pauline K. Morgan (No. 3650)  
Sean T. Greecher (No. 4484)  
Andrew L. Magaziner (No. 5426)  
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-and-

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