

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

IN RE:

THE LAKES EDGE GROUP, LLC,

Debtor.

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Case Number 20-50715
Chapter 11

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

NOTICE IS HEREBY GIVEN that the property described below will be sold as set forth in the *Order (A) Approving The Form of Asset Purchase Agreement; (B) Authorizing and Scheduling an Auction; (C) Approving Procedures for Submission of Competing Bids Including Expense Reimbursement Provisions; (D) Scheduling a Final Hearing to Consider Approval of the Auction Sale, (i) Authorizing the Sale of Substantially All of the Assets of Debtor to Stalking Horse Bidder or to a Higher Successful Bidder; (ii) Authorizing the Sale of Such Assets to Be Free and Clear of All Liens, Claims, Interest, and Encumbrances and Transferring Such Liens, Claims, Interests and Encumbrances to the Proceeds of Sale; and (iii) Payment of the Expense Reimbursement, if Necessary; and (E) Approving the Form and Manner of Notice of Auction Bidding Procedures and Final Sale Hearing* entered on February 24, 2021 by the United States Bankruptcy Court, Middle District of North Carolina [ECF# 197] ("Sale Procedures Order"). A copy of the Sale Procedures Order is attached hereto and incorporated herein by reference as **Attachment 1**.

The property described below shall be sold at public auction sale to be conducted on **March 12, 2021, AT 10:00 A.M.**, at the offices of Blanco Tackabery & Matamoros, P.A., 110 S. Stratford Road, Suite 500, Winston-Salem, North Carolina, or such other place as may be ordered by the U.S. Bankruptcy Court for the Middle District of North Carolina. At the election of Trustee, in consultation with Keystone, the City, the Bankruptcy Administrator, and the Qualified Bidders, or pursuant to an order of the Bankruptcy Court, Trustee may hold the Auction virtually, through video and/or telephonic means, as determined by Trustee. ("Auction").

The property to be sold at the Auction consists of substantially all of the assets of The Lakes Edge Group, LLC ("Debtor") including a 347 unit apartment complex located at 301 Walkertown Avenue, Winston-Salem, North Carolina commonly known as Lakeside Villa Apartments (the "Property"), vehicles, furniture, fixtures and equipment, and certain books and records, all as more fully

described in the Asset Purchase Agreement ("Asset Purchase Agreement") dated January 12, 2021 by and between Debtor and Rabun Gap Holdings, LLC ("Stalking Horse Bidder"). Excluded from the property being sold are Debtor's accounts, deposits and other prepaid items, certain books and records of Debtor, all avoidance actions of Debtor's estate arising under Title 11 of the United States Code, including without limitation, sections 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code, any other claims or causes of action of Debtor, and all insurance policies and rights thereunder ("Excluded Assets").

TAKE FURTHER NOTICE that any parties interested in bidding at the Auction must be pre-certified as a Qualified Bidder as set forth in the Bidding Procedures attached hereto and incorporated herein by reference as **Attachment 2**.

TAKE FURTHER NOTICE that a **FINAL SALE HEARING** will be held on **March 18, 2021 at 9:30 A.M.** in the United States Bankruptcy court for the Middle District of North Carolina located at 601 W. 4th Street, Winston-Salem, North Carolina, subject to *Order Establishing Default Procedures for Future Hearings Scheduled in this Case* [ECF# 180] as to manner of hearing, to confirm that the procedures set forth in the Sale Procedures Order were followed, that the Auction was conducted in accordance with the Sale Procedures Order, and to make such findings as are necessary to provide the Successful Bidder at the Auction with an order that properly passes title to the Assets in accordance with the terms and conditions of the Asset Purchase Agreement, the Bidding Procedures and the Sale Procedures Order.

TAKE FURTHER NOTICE that any objection to the Sale or entry of the Final Sale Order must be filed with the Court and served by electronic mail on Trustee, Ashley S. Rusher, asr@blancolaw.com; counsel for Debtor, by electronic mail to eharvey@bennett-guthrie.com; the Bankruptcy Administrator, c/o Robert E. Price, by electronic mail to robert_e_price@ncmba.uscourts.gov; counsel for Keystone, Rayford K. Adams, III, by electronic mail to tadams@spilmanlaw.com; counsel for the City of Winston-Salem, John Lawson, by electronic mail to johnl@cityofws.org, and counsel for the Successful Bidder, Gwendolyn Godfrey, by electronic mail at ggodfrey@polsinelli.com so as to be actually received by the Bankruptcy Court and such parties on or before 4:00 p.m. (EDT), March 16, 2021.

This the ^{15th} day of February, 2021.

/s/ Ashley S. Rusher

Ashley S. Rusher, NCSB #14296
Chapter 11 Trustee

OF COUNSEL:
BLANCO TACKABERY
& MATAMOROS, P.A.
P. O. Drawer 25008
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ATTACHMENT 1
SALE PROCEDURES ORDER

SO ORDERED.

SIGNED this 24th day of February, 2021.



Lena Mansori James
LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

IN RE:	§	
	§	
THE LAKES EDGE GROUP, LLC,	§	Case Number 20-50715
	§	Chapter 11
Debtor.	§	

ORDER (A) APPROVING THE FORM OF ASSET PURCHASE AGREEMENT; (B) AUTHORIZING AND SCHEDULING AN AUCTION; (C) APPROVING PROCEDURES FOR SUBMISSION OF COMPETING BIDS INCLUDING THE EXPENSE REIMBURSEMENT PROVISIONS; (D) SCHEDULING A FINAL HEARING TO CONSIDER APPROVAL OF THE AUCTION SALE (i) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF DEBTOR TO STALKING HORSE BIDDER OR TO A HIGHER SUCCESSFUL BIDDER; (ii) AUTHORIZING THE SALE OF SUCH ASSETS TO BE FREE AND CLEAR OF ALL LIENS, CLAIMS, INTEREST, AND ENCUMBRANCES AND TRANSFERRING SUCH LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES TO THE PROCEEDS OF SALE; AND (iii) PAYMENT OF THE EXPENSE REIMBURSEMENT, IF NECESSARY; AND (E) APPROVING THE FORM AND MANNER OF NOTICE OF AUCTION BIDDING PROCEDURES AND FINAL SALE HEARING

THIS MATTER came on for consideration before the Honorable Lena M. James, United States Bankruptcy Judge for the Middle District of North Carolina presiding on February 18, 2021, upon the *Motion of Trustee for an order or orders*

(A) Approving The Form of Asset Purchase Agreement; (B) Authorizing and Scheduling an Auction; (C) Approving Procedures for Submission of Competing Bids Including Expense Reimbursement Provisions; (D) Scheduling a Final Hearing to Consider Approval of the Auction Sale, (i) Authorizing the Sale of Substantially All of the Assets of Debtor to Stalking Horse Bidder or to a Higher Successful Bidder; (ii) Authorizing the Sale of Such Assets to Be Free and Clear of All Liens, Claims, Interest, and Encumbrances and Transferring Such Liens, Claims, Interests and Encumbrances to the Proceeds of Sale; and (iii) Payment of the Expense Reimbursement, if Necessary; (E) Approving the Form and Manner of Notice of Auction Bidding Procedures and Final Sale Hearing; and (F) Granting Related Relief Including, if Necessary, a Hearing under Section 506(a) of the Bankruptcy Code (“Motion”) [ECF# 171 (Refiled as ECF# 174 to correct docket entry code)] (“Sale Procedures Motion”) filed on January 20, 2021, by Ashley S. Rusher, Chapter 11 Trustee (“Trustee”) for The Lakes Edge Group, LLC (“Debtor”). The Trustee properly served the Motion on January 20, 2021 on the Bankruptcy Administrator for the Middle District of North Carolina, Debtor’s pre-petition secured creditors, all unsecured creditors, and any party-in-interest requesting notice through the Court’s CM/ECF electronic noticing system by First Class Mail through the United States Postal Service, and the Bankruptcy Noticing Center served notice of hearing on January 21, 2021.

Ashley S. Rusher, Chapter 11 Trustee (“Trustee”), Robert E. Price, Jr., counsel for the Bankruptcy Administrator, Rayford K. Adams III and Kayla I.

Russell, counsel for Keystone Real Estate Income Trust, LLC ("Keystone"); John Lawson, counsel for the City of Winston Salem (the "City"), and Gwendolyn J. Godfrey, counsel for Rabun Gap Holdings, LLC ("Stalking Horse Bidder") appeared at the hearing.

Having considered the Sale Procedures Motion, the Affidavit of Trustee offered in support of the Sale Procedures Motion, the Declaration of Asok Biswas and Nanda Biswas offered in support of the Sale Procedures Motion and filed on February 22, 2021, the exhibits entered into evidence at the hearing, the testimony of the Trustee at the hearing, arguments of counsel, and the record in this case, and hearing no objection by any party in interest, the Court having determined that the relief requested in the Sale Procedures Motion is necessary and proper, and is in the best interests of Debtor, its estate, and its creditors; and after due deliberation and sufficient cause appearing therefor, the Court makes the following findings of fact and conclusions of law¹:

1. This Court has jurisdiction over the Sale Procedures Motion pursuant to 28 U.S.C. §§157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue of this Chapter 11 case and this Motion in this District is proper pursuant to 28 U.S.C. §1408.

2. On September 24, 2020, Debtor commenced a case under Chapter 11, Title 11, United States Code in this Court. Debtor continued to operate its business and manage its properties as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code until November 16, 2020. On November 16, 2020,

¹ All capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Motion.

the Court appointed Trustee as Chapter 11 Trustee for Debtor pursuant to Section 1104 of the Bankruptcy Code [ECF# 116]. No creditors' or other official committee has been appointed in this case pursuant to Section 1102 of the Bankruptcy Code.

3. Debtor owns and operates a 347 unit apartment complex located at 301 Walkertown Avenue, Winston-Salem, North Carolina commonly known as Lakeside Villa Apartments (the "Property").

4. Trustee seeks to facilitate a strategic sale of the Property to maximize the value of Debtor's assets for the benefit of Debtor's estate and its creditors.

5. Trustee received from Rabun Gap Holdings, LLC, a Georgia limited liability company ("Stalking Horse Bidder"), an offer to purchase substantially all of Debtor's assets (the "Stalking Horse Offer") for a purchase price in the amount of Seven Million Five Hundred Thousand and 00/100 Dollars (\$7,500,000.00). Stalking Horse Bidder and Trustee on behalf of Debtor executed an Asset Purchase Agreement ("Stalking Horse Asset Purchase Agreement") setting forth the Purchased Assets and the Excluded Assets as defined therein.

6. Stalking Horse Bidder has agreed to act as and be designated a "stalking horse," which permits Trustee to continue to market Debtor's assets to other interested buyers and to hold an auction sale of the Purchased Assets if others qualify to bid at such sale submit competitive bids to the Trustee in compliance with and as outlined in the Bidding Procedures.

7. Debtor's assets are encumbered by the voluntary security interests of Keystone and Asok K. Biswas and Nanda Biswas ("Biswas"), and the *ad valorem*

real property tax lien of Forsyth County, North Carolina ("Tax Lien"). Keystone's claim shall be allowed in the agreed discounted amount of \$6,000,000.00, and Trustee shall be authorized to pay Keystone's claim from the proceeds of sale at Closing, such payment being in full satisfaction of all claims asserted by Keystone against the bankruptcy estate. Biswas' claim shall be in an amount not less than \$1,200,000.00 nor to exceed \$1,785,890.00, as determined by the purchase price, and Trustee shall be authorized to pay Biswas claim from the proceeds of sale at the Closing, such payment being in full satisfaction of all claims asserted by Biswas against the bankruptcy estate.

8. Attached to the Sale Procedures Motion were (i) the Stalking Horse Asset Purchase Agreement; (ii) the Form Asset Purchase Agreement; (iii) the proposed auction Bidding Procedures; and (iv) a proposed Notice of Auction Sale and Bidding Procedures ("Notice"). Due and adequate notice of the filing of the Motion, and the hearing to approve same was given by service of the Motion and notice of hearing in accordance with Bankruptcy Rules 2002, 6004 and 6006, as evidenced by the Certificates of Service filed with the Court.

9. The form of the Stalking Horse Asset Purchase Agreement is acceptable, including the provisions contained therein for the payment to the Stalking Horse Bidder of an Expense Reimbursement in the event it is not the Successful Bidder at the Auction. Based upon the risk associated with being a "stalking horse," as well as the due diligence and document preparation and negotiations, from which other Qualified Bidders will benefit, the Expense

Reimbursement is fair and reasonable to compensate the Stalking Horse Bidder for such risk and expense, and will provide a substantial benefit to the estate. The parties negotiated the Expense Reimbursement at arms-length and in good faith. The Stalking Horse Offer, has provided a benefit to Debtor's estate by increasing the likelihood that the price at which the Purchased Assets are sold will reflect their true worth.

10. The Form APA, to be utilized by Qualified Bidders in submitting Qualified Bids to participate in the Auction, is acceptable.

11. Good cause exists and it is in the best interests of the creditors for this Court to authorize the Auction for the sale of the Purchased Assets pursuant to Section 363(b) and (f) of the Bankruptcy Code upon the terms and conditions set forth herein and as contained in the Stalking Horse Asset Purchase Agreement and Bidding Procedures. Trustee has established a sound business purpose and justification for this Court to authorize a sale of the Purchased Assets, pursuant to Section 363(b) of the Bankruptcy Code. Any delay in selling the Purchased Assets may result in a deterioration in the value of the business and hence, the Purchased Assets. Capitalizing on a sale at this time will maximize the value of the business and reduce the risk of deterioration in the value received by Debtor's estate and its creditors.

12. An Auction scheduled for March 12, 2021, provides reasonable and adequate time for additional marketing of the Property to prospective purchasers,

and provides prospective purchasers with sufficient time to determine if they will submit competitive bids at the Auction and qualify as Qualified Bidders.

13. The Bidding Procedures are reasonable and appropriate and will allow the Purchased Assets to be properly and adequately exposed to the marketplace, create an appropriate and fair competitive bidding process to allow for the marketplace to determine the fair market value of the Purchased Assets to be sold and will allow for a timely sale of the Purchased Assets that preserves, to the best extent possible, the value of the Purchased Assets.

14. Scheduling the Final Sale Hearing to be held four (4) business days after the Auction for the Court to consider final approval of the sale of the Purchased Assets, and such other matters as may be required to pass title to the Successful Bidder in accordance with the respective asset purchase agreement, is reasonable and provides adequate notice to creditors and parties-in-interest.

15. The Notice of Sale is reasonable and adequate to ensure that due process is served and that prospective purchasers, creditors, and other parties-in-interest have received sufficient and adequate notice of the Auction and Bidding Procedures, this Sale Procedures Order, and Notice of the Final Sale Hearing.

16. Trustee has marketed the sale of the Property to five (5) large regional commercial real estate brokers and an additional thirteen (13) interested multifamily housing purchasers. Trustee shall continue to market the sale of Property and advertise the Auction through the Bid Deadline as follows: (i) on the website of the United States Bankruptcy Court for the Middle District of North

Carolina, (ii) by special advertisement to the top 25 commercial real estate brokers in the region and the top 25 commercial real estate developers in the region as well as the national firms of Marcus & Millichap, JLL, Cushman & Wakefield, CBRE, and Newmark Group.

NOW THEREFOR, IT IS HEREBY ORDERED that pursuant to Section 363(b) and (f) of the Bankruptcy Code, the Motion be, and is hereby, **GRANTED IN PART**, subject to a Final Sale Hearing, upon the terms set forth below:

1. The form of the Stalking Horse Asset Purchase Agreement and the Form APA is approved;

2. If there are one or more Qualified Bidders other than the Stalking Horse Bidder, Trustee is authorized to conduct an Auction on March 12, 2021 at 10:00 a.m. at the offices of Blanco Tackabery & Matamoros, P.A., 110 S. Stratford Road, Suite 500, Winston-Salem, North Carolina at which time she shall solicit competing bids for the sale of the Purchased Assets. All Qualified Bidders must have at least one representative, with authority, present in person at the Auction. Trustee, in consultation with Keystone, the Bankruptcy Administrator, the Stalking Horse Bidder, and other Qualified Bidders may determine that conducting the sale virtually is necessary to protect the health and safety of Auction participants due to the COVID-19 pandemic, and in such event, Trustee is authorized to conduct an Auction at the same time with the participation of the same identified parties by virtual video conferencing. Trustee shall have a transcriptionist record minute of the Auction, which minutes shall be available for inspection by all parties in

interest. Trustee shall file a Report of Sale with the Court by 10:00 a.m. on March 15, 2021;

3. The Bidding Procedures are approved for distribution to prospective purchasers and other parties-in-interest;

4. The Stalking Horse Bidder is deemed a Qualified Bidder;

5. The provisions of the Stalking Horse Asset Purchase Agreement and Bidding Procedures providing for the Expense Reimbursement are hereby approved in all respects and Trustee shall be authorized to pay the Expense Reimbursement to the Stalking Horse Bidder if: (a) it is not in breach of or default under the Stalking Horse Asset Purchase Agreement and (b) it is not the Successful Bidder. The Expense Reimbursement shall be payable to the Stalking Horse Bidder as an administrative expense of Debtor's estate pursuant to Sections 503(b) and 507(a)(1) of the Bankruptcy Code and shall be paid at Closing from the proceeds of the sale of the Purchased Assets. If the Stalking Horse Bidder is the purchaser of the Purchased Assets at a price in excess of the Stalking Horse Offer, then it shall receive a credit in the amount of the Expense Reimbursement with regard to the price paid by it at the Closing of the sale of the Purchased Assets. By submitting a Qualified Bid, all Qualified Bidders, except the Stalking Horse Bidder, shall be deemed to have waived any right to seek a claim for an expense reimbursement, fees or other costs pursuant to Section 503 of the Bankruptcy Code;

6. By submitting a Qualified Bid, all Qualified Bidders shall be deemed to have consented to the exclusive jurisdiction of the Bankruptcy Court in connection

with determinations made regarding any disputes arising in connection with the Bidding Procedures or the Auction, including consent to the core jurisdiction of the Bankruptcy Court, consent to the constitutional authority of the Bankruptcy Court to enter a final judgment, and agree to have waived any right to a jury trial in connection with any disputes related to or arising out of the Bidding Procedures or the Auction;

7. The Court shall hold emergency hearings to resolve any disputes that may arise prior to or during the Auction. These emergency hearings would include, but not be limited to, any hearing as to whether a party should be designated as a Qualified Bidder. All such emergency hearings shall be held on Notice and Hearing as determined by the Court to be necessary under the circumstances and may include limited notice and/or telephonic notice to the designated parties. Where the Court deems appropriate, *ex parte* orders shall be issued by the Court to aid and assist in the consummation of the sale of the Purchased Assets;

8. The form and manner of the Notice of Sale is approved. Debtor shall serve the Notice of Sale along with this Order, and the Auction Bidding Procedures by first-class mail, within two (2) business days after entry of this Sale Procedures Order on: (a) all potential purchasers with whom Trustee has communicated about the sale of the Purchased Assets; (b) all attorneys and other parties who have entered an appearance in this case; (c) all secured creditors, (d) applicable taxing authorities, (e) the Bankruptcy Administrator, (f) all other creditors listed on the official mailing matrix, and (g) the top 25 regional real estate brokers and top 25

regional real estate developers, and shall thereafter file a Certificate of Service of the same with the Court;

9. Debtor shall cooperate in the sale process and provide assistance when required to Trustee, including, but not limited to, providing access (at reasonable times during normal business hours) to the Purchased Assets for site inspections by potential purchasers, and access to officers and other employees of the business for the purposes of evaluating the Purchased Assets and all properties, books, accounts, records and documents of, or relating to, the Purchased Assets; conducting its business in the ordinary and usual course consistent with past practice; transitioning ownership of the Purchased Assets and the business operations to the Successful Bidder upon Closing; and diligently assisting with the collection of rent receivables excluded from the Purchased Assets and retained by the bankruptcy estate after the Closing.

IT IS FURTHER ORDERED, AND NOTICE IS HEREBY GIVEN that the **Final Sale Hearing shall take place at 9:30 a.m., on March 18, 2021** before the United States Bankruptcy court for the Middle District of North Carolina, subject to the Order Establishing Default Procedures for Future Hearings Scheduled in this Case [ECF# 180] as to manner of hearing, to confirm the sale and enter such other appropriate orders as may be necessary to transfer marketable title to the Successful Bidder.

END OF DOCUMENT

ATTACHMENT 2
BIDDING PROCEDURES

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

IN RE:

THE LAKES EDGE GROUP, LLC,

Debtor.

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Case Number 20-50715
Chapter 11

AUCTION BIDDING PROCEDURES

Summary of Important Dates.

March 5, 2021	Participation Deadline
March 10, 2021	Bid Deadline
March 11, 2021	Deadline to provide notice to Qualified Bidders
March 12, 2021	Auction to be conducted in the offices of Blanco Tackabery & Matamoros, P.A., 110 S. Stratford Road, Suite 500, Winston-Salem, North Carolina
March 16, 2021	Sale Objection Deadline
March 18, 2021	Final Sale Hearing, to be conducted at the United States Bankruptcy Court for the Middle District of North Carolina

Sale. Sale means the sale of substantially all of the Purchased Assets (defined below) owned by The Lakes Edge Group, LLC ("Debtor") by means of an auction sale ("Auction"), subject to: (i) execution of an Asset Purchase Agreement in substantial conformity with the Stalking Horse Asset Purchase Agreement (defined below); (ii) subsequent approval of the United States Bankruptcy Court for the Middle District of North Carolina ("Bankruptcy Court"); and (iii) entry of a Final Sale Order (defined below). To facilitate the sale of the Purchased Assets, Trustee

has prepared a template asset purchase agreement ("Form APA") to be used by prospective bidders.

Purchased Assets. The assets offered for sale at the Auction will be substantially all of Debtor's assets including a 347 unit apartment complex located at 301 Walkertown Avenue, Winston-Salem, North Carolina commonly known as Lakeside Villa Apartments (the "Property"), vehicles, furniture, fixtures and equipment, and certain books and records all as particularly defined in the Asset Purchase Agreement dated January 12, 2021 by and between Debtor and Rabun Gap Holdings, LLC ("Stalking Horse Bidder" and agreement the "Stalking Horse Asset Purchase Agreement").

Excluded Assets. The Purchased Assets exclude Debtor's accounts, deposits and other prepaid items, certain books and records of Debtor, all avoidance actions of Debtor's estate arising under Title 11 of the United States Code, including without limitation, sections 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code, any other claims or causes of action of Debtor, and all insurance policies and rights thereunder ("Excluded Assets").

Rental Contracts. To the extent the Rental Contracts with tenants of the Property for the lease of an apartment unit ("Rental Contract") are for a term longer than a month to month tenancy, Debtor shall assume and assign such Rental Contracts to Successful Bidder (defined below).

Qualified Bidders. A "Qualified Bidder" is a party who has provided the following to Trustee on or before **March 5, 2021**, (the "Participation Deadline"):

i. A fully executed non-disclosure agreement in form and substance acceptable to Trustee delivered to Ashley S. Rusher, Blanco, Tackabery & Matamoros, P.A., P.O. Drawer 25008, Winston-Salem, North Carolina 27114-5008 or by electronic mail to asr@blancolaw.com;

ii. Evidence of corporate authority to proceed with the purchase of the Purchased Assets, the identity and exact legal name of the bidder, and if the bidder is an entity formed solely for the purpose of this transaction, the identity of any financial backer or equity holder of the bidder, including the entity designated to be the assignee of Rental Contracts to be included in a bid delivered to Ashley S. Rusher, Blanco, Tackabery & Matamoros, P.A., P.O. Drawer 25008, Winston-Salem, North Carolina 27114-5008 or by electronic mail to asr@blancolaw.com; and

iii. Evidence establishing, as reasonably determined by Trustee, such prospective bidder's financial ability to consummate the sale for a cash purchase price in an amount equal to or exceeding its Qualified Bid (defined below) in a timely manner if such bidder becomes the Successful Bidder at the Auction, delivered to Ashley S. Rusher, Blanco, Tackabery & Matamoros, P.A., P.O. Drawer

25008, Winston-Salem, North Carolina 27114-5008 or by electronic mail to asr@blancolaw.com.

Trustee shall provide notice to each Qualified Bidder on or before **March 8, 2021**, that it qualifies for participation in the Auction process as a Qualified Bidder for purposes of submitting a bid. To the extent Trustee notifies a prospective bidder that it does not meet the standards as a Qualified Bidder, and such Qualified Bidder disagrees with such determination, it may request Trustee to schedule a hearing to resolve any dispute arising out of such determination. Stalking Horse Bidder is a Qualified Bidder entitled to participate in the Auction. Within twenty-four (24) hours following the Participation Deadline, Trustee shall provide Stalking Horse Bidder, Keystone Real Estate Income Trust, LLC ("Keystone"), the City of Winston-Salem ("City"), and the Bankruptcy Administrator with notice in writing of the name of each Qualified Bidder.

Bid Deadline. No later than **March 10, 2021**, ("Bid Deadline"), Qualified Bidders seeking to participate in the Auction must deliver to Trustee the following:

i. An executed Form APA including a redline comparison to the Stalking Horse Asset Purchase Agreement demonstrating any variations from the Stalking Horse Asset Purchase Agreement and stating the Qualified Bidder's purchase price for the Purchased Assets delivered to Ashley S. Rusher, Blanco, Tackabery & Matamoros, P.A., P.O. Drawer 25008, Winston-Salem, North Carolina 27114-5008 or by electronic mail to asr@blancolaw.com. All Qualified Bids made before the Auction must be in an amount equal to or greater than Three Hundred Thousand and 00/100 Dollars (\$300,000.00) in excess of the Stalking Horse Offer to account for (i) the Expense Reimbursement (defined below) and (ii) an initial overbid in the amount of Two Hundred Thousand and 00/100 Dollars (\$200,000.00). The purchase price of any Qualified Bid must be payable only in cash. A Qualified Bid may not contain any contingencies, conditions or approvals in addition to those set forth in the Stalking Horse Asset Purchase Agreement. A Qualified Bid must remain open and be irrevocable through the Final Sale Hearing and, (i) if it is determined at such hearing to be approved as the Successful Bid, it shall remain open and be irrevocable through the Closing Date (defined below) and (ii) if it is determined that such bid is the Back-up Bid (defined below) then such bid will remain open and be irrevocable through the time set forth below. A bid from a Qualified Bidder in accordance with the foregoing terms (as determined by Trustee) will constitute a "Qualified Bid."

ii. A cash deposit in the amount of three percent (3%) of the Qualified Bid amount. Such deposit shall be delivered to Trustee at Blanco Tackabery & Matamoros, P.A. at P.O. Drawer 25008, Winston-Salem, North Carolina 27114 by wire transfer to be deposited in a separate non-interest bearing trust fund account maintained for all sale deposits at Branch Banking & Trust Company now Truist.

Trustee shall cause all deposits of Qualified Bidders except the Successful Bidder and the Backup Bidder to be returned within two (2) business days following the Auction. The deposit shall be returned by trust account check by first-class mail to the address and entity which the Qualified Bidder in writing has instructed the Trustee to return the deposit. If a Qualified Bidder desires that the deposit be returned by wire transfer, then said instructions for said wire transfer shall be provided to Trustee upon submission of the deposit. Failure of the Qualified Bidder to provide proper instructions for the return of deposit will authorize Trustee to hold said deposit pending written instructions.

iii. An executed Good Faith Declaration establishing the Qualified Bidder's good faith, within the meaning of Section 363(m) of the Bankruptcy Code.

Within twenty-four (24) hours following the Bid Deadline, Trustee shall provide Stalking Horse Bidder, Keystone, the City and the Bankruptcy Administrator with notice in writing of each Qualified Bid.

Auction. If there is at least one Qualified Bid in addition to the Stalking Horse Offer, Trustee will conduct the Auction. Attendance at the Auction will be limited to: (i) members, representatives of, and counsel to Debtor; (ii) members, representatives of, and counsel to Trustee; (iii) members, representatives of and counsel to any Qualified Bidders, including the Stalking Horse Bidder; (iv) members, representatives of, and counsel to Keystone; (v) members, representatives of, and counsel to Biswas; (vi) members, representatives of, and counsel to the City; and (vii) the Bankruptcy Administrator and his staff. All Qualified Bidders participating in the Auction must have at least one party, with authority, attending the Auction in person. The Auction proceedings shall be recorded by a Court Reporter. If no Qualified Bid is submitted by the Bid Deadline, then the Stalking Horse Offer will be deemed the Successful Bid and the Stalking Horse Bidder will be deemed the Successful Bidder, and no Auction will be held.

Auction Date, Time and Location. The Auction shall take place at **10:00 a.m. on Friday, March 12, 2021**, in the law offices of Blanco Tackabery & Matamoros, P.A., 110 S. Stratford Road, Suite 500, Winston-Salem, North Carolina, or such other place as may be ordered by the U.S. Bankruptcy Court for the Middle District of North Carolina. At the election of Trustee, in consultation with Keystone, the City, the Bankruptcy Administrator, and the Qualified Bidders, or pursuant to an order of the Bankruptcy Court, Trustee may hold the Auction virtually, through video and/or telephonic means, as determined by Trustee.

Acceptable Opening Bid. The opening bid at the Auction shall be the highest Qualified Bid submitted no later than the Bid Deadline, as determined by Trustee in consultation with the City and the Bankruptcy Administrator ("Acceptable Opening Bid") and will be announced by Trustee at the opening of the Auction.

Subsequent Bids at Auction. Following announcement of the Acceptable Opening Bid, each subsequent bid ("Acceptable Upset Bid") must increase the value of the purchase price offered for the Purchased Assets by not less than One Hundred Thousand and 00/100 Dollars (\$100,000.00) above the immediately prior Acceptable Upset Bid, taking into consideration the Expense Reimbursement. The Auction shall continue until such time as Trustee in consultation with the City and the Bankruptcy Administrator, concludes that no higher or otherwise better Acceptable Upset Bids are reasonably and promptly expected from Qualified Bidders. Trustee, after consultation with the City and the Bankruptcy Administrator, may alter the rules of the Auction as circumstances dictate if such alteration is in the best interests of Debtor's estate and its creditors.

Determination of Successful Bidder. Trustee, in her business judgment, and in consultation with the City and the Bankruptcy Administrator, their counsel and advisors and any other party so approved by an order of the Bankruptcy Court, shall make a determination of which Bid received at the Auction is the highest and best offer (the "Successful Bid"). All Qualified Bidders in attendance at the Auction will be notified of the Successful Bid designation at the conclusion of the Auction. The Qualified Bidder who made the Successful Bid at the Auction (the "Successful Bidder") shall amend its Asset Purchase Agreement to provide for the purchase price in the amount of the Successful Bid, and Trustee shall countersign the amended Asset Purchase Agreement on behalf of Debtor. The Successful Bid is not subject to any upset bid after the close of the Auction or at the Final Sale Hearing, unless upon application of Trustee, the Court orders otherwise in light of extraordinary circumstances not anticipated at the time of the Auction.

Designation of a Back-up Bidder. The Acceptable Upset Bid that is determined by Trustee in consultation with the City and the Bankruptcy Administrator, their counsel and advisors and any other party so approved by an order of the Bankruptcy Court to be the second-best bid ("Back-up Bid" and the submitting Qualified Bidder, the "Back-up Bidder") shall be notified of this designation at the conclusion of the Auction; the Back-up Bid will remain open and irrevocable until the later of (a) fourteen (14) days after the Final Sale Hearing or (b) the Closing Date; *provided that* if Trustee sends the Back-up Bidder written notice that the Back-up Bidder is now the New Successful Bidder (defined below) while the Back-up Bid is still open, then the Back-up Bid will remain open and irrevocable an additional fifteen (15) days after Back-up Bidder's receipt of such notice.

Dispute Resolution. The United States Bankruptcy Court for the Middle District of North Carolina shall retain exclusive jurisdiction to resolve any disputes which may arise concerning the Bidding Procedures or other issues relevant to the sale of the Purchased Assets as outlined herein and in the Sale Procedures Order. By submitting a Qualified Bid, all Qualified Bidders shall be deemed to have consented to the exclusive jurisdiction of the Bankruptcy Court in connection with determinations made regarding any disputes arising in connection with the Bidding

Procedures or the Auction, including consent to the core jurisdiction of the Bankruptcy Court, consent to the constitutional authority of the Bankruptcy Court to enter a final judgment, and agree to have waived any right to a jury trial in connection with any disputes related to or arising out of the Bidding Procedures or the Auction. The Sale Procedures Order shall authorize the Bankruptcy Court to hold emergency hearings to resolve any disputes that may arise prior to, during or after the Auction, which shall be held on Notice and Hearing as determined by the Bankruptcy Court to be necessary under the circumstances and may include limited notice and/or telephonic notice to the designated parties.

Court Hearings.

i. **Initial Sale Hearing.** An initial sale hearing was held by the Court to approve Bidding Procedures, including authorizing Trustee to pay the Expense Reimbursement to the Stalking Horse Bidder as set forth in the Bidding Procedures, deem the Stalking Horse as a Qualified Bidder, and entry of a Sale Procedures Order.

ii. **Final Sale Hearing.** A final sale hearing will be held on **March 18, 2021, at 9:30 a.m.** ("**Final Sale Hearing**"). It shall be the purpose of said hearing to confirm that the procedures as set forth in the Sale Procedures Order have been followed by Trustee and the Auction was conducted in accordance with the same, and to make such findings as are necessary to provide the Successful Bidder with an order that properly passes title in accordance with the terms and conditions of the applicable asset purchase agreement and to enter an order approving the sale of the Purchased Assets to the Successful Bidder in accordance with these bid procedures (such order, the "**Final Sale Order**"). Any objection to the Sale or entry of the Final Sale Order must be filed with the Court and served on Trustee, Ashley S. Rusher, by electronic mail to asr@blancolaw.com; counsel for Debtor, by electronic mail to eharvey@bennett-guthrie.com; the Bankruptcy Administrator, c/o Robert E. Price, by electronic mail to robert_e_price@ncmba.uscourts.gov; counsel for Keystone, Rayford K. Adams III, by electronic mail to tadams@spillmanlaw.com; and counsel for the Successful Bidder so as to be actually received by the Bankruptcy Court and such parties on or before **4:00 p.m., March 16, 2021**. By submitting a Qualified Bid, all Qualified Bidders shall be deemed to have consented to the exclusive jurisdiction of the Bankruptcy Court in connection with determinations made at the initial sale hearing and entry of the Sale Procedures Order, and the final sale hearing and entry of the Final Sale Order, including consent to the core jurisdiction of the Bankruptcy Court, consent to the constitutional authority of the Bankruptcy Court to enter a final judgment, and agree to have waived any right to a jury trial in connection with any determinations made at the initial sale hearing and entry of the Sale Procedures Order, and the final sale hearing and entry of the Final Sale Order.

Closing Date. The closing date shall be deemed to be the date upon which the consideration is paid and all closing documents are signed (the "Closing Date"). Closing must occur within fifteen (15) days of the date of entry of the Final Sale Order or as otherwise provided in the final, binding purchase agreement between Trustee and the Successful Bidder (including the Back-up Bidder if such Back-up Bidder becomes the Successful Bidder).

Effect of Failure to Close Within Time Required. In the event closing of the sale does not occur within fifteen (15) days of the date of entry of the Final Sale Order, and no extension of the Closing Date has been agreed to by Trustee, in consultation with Keystone, the City and the Bankruptcy Administrator:

i. The Back-up Bidder shall be deemed to be the new Successful Bidder ("New Successful Bidder") without further hearing or order of the Court.

ii. Trustee shall notify the New Successful Bidder in writing that it has been deemed to be the Successful Bidder, and the date such written notice is given to the New Successful Bidder shall be referred to as the "Notification Date."

iii. Within three (3) business days of the Notification Date, the New Successful Bidder shall amend its Asset Purchase Agreement to provide for the purchase price in the amount of the New Successful Bid, and Trustee shall countersign the amended Asset Purchase Agreement on behalf of Debtor.

iv. Closing of the sale to the New Successful Bidder must take place within fifteen (15) days of the Notification Date.

Absolute Sale. The Auction shall be an absolute sale and not subject to upset bid after the Auction, but subject to entry of the Final Sale Order, unless upon application of Debtor, the Court orders otherwise in light of extraordinary circumstances not anticipated at the time of the Auction. Notwithstanding Bankruptcy Rule 6004(g), Trustee is authorized to close this sale immediately upon approval at the Final Sale Hearing.

Necessary Findings for Successful Bidder. A sale conducted pursuant to the procedures set forth herein shall result in the Purchased Assets being sold to the Successful Bidder as a good-faith purchaser. Said purchaser shall acquire all rights as can be conveyed pursuant to 11 U.S.C. § 363 including, but not limited to, the rights of a good faith purchaser pursuant to 11 U.S.C. § 363(m), and a finding, based upon the sworn representation of the Successful Bidder, that the bidding was not pursuant to any improper collusive bidding practices, which prevent the sale from being avoided for reasons which would include 11 U.S.C. § 363(n).

Expense Reimbursement. A fee (the "Expense Reimbursement") shall be paid to the Stalking Horse Bidder as an expense reimbursement in an amount equal to the

One Hundred Thousand and 00/100 Dollars (\$ 100,000.00) in the event the Purchased Assets are sold at the Auction and Stalking Horse Bidder is not the Successful Bidder. The Expense Reimbursement is to be deemed earned and shall be paid in consideration of the cost and expense incurred by the Stalking Horse Bidder to move forward with the negotiation and preparation of the Asset Purchase Agreement and with all other pleadings and hearings necessary to obtain Bankruptcy Court approval of the Asset Purchase Agreement, entry of the Sale Procedures Order and the conduct of the Auction; and in recognition of the benefit gained by Trustee in allowing the Stalking Horse Offer to be subject to a higher bid pursuant to these Bidding Procedures. By submitting a Qualified Bid, all other Qualified Bidders shall be deemed to have waived any right to seek a claim for an expense reimbursement, fees or other costs pursuant to Section 503 of the Bankruptcy Code.

Payment of Expense Reimbursement. If the Purchased Assets are sold to a Qualified Bidder other than the Stalking Horse Bidder for a price in excess of the value of the Stalking Horse Offer, including to a New Successful Bidder, then at the closing of such sale, Trustee shall pay, or cause to be paid, to the Stalking Horse Bidder the Expense Reimbursement in immediately available funds; provided, however, if the Stalking Horse Bidder is the Successful Bidder at a price in excess of the Stalking Horse Offer, then in such event, the Stalking Horse Bidder shall receive a credit in the amount of the Expense Reimbursement with regard to the price paid by it at the closing of the sale of the Purchased Assets.

Emergency Court Hearing with Notice and Hearing. The Sale Procedures Order shall authorize the Court to hold emergency hearings to resolve any disputes that may arise prior to the Auction. These emergency hearings would include, but not be limited to, any hearing as to whether a party should be designated as a Qualified Bidder. All such emergency hearings shall be held on Notice and Hearing as determined by the Court to be necessary under the circumstances and may include limited notice and/or telephonic notice to the designated parties. Where deemed necessary, the Sale Procedures Order shall allow for *ex parte* orders to be issued by the Court to aid and assist in the consummation of this Sale.

[END OF DOCUMENT]