

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

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In re: : Chapter 11  
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DIRECTBUY HOLDINGS, INC., *et al.*,<sup>1</sup> : Case No. 16-12435 (CSS)  
: (Jointly Administered)  
Debtors. :   
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**BIDDING PROCEDURES**

Set forth below are the bidding procedures (the “**Bidding Procedures**”) to be employed in connection with the sale of all or substantially all the business assets of DirectBuy Holdings, Inc. and its debtor affiliates (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”) pending in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

On December 1, 2016, the Bankruptcy Court entered that certain *Order (A) Approving “Stalking Horse” Asset Purchase Agreement; (B) Approving Procedures in Connection With the Sale of All or Substantially All of the Debtors’ Business Assets; (C) Scheduling the Related Auction and Hearing to Consider Approval of Sale; (D) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (E) Approving the Form and Manner of Notice Thereof; (F) Approving Expense Reimbursement; and (G) Granting Related Relief* [Docket No. 126] (the “**Bidding Procedures Order**”). Pursuant to the Bidding Procedures Order, in consultation with the Official Committee of Unsecured Creditors (the “**Committee**”) the Debtors are authorized to employ, and are empowered to take all actions necessary or appropriate to implement the Bidding Procedures in connection with the sale of the Purchased Assets (as defined below) (the “**Sale**”).

**I. PURCHASE AGREEMENT**

The Debtors, as sellers, entered into that certain Asset Purchase Agreement, dated November 1, 2016 (together with the schedules and related documents thereto, the “**Purchase Agreement**”) with Derby SPV, Inc., as purchaser (the “**Purchaser**”), pursuant to which the Purchaser has agreed to acquire the Purchased Assets (as defined and to the extent provided in the Purchase Agreement, collectively, the “**Purchased Assets**”) and to assume certain expressly enumerated

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number are: DirectBuy Holdings, Inc. (3621); United Consumers Club, Incorporated (“**UCC**”) (6335); DirectBuy, Inc. (5059); Beta Finance Company, Inc. (8776); UCC Distribution, Inc. (6010); U.C.C. Trading Corporation (4388); National Management Corporation (8765); and UCC of Canada, Inc. (6435). The address of the Debtors’ corporate headquarters is 8450 Broadway, Merrillville, IN 46410.

liabilities, all on the terms and conditions specified therein. The credit bid set forth in the Purchase Agreement is made in the name of the Purchaser by U.S. Bank National Association, as trustee and collateral agent for the PrePetition Notes on behalf of all holders of such notes on a pro rata basis.

The sale transaction pursuant to the Purchase Agreement is subject to competitive bidding as set forth herein. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement.

## **II. SALE FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS**

Except as otherwise provided in the Purchase Agreement or such other approved purchase agreement of the Successful Bidder, the Debtors shall seek to have the Purchased Assets sold free and clear of any claim, pledge, option, charge, hypothecation, easement, security interest, license, right-of-way, encroachment, mortgage, and deed of trust or other encumbrance of any kind or nature thereon and there against (except for Permitted Liens) (collectively, the “**Liens**”), with such Liens to attach solely to the net proceeds of Sale.<sup>2</sup>

## **III. PROVISIONS GOVERNING QUALIFICATIONS OF BIDDERS**

### **A. Potential Bidders**

Unless otherwise ordered by the Bankruptcy Court, in order to participate in the bidding process, prior to the Bid Deadline (defined below), each person, other than the Purchaser, who wishes to participate in the bidding process (a “**Potential Bidder**”) must deliver to the Notice Parties (as defined below) to the extent not previously delivered, an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors to a Potential Bidder) in form and substance satisfactory to the Debtors, in consultation with the Committee, which shall inure to the benefit of the Successful Bidder; without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions.

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<sup>2</sup> Nothing herein shall impair the rights of Pacific Western Bank in connection with their Certificate of Deposit securing a letter of credit in favor of the State of California.

## **B. Due Diligence**

Upon execution of a valid confidentiality agreement in form and substance reasonably acceptable to the Debtors, in consultation with the Committee, the Debtors will afford any Potential Bidder such due diligence access or additional information as the Debtors, in consultation with their advisors, deem appropriate, in their reasonable discretion. Any such due diligence access or additional information provided to Potential Bidders shall also be made available to the Committee and its professionals. The Debtors will limit access to due diligence to those parties they believe, in the exercise of their reasonable judgment, are pursuing the transaction in good faith and are capable of submitting a Qualified Bid (as defined below). If access is denied to any Potential Bidder, the Debtors shall promptly inform the Committee of same.

The Debtors must promptly advise the Purchaser in the event any other Potential Bidder receives diligence the Purchaser has not received and Purchaser shall be provided with prompt access to such diligence materials.

The due diligence period shall end on the Bid Deadline and no Potential Bid shall be deemed a Qualified Bid if it has any due diligence contingencies as of the Bid Deadline. For the avoidance of doubt, other than with respect to the Committee, neither the Debtors nor any of their respective representatives shall be obligated to furnish any due diligence information to any person other than a Potential Bidder.

## **C. Qualified Bids**

In order to participate in the bidding process and be deemed a "**Qualified Bidder**," each Potential Bidder (other than the Purchaser) must submit a "**Qualified Bid**" by the Bid Deadline (as defined below). To constitute a Qualified Bid, a bid must:

- i. fully disclose the identity of the Potential Bidder and include contact information for the specific person (s) the Debtors should contact if they have any questions about the Potential Bidder's bid;
- ii. state that the Potential Bidder offers to purchase the Purchased Assets or some substantial portion thereof;
- iii. include a signed writing that the Potential Bidder's offer is formal, binding, unconditional, and irrevocable until (i) the closing of the transaction with the Successful Bidder (as defined below) and (ii) for two (2) business days after the earlier of the closing of the sale transaction with the Successful Bidder or the termination of the Successful Bid, if such bidder is designated the Back-Up Bidder (as defined below) at the conclusion of the Auction;
- iv. confirm that there are no conditions precedent to the Potential Bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid;

- v. set forth each regulatory and third-party approval required for the Potential Bidder to consummate the transaction and the time period within which the Potential Bidder expects to receive such approvals;
- vi. include a duly authorized and executed copy of a purchase agreement (a “**Bidder Purchase Agreement**”), including the purchase price for the Purchased Assets expressed in U.S. Dollars (the “**Purchase Price**”), together with all exhibits and schedules thereto, together with copies marked (“**Marked Agreement**”) to show any amendments and modifications to the Purchase Agreement and the proposed order to approve the sale; provided, however, that such Bidder Purchase Agreement shall not include any financing or diligence conditions;
- vii. include written evidence of sufficient cash on hand to fund the purchase price or sources of immediately available funds that are not conditioned or contingent on further third party approvals or commitments, that will allow the Debtors to make a reasonable determination as to the Potential Bidder’s financial and other capabilities to consummate the transaction contemplated by the Bidder Purchase Agreement; such written evidence shall include the most current audited and the most current unaudited financial statements, and any bank account or investment account statements or other evidence of any bank line(s) of credit or available cash to complete the purchase, or such other financial information as may be acceptable to the Debtors in their reasonable discretion (collectively, the “**Financials**”) of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of acquiring the Purchased Assets, the Financials of the Potential Bidder’s equity holder(s) or other financial backer(s);
- viii. provide for a cash purchase price of at least the Purchase Price (as defined in the Purchase Agreement) *plus* a cash overbid of \$200,000 (collectively, the “**Minimum Overbid**”), and otherwise has a value to the Debtors, in the Debtors’ exercise of their reasonable business judgment, after consultation with their advisors and the Committee, that is greater or otherwise better than the value offered under the Purchase Agreement, including impact of the liabilities assumed in the Purchase Agreement;
- ix. identify with particularity which executory contracts and unexpired leases the Potential Bidder wishes to assume and provides for the Potential Bidder to pay related Cure Amount;
- x. contain sufficient information concerning the Potential Bidder’s ability to provide adequate assurance of future performance with respect to executory contracts and unexpired leases to be assumed and assigned;
- xi. include an acknowledgement and representation that the bidder: (A) has had an opportunity to conduct any and all required due diligence regarding

the Purchased Assets prior to making its offer; (B) has relied solely on its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid; (C) did not rely on any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets or the completeness of any information provided in connection therewith or with the Auction (defined below), except as expressly stated in the Purchase Agreement; and (D) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid;

- xii. include evidence, in form and substance reasonably satisfactory to the Debtors, in consultation with the Committee, of authorization and approval from the Potential Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Purchase Agreement;
- xiii. be accompanied by a good faith deposit in the form of a wire transfer, certified check or such other form acceptable to the Debtors, in consultation with the Committee, payable to the order of the Debtors (or such other party as the Debtors may determine, including an escrow agent) in an amount equal to ten percent (10%) of the Qualified Bid;
- xiv. state that the Potential Bidder agrees to serve as a Back-Up Bidder (as defined below) if such bidder's Qualified Bid is selected as the next highest or otherwise next best bid after the Successful Bidder (as defined below) with respect to the Purchased Assets;
- xv. state that the Potential Bidder consents to the jurisdiction of the Bankruptcy Court;
- xvi. state that the Potential Bidder agrees that it shall abide by the Debtors' privacy policies, and include any reasonable information requested by a consumer privacy ombudsman, should one be appointed in the Chapter 11 Cases pursuant to Section 363(b)(1)(B) of the Bankruptcy Code; and
- xvii. contain such other information reasonably requested by the Debtors in consultation with the Committee.

As promptly as practicable after a Potential Bidder delivers all the materials required above (and in any event no later than two (2) business days thereafter), the Debtors, in consultation with the Committee, will determine and will notify the Potential Bidder and the Notice Parties if such Potential Bidder is a Qualified Bidder. If the Debtors determine that any Potential Bidder who delivers a bid is not a Qualified Bidder, the Debtors shall promptly notify the Committee of same.

For the avoidance of doubt, the Purchaser shall not be required to take any further action in order to participate in the Auction (if any) or, if the Purchaser is the Successful Bidder, to be named the Successful Bidder at the Sale Hearing (as defined below).

The Debtors, in their discretion, may accept a single Qualified Bid or multiple bids for non-overlapping material portions of the Assets such that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid.

#### **D. Bid Deadline**

A Potential Bidder that desires to make a bid shall deliver written copies of its bid to the following parties (collectively, the “**Notice Parties**”): (i) the Debtors, 8450 Broadway, Merrillville, Indiana 46410 (Attn: Michael P. Bornhorst); (ii) counsel to the Debtors, Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601 (Attn: Ilana Volkov, Esq. and Marc P. Press, Esq.), [ivolkov@coleschotz.com](mailto:ivolkov@coleschotz.com) and [mppress@coleschotz.com](mailto:mppress@coleschotz.com); (iii) investment banker to the Debtors, Carl Marks & Co., 900 Third Avenue, 33<sup>rd</sup> Floor, New York, New York 10022 (Attn: Charles Boguslaski and Parker Condie); and (iv) counsel to the Committee, Saul Ewing, One Riverfront Plaza, 1037 Raymond Boulevard, Suite 1520, Newark, NJ 07102-5426 (Attn: Sharon Levine, Esq.), [slevine@saul.com](mailto:slevine@saul.com); and (v) financial advisor to the Committee, Emerald Capital Advisors, 70 East 55<sup>th</sup> Street, 17<sup>th</sup> Floor, New York, NY 10022 (Attn: John Madden), [jpm@emeraldcapitaladvisors.com](mailto:jpm@emeraldcapitaladvisors.com), so as to be received not later than **January 12, 2017, at 5:00 p.m.** Eastern Standard Time (the “**Bid Deadline**”), as same may be adjourned by the Debtors in consultation with their advisors and the Committee. The Purchaser is deemed a Qualified Bidder and the Purchase Agreement constitutes a Qualified Bid for all purposes.

#### **IV. Auction Process**

##### **A. Evaluation of Competing Bids**

A Qualified Bid will be valued based upon several factors including, without limitation, (1) the amount of such bid, (2) the risks and timing associated with consummating such bid, (3) any proposed revisions to the Purchase Agreement, and (4) any other factors deemed relevant by the Debtors in their reasonable discretion, in consultation with their advisors and the Committee.

##### **B. No Qualified Bids**

If the Debtors do not receive any Qualified Bids other than the Purchase Agreement, the Debtors will not hold an auction, the Purchaser will be named the Successful Bidder for the Purchased Assets and the Debtors shall request at the Sale Hearing (as defined below) that the Bankruptcy Court approve the Purchase Agreement with the Purchaser.

##### **C. Auction**

If the Debtors receive one or more Qualified Bids in addition to the Purchase Agreement, the Debtors will conduct an auction (the “**Auction**”), which shall be transcribed, on **January 18, 2017, at 10:00 a.m.** Eastern Standard Time (the “**Auction Date**”), as same may be adjourned by the Debtors in consultation with their advisors and the Committee, at the offices of Cole Schotz

P.C., 25 Main Street, Hackensack, New Jersey, or such other location as shall be timely communicated to all entities entitled to attend the Auction. The Auction shall run in accordance with the following procedures:

- i. only Qualified Bidders that have submitted Qualified Bids by the Bid Deadline are eligible to participate at the Auction;
- ii. Qualified Bidders participating the Auction must appear in person at the Auction, or through a duly authorized representative;
- iii. the Auction will be conducted openly and the Committee and its professionals and all creditors will be permitted to attend; provided, however, the Debtors may, in their sole and exclusive discretion, establish a reasonable limit on the number of representatives and/or professional advisors that may appear on the behalf of or accompany each Qualified Bidder and other parties in interest (other than the Committee, which shall not be so limited) at the Auction;
- iv. each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale;
- v. at least one (1) business day before the Auction, each Qualified Bidder must inform the Debtors whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the date of the selection of the Successful Bidder and the Back-Up Bidder (defined below) at the conclusion of the Auction. At least one (1) business day before the Auction, the Debtors will identify to the Purchaser and Committee which Qualified Bid the Debtors believe in their reasonable discretion, in consultation with their advisors and the Committee, is the highest or otherwise best offer at that time; provided, however, that the Debtors, upon further consultation, may determine which offer is the highest or otherwise best offer at any time before the commencement of the Auction (the "**Starting Bid**");
- vi. all Qualified Bidders will be entitled to be present for all Subsequent Bids (as defined below) at the Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the Auction; provided that all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the Auction in person;
- vii. the Debtors, in consultation with their advisors and the Committee, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, provided that such rules are (i) not inconsistent with these Bidding Procedures, the

Order approving these Bidding Procedures, the Bankruptcy Code or any order of the Bankruptcy Court entered in connection herewith, and (ii) disclosed to each Qualified Bidder at the Auction; and

- viii. bidding at the Auction will begin with the Starting Bid and continue in bidding increments (each a “**Subsequent Bid**”) providing a net value to the estate of at least an additional \$200,000 above the prior bid. After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the bid that they believe, in consultation with the Committee, to be the highest or otherwise better offer (the “**Leading Bid**”). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid.

The Debtors shall have the right to conduct any number of Auctions on such date to accommodate Qualified Bids for certain, but less than all of the Purchased Assets if the Debtors determine, in their business judgment and upon consultation with the Committee, that such process would be in the best interest of the Debtors’ estates and result in a materially higher recovery for the estates.

**D. Selection of Successful Bid**

Before the conclusion of the Auction, the Debtors, in consultation with their advisors and the Committee, will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer is the highest or otherwise best offer from among the Qualified Bidders submitted at the Auction (the “**Successful Bid**” and the bidder(s) making such bid, the “**Successful Bidder**”), and communicate to the Qualified Bidders the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Debtors at the conclusion of the Auction shall be final, subject only to approval by the Bankruptcy Court.

Unless otherwise agreed to by the Debtors and the Successful Bidder, within two (2) business days after the conclusion of the Auction, 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 Debtors shall file notice of the identity of the successful bidder and back-up bidder at the auction, and the amount of their bids, with the Court by January 20, 2016 at 12:00 p.m. The same day, the Debtors shall serve such notice by fax or email to all contract counterparties and creditors who have requested the same in writing and provided their fax number or email address to Debtors’ counsel.

The Debtors will consummate the Sale to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Bankruptcy Court at the Sale Hearing.

**E. Back-Up Bidder**

If an Auction is conducted, the Qualified Bidder with the next highest or otherwise best Qualified Bid to the Successful Bidder, as determined by the Debtors at the Auction in the exercise of their business judgment, upon consultation with the Committee, shall be required to serve as a back-up bidder (the “**Back-Up Bidder**” and, the bid submitted by the Back-Up Bidder, the “**Back-Up Bid**”) and keep such bid open and irrevocable until either two (2) business days after closing of the sale transaction with the Successful Bidder or five (5) business days after termination of a Successful Bid, whichever applies. Following the Sale Hearing, if the Successful Bidder fails to consummate the approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the Sale with the Back-Up Bidder without further order of the Bankruptcy Court. For the avoidance of doubt, absent participation in the Auction and the making of an overbid, the Purchaser cannot be designated the Back-Up Bidder, unless it consents to such designation.

**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 (as defined below) no later than five (5) business days following the conclusion of the Auction. The deposit of the Back-Up Bidder shall be held by the Debtors until one (1) business day after the closing of the sale transaction with the Successful Bidder.

**V. Sale Hearing**

The Successful Bid (or the Purchase Agreement, if no qualified Bid other than that of the Purchaser is received or accepted) and Back-Up Bid will be subject to approval by the Bankruptcy Court. The hearing to approve the Sale and the Successful Bid and any Back-Up Bid shall take place on January 24, 2017, at 1:00 p.m. Eastern Standard Time, before the Honorable Christopher S. Sontchi, U.S.B.J., at the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 5th Floor, Courtroom 6, Wilmington, DE 19801. The Debtors’ presentation to the Bankruptcy Court for approval of the Successful Bid or any Back-Up Bid does not constitute the Debtors’ acceptance of such bid(s).

The Debtors will have accepted the terms of the Successful Bid or any Back-Up Bid only when such bid(s) has been approved by the Bankruptcy Court pursuant to a Sale Order.