

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re: : Chapter 11  
: :  
COCOA SERVICES, L.L.C., et al.,<sup>1</sup> : Case No. 17-11936 (JLG)  
: :  
Debtors. : Jointly Administered  
: :  
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**ORDER ESTABLISHING BIDDING PROCEDURES AND RELATED RELIEF  
REGARDING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS**

Upon the motion (the "Motion")<sup>2</sup> of Cocoa Services, L.L.C. ("Cocoa Services") and Morgan Drive Associates, L.L.C. ("Morgan Drive"), the debtors and debtors-in-possession (each a "Debtor" and collectively, the "Debtors"), for an order (the "Bidding Procedures Order") (a) establishing bidding procedures and bid protections, including an auction (the "Bidding Procedures"), with respect to the Debtors' sale of their Assets, (b) approving the form and manner of notices thereof (the "Bidding Procedures Notice"), (c) establishing JB Cocoa Holding, Inc. ("JB Cocoa") as the stalking horse bidder for the Purchased Assets, (d) approving the form of Asset Purchase Agreement by and among the Debtors and JB Cocoa (the "Stalking Horse APA"), pursuant to which the Debtors propose to sell the Purchased Assets to JB Cocoa or a third party that makes a higher and/or better offer for the Assets (the "Proposed Sale"), (e) setting a hearing to consider approval of the Debtors' sale of the Assets (the "Sale Hearing"), and (f) granting other relief; and it appearing that the Debtors have provided good and sufficient notice to interested parties of the Motion, as evidenced by the proof of service filed on July 24,

<sup>1</sup> Debtors in these Bankruptcy Cases and the last four digits of their respective taxpayer identification number are as follows: Cocoa Services, L.L.C. (3769); Morgan Drive Associates, L.L.C. (2335). Debtors' principal office is located at 400 Eagle Court, Swedesboro, New Jersey 08085.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

2017 [Docket No. 30]; and it further appearing that this Court has jurisdiction to grant the requested relief pursuant to 28 U.S.C. §§ 157 and 1334; and after considering all objections to the Motion, if any; and the Court having conducted a hearing on August 10, 2017, at which time the Court considered, among other things, the Bidding Procedures, any objections thereto and the oral arguments of counsel; and it further appearing that the relief requested is reasonable and necessary to protect the interests of the Debtors, their estates, and creditors; and after due deliberation, sufficient cause appearing therefor, it is hereby

**FOUND AND DETERMINED THAT:**<sup>3</sup>

A. The statutory and legal predicates for the relief requested in this Order are sections 105, 363 and 365 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 6004-1 and 6006-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”).

B. The Debtors have provided good and sufficient notice of the relief granted by the Bidding Procedures Order to all parties in interest. The notice provided is appropriate and is calculated to provide interested parties with timely and proper notice of the Bidding Procedures and the Auction. 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 6004(a).

C. The Debtors have engaged in a marketing process with respect to the Assets to solicit and develop the highest and best offers for the Assets.

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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.

D. The Bidding Procedures attached hereto as **Exhibit 1** are fair, reasonable, appropriate and are designed to maximize recovery to the Debtors' estates.

E. The Debtors have demonstrated compelling and sound business justifications for entering into the Stalking Horse APA and incurring the obligations arising thereunder or in connection therewith, including the provisions related to the Transaction Expenses.

F. JB Cocoa's role as a "stalking-horse" and the Stalking Horse APA as the "stalking-horse" sale agreement is in the best interest of the Debtors and the Debtors' estates, and it reflects a sound exercise of the Debtors' business judgment. The Stalking Horse APA provides the Debtors with the opportunity to sell the Purchased Assets in order to maximize value.

G. The Bid Protections, including, but not limited to, the Transaction Expenses, (i) have been negotiated by the Debtors and JB Cocoa at arms' length and in good faith, (ii) are a material inducement for, and consideration of, JB Cocoa's execution of the Stalking Horse APA, and (iii) are necessary to ensure that JB Cocoa will continue to pursue the Stalking Horse APA and the sale transaction contemplated thereby. The Transaction Expenses, to the extent payable under the Stalking Horse APA and this Order, (x) (i) are an actual and necessary cost and expense of preserving the Debtors' estates within the meaning of section 503(b) of the Bankruptcy Code and (ii) shall be treated as an allowed superpriority administrative expense claim against the Debtors' estates, pursuant to sections 105(a), 503(b) and 507(a)(2) of the Bankruptcy Code, (y) are commensurate to the real and material benefits conferred upon the Debtors' estates, (z) are fair, reasonable and appropriate, particularly in light of the size and nature of the Proposed Sale to JB Cocoa and the efforts that have been and will be expended by JB Cocoa.

H. The Debtors have demonstrated good and sufficient business reasons for the Court to approve (i) the Bidding Procedures, (ii) the Assumption and Assignment Procedures, (iii) the Bid Protections, including, but not limited to, the Transaction Expenses (to the extent payable under the Stalking Horse APA and this Order), and (iv) the form and manner of notice of the Auction and Sale Hearing.

I. The Bidding Procedures comply with the requirements of Local Rule 6004-1 and the Sale Guidelines. The Bidding Procedures were negotiated in good faith and at arms' length and are reasonably designed to promote participation and active bidding and ensure that the highest or best value is generated for the Assets.

J. The Assumption and Assignment Procedures, including notice of proposed Cure Costs, are reasonable and appropriate and consistent with section 365 of the Bankruptcy Code and Bankruptcy Rule 6006. The Assumption and Assignment Procedures have been tailored to provide adequate opportunity for all Counterparties to the Cocoa Services' Contracts to raise objections, if any.

K. The Bidding Procedures Notice is reasonably calculated to provide all interested parties with timely and proper notice of the Bidding Procedures, the Assumption and Assignment Procedures, the Auction, the Sale Hearing and the Proposed Sale, and the objection deadlines related thereto.

IT IS HEREBY ORDERED THAT:

**The Bidding Procedures/The Auction**

1. The Bidding Procedures, attached hereto as **Exhibit 1**, are hereby approved in all respects, are incorporated herein and shall apply with respect to any bids for the Assets. The

Debtors are authorized to take all action necessary or appropriate to implement the Bidding Procedures.

2. The deadline for submitting an Offer for the Assets shall be **August 25, 2017 at 5:00 p.m. (prevailing Eastern Time)** (the "Offer Deadline"). The Debtors shall provide copies of all bids to each of the Consultation Parties, in accordance with the Bidding Procedures.

3. If the Debtors receive at least two (2) Qualified Bids for the Assets by the Offer Deadline, the Debtors shall conduct the Auction. The Auction shall take place at the offices of Riker, Danzig, Scherer, Hyland & Perretti LLP, Headquarters Plaza, One Speedwell Avenue, Morristown, New Jersey 07962 on **September 6, 2017 at 10:00 a.m. (prevailing Eastern Time)**, or at such other time and location as the Debtors, after consulting with the Consultation Parties and after providing notice to the Notice Parties, may determine in their reasonable business judgment. The Consultation Parties and/or their representatives shall be permitted to attend the Auction.

4. The Auction shall be conducted openly and shall be transcribed or videotaped, at the Debtors' option after consultation with the Consultation Parties.

5. Subject to the Bidding Procedures and this Order, the Debtors shall have the right, after consulting with the Consultation Parties, in their reasonable business judgment, to: (i) determine which bidders qualify as Qualified Parties; (ii) determine which bids qualify as Qualified Bids; (iii) determine which Qualified Bids qualify as Baseline Bids; (iv) determine the amount of each Minimum Overbid; (v) determine which Qualified Bids are the Winning Bids and the Backup Bids; (vi) reject any bid that is: (a) inadequate or insufficient; (b) not in conformity with the requirements of the Bidding Procedures, the Bankruptcy Code, the Bidding Procedures Order, or any other order of this Court; or (c) contrary to the best interests of the

Debtors and their estates; or (vii) adjourn or cancel the Auction, after providing notice of such adjournment or cancellation in accordance with the Bidding Procedures.

6. All bidders submitting a Qualified 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.

7. Notwithstanding anything to the contrary set forth herein, JB Cocoa's bid, as reflected in the Stalking Horse APA, is deemed a Qualified Bid pursuant to the Bidding Procedures for all purposes.

#### **The Sale Hearing/Objection Deadline**

8. The Court shall conduct the Sale Hearing on **September 26, 2017 at 2:00 p.m. (EST)**. The Debtors may, after (a) consultation with JB Cocoa or the Winning Bidder (if JB Cocoa is not the Winning Bidder) and the Consultation Parties and (b) notice to the Notice Parties, seek an adjournment of the Sale Hearing as the Debtors deem appropriate in the exercise of their reasonable business judgment.

9. Responses or objections (collectively, "Sale Objections") if any, to the relief requested in the Sale Motion (other than Cure Objections and Adequate Assurance Objections discussed below) shall be in writing, shall state the name of the objecting party, shall state with particularity the reasons and basis for the Sale Objection, and shall be (a) filed with the Court and (b) served upon (i) counsel for the Debtors (Attn: Joseph L. Schwartz, Esq. and Jason D. Navarino, Esq.), (ii) the Office of the U.S. Trustee (Attn: Serene Nakano, Esq.); (iii) Baker, Manock & Jenson, PC (Attn: Carl R. Refuerzo, Esq. and Courtney R. McKeever, Esq.) and Trenk, DiPasquale, Della Fera & Sodono, P.C. (Attn: Adam D. Wolper, Esq. and Ross J. Switkes, Esq.), as counsel to JB Cocoa; (iv) the attorneys (if applicable) of any Winning

Bidder(s); (v) the attorneys (if applicable) of any applicable Backup Bidder(s); (vi) Thompson & Knight, LLP, as counsel to Bank of the West (Attn: Anthony Pirraglia, Esq.) and (vii) Windels Marx Lane & Mittendorf LLP (Attn: James Sullivan), as counsel for Alan Nisselson, Interim Chapter 7 Trustee of Transmar Commodity Group, Ltd.; (collectively, the “Objection Recipients”), **so as to be filed, served and actually received by the Court (including providing a copy two copies, single-sided, [JLG]to Chambers) by no later than September 14, 2017 at 4:00 p.m.** (the “Sale Objection Deadline”). Any reply by the Debtors or other Objection Recipient shall be **filed, served and actually received by the Court (including providing a copy to Chambers) by no later than September 20, 2017 at 4:00 p.m.** (the “Sale Reply Deadline”).

#### **Notice Procedures**

10. The Bidding Procedures Notice, attached to the Motion as Exhibit D, provides adequate and sufficient notice to all interested parties of the Bidding Procedures, Auction, Motion, Sale Hearing, and the Proposed Sale pursuant to Bankruptcy Rules 2002 and 6004 and Local Rules 4001-1 and 6004-1, and is hereby approved.

11. ~~As soon as is reasonably practicable, but by no later than two (2) business days after entry of the Bidding Procedures Order,~~ **On or before August 15, 2017, [JLG]** the Debtors shall serve a copy of this Order, with exhibit, and the Bidding Procedures Notice: (A) upon the following persons by overnight mail and email (where available): (i) the Office of the U.S. Trustee (Attn: Serene Nakano, Esq.); (ii) Baker, Manock & Jenson, PC (Attn: Carl R. Refuerzo, Esq. and Courtney R. McKeever, Esq.) and Trenk, DiPasquale, Della Fera & Sodono, P.C. (Attn: Adam D. Wolper, Esq. and Ross J. Switkes, Esq.), as counsel to JB Cocoa; (iii) all Counterparties to the Cocoa Services’ Contracts; (iv) all parties who have made an offer on the

Assets or expressed an interest in making an offer on the Assets; (v) Thompson & Knight, LLP, as counsel to Bank of the West (Attn: Anthony Pirraglia, Esq.); (vi) Windels Marx Lane & Mittendorf LLP (Attn: James Sullivan), as counsel for Alan Nisselson, Interim Chapter 7 Trustee of Transmar Commodity Group, Ltd.; and (vii) the United States Attorney's Office for the Southern District of New York (Attn: Civil Division – Tax and Bankruptcy); and (B) upon the following persons by first-class mail, postage prepaid: (i) all taxing authorities that have jurisdiction over the Assets; (ii) all known persons holding a lien on any of the Assets (other than Bank of the West); and (iii) all entities who have requested notice under Bankruptcy Rule 2002 other than those previously referenced in this paragraph (collectively, the "Notice Parties").

**The Assumption and Assignment Procedures**

12. The Proposed Assumed Contracts Notice, attached to the Motion as Exhibit F, provides adequate and sufficient notice to any applicable Counterparty of any proposed assumption and/or assignment of any Cocoa Services' Contract, and is hereby approved.

13. The Assumption and Assignment Procedures (as set forth in the Motion) are reasonable, fair, and appropriate, and contain the type of information required under Bankruptcy Rule 2002, Local Rule 2002-1, and comply in all respects with all other applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules, and are hereby approved.

14. Within two (2) business days after entry of this Order, the Debtors shall file with the Court, serve on the Notice Parties, including each applicable Counterparty, and cause to be published on the Prime Clerk Website the Proposed Assumed Contracts Notice.

15. Any and all objections to the Cure Amounts (any such objection, a "Cure Objection") shall be in writing, shall state with specificity the legal and factual bases thereof and include any appropriate supporting documentation, filed with and received by the Court

(including providing ~~a copy~~ **two copies, single-sided [JLG]** to Chambers) and shall be simultaneously served on the following Objection Recipients, so as to be actually received by the Objection Recipients by no later than **September 14, 2017 at 4:00 p.m.** (the “Cure Objection Deadline”). Any reply by the Debtors shall be filed, served and actually received by the Court (including providing ~~a copy~~ **two copies single-sided [JLG]**to Chambers) by no later than **September 20, 2017 at 4:00 p.m.**

16. The Debtors and any Counterparty that has filed a Cure Objection shall confer in good faith in an effort to resolve the Cure Objection without Court intervention, after consultation with the Consultation Parties. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the Sale Hearing, the Court shall determine the amount to be paid or reserved with respect to such objection at the Sale Hearing; provided that, a Cure Objection (and only a Cure Objection) may, at the Debtors’ discretion, after consulting with the Consultation Parties and the applicable Winning Bidder, be adjourned with the Court’s consent (an “Adjourned Cure Objection”) to a subsequent hearing. An Adjourned Cure Objection may be resolved after the closing date of the applicable Proposed Sale (and therefore the contract of the Counterparty in question may be assumed and assigned at the closing), provided that the Debtors maintain a cash reserve equal to the Cure Costs the objecting Counterparty believes is required to cure the asserted monetary default under the implicated Cocoa Services’ Contract.

17. All other Sale Objections to the proposed assumption and assignment of the Debtors’ right, title, and interest in, to, and under a Cocoa Services’ Contract, if it is ultimately designated for assumption and assignment by the Winning Bidder(s), will be heard at the Sale Hearing.

18. If a Counterparty fails to timely file with the Court and serve on the Objection Recipients a Cure Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the implicated Cocoa Services' Contract (unless such Counterparty has timely filed an Adequate Assurance Objection) to the applicable Winning Bidder and forever shall be barred from asserting any objection with regard to such assumption, assignment, and sale. The Cure Costs set forth in the Proposed Assumed Contracts Notice shall be controlling and will be the only amount necessary to cure outstanding monetary defaults under the implicated Cocoa Services' Contract under 11 § U.S.C. 365(b), notwithstanding anything to the contrary in any Cocoa Services' Contract, or any other document, and the Counterparty to the Cocoa Services' Contract shall be deemed to have consented to the Cure Costs and shall forever be barred from asserting any other claims related to such Cocoa Services' Contract against the Debtors or the Winning Bidders, or the property of any of them.

19. To the extent requested by a Counterparty, the Debtors shall provide, with respect to JB Cocoa and each Qualified Party, information to demonstrate that JB Cocoa or such other Qualified Party is able to fulfill all obligations in connection with satisfying adequate assurance of future performance under any Cocoa Services' Contract ("Adequate Assurance Information"). In particular, the Debtors shall: (a) within 24 hours of receipt of an Offer from a Potential Bidder (other than JB Cocoa) and (b) with respect to JB Cocoa, by no later than twenty (20) days before the Sale Hearing, or by **August 30, 2017 at 5:00 p.m.** (the later of (a) and (b), the "Adequate Assurance Deadline"), provide a copy of the Adequate Assurance Information to those Counterparties (or their counsel) who have: (x) submitted a written request (e-mail to Debtors' counsel is acceptable) for Adequate Assurance Information and (y) confirmed in writing to the Debtors' counsel (e-mail is acceptable) their agreement to keep such Adequate Assurance

Information strictly confidential and use it solely for the purpose of evaluating whether a Potential Bidder, including JB Cocoa, has provided adequate assurance of future performance under the implicated Cocoa Services' Contracts.

20. Any Counterparty to a Cocoa Services' Contract that has an objection to the proposed assumption, assignment, and/or sale of the Cocoa Services' Contract, the subject of which objection is a Winning Bidder's proposed form of adequate assurance of future performance with respect to such contract (each, an "Adequate Assurance Objection"), shall file with the Court (including providing ~~a copy~~ **two copies single-sided [JLG]** to Chambers) and simultaneously serve on the Objection Recipients an Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof, including submitting any appropriate supporting documentation, by no later than **September 14, 2017 at 4:00 p.m. (prevailing Eastern Time)** (the "Adequate Assurance Objection Deadline"). Replies, if any, to Adequate Assurance Objections shall be filed, served and actually received by the Court (including providing ~~a copy~~ **two copies single-sided [JLG]** to Chambers) by **September 20, 2017 at 4:00 p.m. (prevailing Eastern Time)**.

21. The Debtors, after consultation with the Consultation Parties, and any Counterparty that has filed an Adequate Assurance Objection shall confer in good faith in an effort to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, the Court shall determine any issues of adequate assurance of future performance by the applicable Winning Bidder at the Sale Hearing.

22. If a Counterparty fails to timely file with the Court and serve on the Objection Recipients an Adequate Assurance Objection, the Counterparty shall be deemed to have

consented to the assumption, assignment, and/or sale of the implicated Cocoa Services' Contract (unless the Counterparty has filed a timely Cure Objection with respect to the Cocoa Services' Contract) to the applicable Winning Bidder and shall be forever barred from asserting any objection with regard to such assumption, assignment, and/or sale. Further, in the event no objections are filed and served, the applicable Winning Bidder shall be deemed to have provided adequate assurance of future performance with respect to the implicated Cocoa Services' Contract in accordance with 11 U.S.C. § 365(f)(2)(B).

23. Any Counterparty to a Cocoa Services' Contract that wishes to file a Sale Objection (other than a Cure Objection or an Adequate Assurance Objection) to the proposed assumption, assignment and sale of the Cocoa Services' Contract shall file with the Court (including providing ~~a copy~~ **two copies single-sided [JLG]** to Chambers) and serve on the Objection Recipients its Sale Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than the Sale Objection Deadline of **September 14, 2017 at 4:00 p.m. (prevailing Eastern Time)**. Replies, if any, to Sale Objections shall be filed, served and actually received by the Court (including providing ~~a copy~~ **two copies single-sided [JLG]** to Chambers) by the Sale Reply Deadline of **September 20, 2017 at 4:00 p.m.**

24. If a Counterparty fails to timely file with the Court and serve on the Objection Recipients a Sale Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Cocoa Services' Contract (unless the Counterparty has filed a timely Cure Objection or Adequate Assurance Objection with respect to the Cocoa Services' Contract) to the applicable Winning Bidder and shall be forever barred from asserting any objection with regard to such assumption, assignment, and sale.

25. The Debtors and JB Cocoa reserve all of their rights, claims, and causes of action with respect to each Cocoa Services' Contract or other document listed on the Proposed Assumed Contracts Notice. The Debtors' inclusion of any Cocoa Services' Contract on the Proposed Assumed Contracts Notice shall not be a covenant, promise, or guarantee that such contract ultimately will be assumed and assigned and sold.

**Debtors' Entry Into Stalking Horse APA**

26. The Debtors are authorized to perform all of their respective pre-closing obligations under the Stalking Horse APA; provided that, for the avoidance of doubt, consummation of the sale contemplated by the Stalking Horse APA shall be subject to entry of the Sale Order and the satisfaction or waiver of the other conditions to closing set forth in the Stalking Horse APA.

27. If the Stalking Horse APA is terminated pursuant to Section 10.01(a), (b), (d), or (c)(ii) (but not also (c)(i)), the Deposit shall be returned to JB Cocoa within two (2) business days of such termination.

**Bid Protections**

28. The Transaction Expenses, and the provisions of the Stalking Horse APA relating thereto, are hereby approved, except that, in the event that the Stalking Horse APA is terminated pursuant to Section 10.01(b)(i), Section 10.01(b)(iii) or Section 10.01(b)(iv) of the Stalking Horse APA, the Debtors shall be obligated for only the Expense Reimbursement, and not the Break-Up Fee, under Section 10.02(c) of the Stalking Horse APA.

29. The Transaction Expenses, to the extent payable under the Stalking Horse APA, shall constitute an allowed superpriority administrative expense claim against the Debtors' estate pursuant to sections 105(a), 503(b) and 507(a)(2) of the Bankruptcy Code.

30. To the extent JB Cocoa is determined to be the Backup Bidder (as defined in the Bidding Procedures) and the Assets are ultimately sold to the Winning Bidder, the Transaction Expenses shall be payable to JB Cocoa.

31. The Transaction Expenses shall not be deemed to be a default under the Interim Order Pursuant to 11 U.S.C. §§ 361, 362 and 363 and Rules 4001(b), 4001(d) and 9014 of the Federal Rules of Bankruptcy Procedure (I) Authorizing Use of Cash Collateral by Cocoa Services, L.L.C., (II) Providing Adequate Protection Thereof and (III) Scheduling a Final Hearing (the “Interim Cash Collateral Order”) and any related final order (together, the “Cash Collateral Orders”).

**Other Relief Granted**

32. In the event there is a conflict between this Order and the Motion or the Stalking Horse APA, this Order shall control and govern. Notwithstanding the immediately preceding sentence, the Debtors’ exercise of any discretion granted to them under this Order shall not excuse the Debtors’ compliance with the terms and provisions of the Stalking Horse APA.

33. This Order shall become effective immediately upon its entry.

34. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

Dated: New York, New York  
August 14, 2017

/s/ James L. Garrity, Jr.  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

Bidding Procedures

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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 :  
 In re: : Chapter 11  
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 COCOA SERVICES, L.L.C., et al.,<sup>4</sup> : Case No. 17-11936  
 :  
 Debtors. : Joint Administration Pending  
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**BIDDING PROCEDURES**

Set forth below are the Bidding Procedures that will be employed in connection with a sale or disposition (the “Proposed Sale”) of substantially all of the assets of Cocoa Services, L.L.C. (“Cocoa Services”) and Morgan Drive Associates, L.L.C. (“Morgan Drive”), the debtors and debtors-in-possession (each a “Debtor” and collectively, the “Debtors”) in the above captioned chapter 11 cases (the “Bankruptcy Cases”).

**Key Dates and Deadlines**

August 25, 2017	Offer Deadline
August 29, 2017	Deadline for Debtors to Notify Prospective Bidders of Status as Qualified Parties
September 6, 2017	Auction
September 14, 2017 at 4:00 p.m.	Sale Objection Deadline, Cure Objection Deadline, and Adequate Assurance Objection Deadline
September 20, 2017 at 4:00 p.m.	Deadline for Debtors to file Replies to Sale Objections, Cure Objections, and Adequate Assurance Objections
September 26, 2017 at 2:00 p.m.	Sale Hearing

<sup>4</sup> Debtors in these Bankruptcy Cases and the last four digits of their respective taxpayer identification number are as follows: Cocoa Services, L.L.C. (3769); Morgan Drive Associates, L.L.C. (2335). Debtors’ principal office is located at 400 Eagle Court, Swedesboro, New Jersey 08085.

### **Description of the Assets**

The Debtors are seeking to sell substantially all of their assets (the “Assets”) free and clear of all liens, claims, interests, or other encumbrances.

### **Consultation Parties**

Throughout the sale process, as necessary or appropriate, the Debtors will consult with the following parties: (i) Bank of the West, (ii) the Committee (if appointed) and (iii) Alan Nisselson, Interim Chapter 7 Trustee of Transmar Commodity Group, Ltd. (together, the “Consultation Parties”).

### **Bidder Qualifications**

Not including JB Cocoa, each person or entity that desires to participate in the Auction (each, a “Prospective Bidder”) must be determined by the Debtors, in consultation with the Consultation Parties, to satisfy the following eligibility requirements:

#### **A. Due Diligence**

Any Prospective Bidder identified by the Debtors as reasonably likely to be a Qualified Party (defined below) that wishes to conduct due diligence on the Assets must execute a confidentiality agreement in form and on terms satisfactory to the Debtors in order to be granted access to all material information regarding the Assets.

The Debtors will work to accommodate all reasonable requests for additional information and due diligence access from Prospective Bidders. All due diligence requests shall be directed to (i) the Debtors, Cocoa Services, L.L.C. and Morgan Drive Associates, L.L.C., 400 Eagle Court, Swedesboro, New Jersey 08085 (Attn: Bernd Herrmann (berndherrmann@gmx.net)).

If the Debtors determine, after consultation with the Consultation Parties, that a Prospective Bidder does not qualify as a Qualified Party, such Prospective Bidder shall not be entitled to receive due diligence access or additional non-public information.

#### **B. Offer Deadline**

Any Prospective Bidder interested in participating in the Auction (defined below) for the Assets shall make an offer (each, an “Offer”) in writing and serve the Offer upon the Debtors (Attn: Joseph L. Schwartz, Esq. and Jason D. Navarino, Esq. of Riker Danzig Scherer Hyland & Perretti, LLP, Headquarters Plaza, One Speedwell Avenue, Morristown, NJ 07962); counsel to Bank of the West (Attn: Anthony F. Pirraglia, Esq., of Thompson & Knight LLP, 333 Clay St., Suite 3300, Houston, TX 77002), and counsel to Alan Nisselson, Interim Chapter 7 Trustee of Transmar Commodity Group, Ltd. (Attn: James Sullivan, Esq., of Windels Marx Lane & Mittendorf LLP, 156 West 56<sup>th</sup> Street, New York, New York, 10019) by no later than **August 25, 2017 at 5:00 p.m.** prevailing Eastern Time (the “Offer Deadline”).

The Debtors shall promptly provide copies of all Offers received to the Consultation Parties; provided that the Debtors shall not be required to provide to any Consultation Party any

material, nonpublic information regarding bids for the Assets if such Consultation Party or any related entity to that Consultation Party submits a bid to purchase all or any portion of the Assets. Further, the Debtors shall not be required to consult with any Consultation Party regarding a particular Offer if that Consultation Party is an active bidder for the Assets at the applicable time.

**C. Qualified Bid Requirements**

To qualify as a “Qualified Bid,” the Offer must be in writing and the Debtors, in consultation with the Consultation Parties, must determine that the Offer satisfies the following requirements:

1. Allocation Schedule. Each Offer must include an allocation schedule of the proposed purchase price for the Assets to be assumed, assigned and sold to it in connection with the proposed transaction as Exhibit A to the Modified APA (defined below).
2. Modified APA. Each written offer must include: (i) an executed copy of an asset purchase agreement which is not materially more burdensome than the Stalking Horse APA or inconsistent with these Bidding Procedures (the “Modified APA”); and (ii) a marked-up copy of the Modified APA reflecting the difference between the Modified APA and the Stalking Horse APA. The Debtors, in consultation with the Consultation Parties, shall determine whether any Modified APA that modifies the Stalking Horse APA in any respect beyond the identity of the purchaser, the purchase price under the agreement and the allocation of the Purchase Price is a Qualified Bid.
3. Bidding Requirements. Any Offer by a Prospective Bidder for all of the Purchased Assets shall not be less than \$8,390,000 (\$8,000,000 plus Transaction Expenses (defined herein) plus \$50,000 initial overbid). If an Offer is only for the assets of Cocoa Services, such Offer shall not be less than \$6,390,000 (\$6,000,000 plus Transaction Expenses (defined herein) plus \$50,000 initial overbid). If an Offer is only for the assets of Morgan Drive, such Offer shall not be less than \$2,390,000 (\$2,000,000 plus Transaction Expenses (defined herein) plus \$50,000 initial overbid).
4. Identification of Bidder. A Qualified Bid must fully disclose the legal identity of each entity that will be bidding for the Assets otherwise participating in connection with such bid (including but not limited to any equity holder or other financial backer if the Prospective Bidder is an entity specifically formed for purposes of effectuating the Proposed Sale, and the complete terms of any such participation) and must also disclose any connections or agreements with the Debtors, any other known Prospective Bidder or Qualified Party, and/or any officer or director of the foregoing.

5. Financial Information. Any Prospective Bidder that wishes to make an Offer for the Assets must provide the Debtors with sufficient and adequate information to demonstrate, to the satisfaction of the Debtors, in consultation with the Consultation Parties, that its Offer: (i) is being made by an entity that has the financial wherewithal and ability to consummate the transaction, including evidence of adequate financing; and (ii) provides information to demonstrate that it is able to fulfill all obligations in connection with all Assigned Contracts (as defined below) so as to satisfy the requirement of providing adequate assurance of future performance, as contemplated by section 365 of the Bankruptcy Code (the “Adequate Assurance Information”).
6. Good Faith Deposit. All Qualified Bids must be accompanied by a good faith deposit in the amount of 10% of the Offer (a “Good Faith Deposit”), in the form of a certified or cashier’s check, payable to “RIKER DANZIG SCHERER HYLAND & PERRETTI LLP TRUST ACCOUNT.” All such deposits shall be retained by the Debtors pending the hearing to consider the Sale Motion and shall be returned within ten (10) days after entry of a Sale Order, except that the Debtors shall transfer the deposit of the Winning Bidder (defined below) to Foundation Title, and apply such deposit(s) to the Purchase Price at closing, and hold the deposit of the Backup Bidder until the first business day following the closing of the Proposed Sale with the Winning Bidder.
7. Other Requirements. Each Offer shall:
  - (i) state that the bid is formal, binding and unconditional, is not subject to further due diligence, and is irrevocable until the earlier to occur of: (x) the first business day following the closing of the Proposed Sale or (y) thirty (30) days following the last date of the Auction (as may be adjourned);
  - (ii) not contain any financing contingencies of any kind;
  - (iii) not contain any condition to closing the Proposed Sale on the receipt of any third party approvals that were not required by the Stalking Horse APA;
  - (iv) state that the Prospective Bidder is ready, willing and able to perform its obligations under the Modified APA submitted with such Offer;
  - (v) expressly state that the Prospective Bidder agrees to serve as a backup bidder (a “Backup Bidder”) if such bidder’s Qualified Bid is selected as the next highest or next best bid after the Winning Bid for the implicated Assets;

(vi) include contact information for the person(s) the Debtors should contact with questions about the Prospective Bidder's bid; and

(vii) be received by the Debtors and Consultation Parties by the Offer Deadline.

8. For the avoidance of doubt, the bid of JB Cocoa has automatically been deemed to be a Qualified Bid.

**D. Qualified Bidders**

The Debtors shall, in consultation with the Consultation Parties, make a determination whether an Offer is a Qualified Bid and shall notify Prospective Bidders whether their Offers have qualified as Qualified Bids by not later than **August 29, 2017 at 5:00 p.m. (prevailing Eastern Time)**; provided that, if an Offer is made by the Offer Deadline that is not determined to be a Qualified Bid, the Debtors will promptly advise the Prospective Bidder of the deficiencies, if any, and allow such Prospective Bidder one (1) day to submit a revised offer. Any Prospective Bidder whose Offer that is deemed a Qualified Bid shall be designated a "Qualified Party."

JB Cocoa shall automatically be deemed a Qualified Party, and JB Cocoa's bid, as reflected in the Stalking Horse APA, shall be deemed a Qualified Bid.

**E. Participants and Attendees**

Each Qualified Party shall appear in person at the Auction or through a duly authorized representative. Only Qualified Parties shall be entitled to make any subsequent bids at the Auction. Each Qualified Party shall be required to confirm that (i) it has not engaged in any collusion with respect to the bidding or the Proposed Sale; and (ii) its Qualified Bid represents a binding, good faith, and bona fide offer to purchase the Assets identified if such bid is selected as the Winning Bidder.

The Debtors, in consultation with the Consultation Parties, shall, after the Offer Deadline and prior to the Auction, evaluate all Qualified Bids or combination of Qualified Bids received, and, in consultation with the Consultation Parties, determine which Qualified Bids or combination of Qualified Bids, as the case may be, reflect the highest or best offers for some or all of the Assets, whether in whole or in lots, at that time (the "Baseline Bid(s)"). The Debtors shall announce such determination at the commencement of the Auction.

**F. Auction Procedures**

The Auction shall be governed by the following procedures, subject to the Debtors' right, after consultation with the Consultation Parties, to modify such procedures in their reasonable business judgment:

1. Minimum Overbid Procedures. Any further bids made at the Auction for the Assets shall be in increments of at least \$50,000 (the “Overbid Procedures”).
2. Highest or Best Offer. After the first round of bidding and between each subsequent round of bidding, the Debtors, after consulting with the Consultation Parties, shall announce the bid that they determine in their business judgment to be the highest or otherwise best offer for the relevant Assets (the “Leading Bid”). Each round of bidding will conclude after each participating Qualified Party has had the opportunity to submit a subsequent bid with full knowledge of the Leading Bid. In making any overbids at the Auction, JB Cocoa shall receive credit for an amount equal to the Transaction Expenses.
3. Modification of Procedure. The Debtors may, after consulting with the Consultation Parties, announce at the Auction modified or additional procedures for conducting the Auction.

**G. Auction Results**

1. Winning Bid. Immediately prior to the conclusion of the Auction, the Debtors shall, in consultation with the Consultation Parties, (i) determine, consistent with these Bidding Procedures, which bid constitutes the Winning Bid for the implicated Assets; and (ii) notify all Qualified Parties at the Auction for the implicated Assets of the identity of the bidder that submitted the Winning Bid (each such bidder, the “Winning Bidder”) and the amount of the purchase price and other material terms of the Winning Bid.

The Auction may include open bidding in the presence of all other Qualified Parties. All Qualified Parties shall have the right to submit additional bids at the Auction to improve their bids. The Debtors may, in their reasonable business judgment, negotiate with any and all Qualified Parties participating in the Auction.

The Debtors shall have the right, after consulting with the Consultation Parties, to determine, in their reasonable business judgment, without liability, which bid is the highest or otherwise best bid and reject at any time, any bid that the Debtors deems to be inadequate or insufficient, not in conformity with the requirements of the Bankruptcy Code, Bankruptcy Rules, or the Local Rules, these Bidding Procedures, any order of the Bankruptcy Court, or the best interests of the Debtors and their estates.

At least one (1) day prior to the Sale Hearing, the Winning Bidder shall be required to supplement its Good Faith Deposit by the difference between its Qualified Bid and the Winning Bid.

2. Backup Bid. Immediately prior to the conclusion of the Auction, the Debtors shall, in consultation with the Consultation Parties, (i) determine, consistent with these Bidding Procedures, which Qualified Bid is the next highest or otherwise best Qualified Bid for the Assets after the Winning Bid (each such Qualified Bid, a “Backup Bid” and the related Qualified Party, a “Backup Bidder”); and (ii) notify all Qualified Parties at the Auction for the Assets of the identity of the Backup Bidder and the amount of the purchase price and other material terms of the Backup Bid. The Backup Bid shall be open and irrevocable until the earlier of (x) the first business day following closing of the Proposed Sale or (y) thirty (30) days following the last date of the Auction (as may be adjourned). If the Winning Bidder fails to consummate a Proposed Sale, the Backup Bidder shall be deemed the new Winning Bidder, and the Debtors will be authorized, but not required, to consummate a Proposed Sale for the applicable Assets with the Backup Bidder.

Subject to the terms and conditions set forth in the Stalking Horse APA or Modified APA, in the event that a Winning Bidder fails to consummate the proposed transaction by the Closing Date, such bidder’s deposit shall be forfeited to the Debtors (but not as liquidated damages, the Debtors reserving the right to pursue all remedies that may be available to it) and the Debtors shall be free to consummate the proposed transaction with the Backup Bidder at the final price bid by such bidder at the Auction (or, if that bidder is unable to consummate the transaction at that price, the Debtors may consummate the transaction with the next higher bidder, and so forth) without the need for an additional hearing or order of the Court.

For the avoidance of doubt, JB Cocoa shall be required to serve as a Backup Bidder if the Debtors, in consultation with the Consultation Parties, determine that JB Cocoa’s offer is the second best bid at the Auction.

3. Auction Results: Within one (1) business day following the Auction, the Debtors will cause the results of the Auction to be filed with the Court, docketed on the Court’s electronic case filing (“ECF”) system, and published on the website of the Debtors’ Court-approved claims agent, Prime Clerk, LLC at (<http://cases.primeclerk.com/cocoaservices>) (the “Prime Clerk Website”), which filing will include a list of the Cocoa Services’ Contracts to be sold and assigned to the Winning Bidder(s), subject to revision prior to Closing, as further set forth below.
4. Bankruptcy Court Approval: All bids for the purchase of the Assets shall be subject to approval of the Court and conditioned upon entry of a Sale Order.