

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	Chapter 11
FRESH & EASY NEIGHBORHOOD	:	Case No. 13-12569 (KJC)
MARKET INC., <i>et al.</i> , ¹	:	
	:	(Jointly Administered)
Debtors.	:	
	:	Re: Docket No. 215

**ORDER (I) APPROVING BID PROCEDURES
FOR THE SALE OF DESIGNATION RIGHTS WITH
RESPECT TO CERTAIN OF THE DEBTORS' LEASES,
(II) AUTHORIZING THE DEBTORS TO ENTER INTO THE
DESIGNATION RIGHTS AGREEMENT IN CONNECTION THEREWITH,
(III) AUTHORIZING THE PAYMENT OF BID PROTECTIONS, (IV) SETTING
BID DEADLINE, AUCTION AND SALE APPROVAL HEARING DATES AND
(V) ESTABLISHING NOTICE PROCEDURES AND APPROVING FORMS OF NOTICE**

Upon the motion (the "Motion"),² dated October 31, 2013, of Fresh & Easy Neighborhood Market Inc. and Fresh & Easy Property Company LLC, as debtors in possession (together, the "Debtors") in the above-referenced chapter 11 cases, pursuant to sections 105(a), 363(b), 365, 503(b) and 507 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"); Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); and Rule 6004-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), for (i) approval of the procedures (the "Bidding Procedures") to be used in connection with the sale of lease designation rights with respect to certain of the Debtors' Leases (the "Lease Designation Rights"), (ii) authorization to

¹ The Debtors are the following two entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Fresh & Easy Neighborhood Market Inc. (7028) and Fresh & Easy Property Company LLC (9636). The address of each of the Debtors is 2120 Park Place, Suite 200, El Segundo, California 90245.

² Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

enter into the DRA (as defined below) in connection therewith, (iii) authorization to pay the Alamo Bid Protections (as defined below) in connection therewith, (iv) the setting of dates for the Bid Deadline, Auction and Sale Hearing (each as defined in the Bidding Procedures) (if needed), and (v) establishing notice procedures and approving forms of notice, all as more fully described in the Motion; and the Court having held a hearing to consider the relief requested therein (the "Bidding Procedures Hearing") with the appearances of all interested parties noted in the record of the Bidding Procedures Hearing; and upon the record of the Bidding Procedures Hearing; the First Day Declaration and all of the proceedings before the Court;

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. The Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. The Debtors have provided due and proper notice of the Motion and Bidding Procedures Hearing to the Notice Parties (as defined below) and no further notice is necessary. A reasonable opportunity to object or be heard regarding the relief requested in the Motion (including, without limitation, with respect to the Bidding Procedures and Alamo Bid Protections) has been afforded to all interested persons and entities, including but not limited to the Notice Parties.

C. The Debtors' proposed notice of the Motion, the Bidding Procedures, the Assignment Procedures, the Auction and the Sale Hearing is appropriate and reasonably

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See FED. R. BANKR. P. 7052. This order shall be deemed to incorporate any findings of fact and conclusions of law made on the record at the Bidding Procedures Hearing pursuant to Bankruptcy Rule 7052.

calculated to provide all interested parties with timely and proper notice, and no other or further notice is required.

D. The Bidding Procedures in the form attached hereto as Annex 1 are fair, reasonable, and appropriate and are designed to maximize the recovery from a sale of the Lease Designation Rights (the "Sale").

E. The Bidding Procedures were negotiated in good faith and at arm's length among the Debtors and the Proposed Buyer (as defined below). The process for selection of the Proposed Buyer was fair and appropriate under the circumstances and is in the best interests of the Debtors' estates.

F. The Debtors have demonstrated a compelling and sound business justification for the Court to enter this Order and, thereby: (i) approve of the Bidding Procedures as contemplated by the agreement for the sale of the Lease Designation Rights, dated as of October 28, 2013 (the "DRA"), with Alamo Group, LLC ("Alamo" or the "Proposed Buyer"), attached as Exhibit D to the Motion; (ii) authorize the Debtors to pay the Break-Up Fee and Expense Reimbursement Amount (each as defined in the DRA and, together, the "Alamo Bid Protections"), under the terms and conditions set forth in the DRA and the Bidding Procedures; (iii) set the dates of the Bid Deadline, Auction (if needed) and Sale Hearing; and (iv) establish notice procedures and approve the forms of notice.

G. The Alamo Bid Protections, as approved by this Order, are fair and reasonable and provide a benefit to the Debtors' estates and creditors.

H. If necessary, the payment of the Alamo Bid Protections, under this Order and upon the conditions set forth in the DRA and the Bidding Procedures, is (a) an actual and necessary cost of preserving the Debtors' estates, within the meaning of sections 503(b) and

507(a) of the Bankruptcy Code, (b) reasonably tailored to encourage, rather than hamper, bidding for the Lease Designation Rights, (c) of substantial benefit to the Debtors' estates and creditors and all parties in interest herein, (d) reasonable and appropriate and (e) material inducements for, and conditions necessary to ensure that the Proposed Buyer will continue to pursue its proposed agreement to purchase the Lease Designation Rights.

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

J. The Sale Notice, Assumption Notice and Notice of Successful Bidder are reasonably calculated to provide each counterparty to the Leases with proper notice of its potential assumption and assignment, any cure amounts, if any, relating thereto, and the Assignment Procedures.

K. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law.

ORDERED, ADJUDGED AND DECREED THAT:

1. The Bidding Procedures attached hereto as Annex 1 are approved, fully incorporated into this Order and the Debtors are authorized and directed to act in accordance therewith. The failure to specifically include a reference to any particular provision of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such provision.

2. Any objections to the Motion or the relief requested therein that have not been adjourned, withdrawn or resolved are overruled in all respects on the merits. Nothing contained in this Order shall prejudice the Creditors' Committee's ability to request an extension of any of the dates set forth in this Order or the Bidding Procedures.

3. The Sale Notice, substantially in the form attached to the Motion as Exhibit D, is approved.

4. Within five (5) days after entry of the Bidding Procedures Order, the Debtors shall serve the Sale Notice on (a) the Office of the United States Trustee for the District of Delaware; (b) the official committee of unsecured creditors (the "Creditors' Committee"); (c) the applicable state and local taxing authorities; (d) the applicable state attorneys general; (e) the Internal Revenue Service; (f) the Securities & Exchange Commission; (g) the United States Attorney General/Antitrust Division of Department of Justice; (h) each of the non-Debtor counterparties to the Leases and their counsel of record (counsel to be served by email and facsimile); (i) counsel to Tesco PLC; (j) all parties that have expressed an interest in acquiring the Lease Designation Rights; and (k) all parties entitled to notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties").

5. Service of the Sale Notice on the Notice Parties and applicable interested bidders in the manner described in the Motion constitutes good and sufficient notice of the Auction and the Sale Hearing. No other or further notice is required.

6. If no Qualified Bids with respect to the Lease Designation Rights other than the DRA are received on or before the Bid Deadline, the Debtors shall not conduct the Auction with respect to the Lease Designation Rights, and if no timely objection to entry of the Sale Order remains unresolved, instead may submit the Sale Order under certification of counsel without further hearing before the Court. The Debtors shall notify counsel to the counterparties to the Leases by email if the Auction will not be held no later than one (1) business day after making such determination. In addition, the Debtors will file a notice with the Court if the Auction is

cancelled or if the date of the Auction is changed and will post such notice to

<http://cases.primeclerk.com/freshandeasy>.

7. In the event the Debtors receive, on or before the Bid Deadline, one or more Qualified Bids in addition to the DRA, an Auction shall be conducted at the offices of Jones Day, 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071 on December 12, 2013 at 10:00 a.m. (Pacific Time), or such later time on such day or such other place as the Debtors shall notify all Qualified Bidders.

8. Within one (1) business day after the conclusion of the Auction, the Debtors shall file with the Court a notice identifying the Successful Bidder(s) (the "Notice of Successful Bidder").

9. Objection Deadline to Sale Order. Objections to the relief sought in the Sale Order shall be in writing, filed and served, so as to be actually received by (i) the Debtors, Fresh & Easy, 2120 Park Place, Suite 200, El Segundo, California 90245 (Attention: Mary Kasper); (ii) co-counsel to the Debtors, Jones Day, 222 East 41st Street, New York, New York 10017-6702 (Attention: Paul D. Leake and Lisa Laukitis); (iii) co-counsel to the Debtors, Richards Layton & Finger, One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attention: Mark D. Collins); (iv) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), 884 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attention: Tiiara Patton); (v) counsel to Alamo Group, LLC, Allen Matkins Leck Gamble Mallory & Natsis LLP, Three Embarcadero Center, 12th Floor, San Francisco, CA 94111 (Attention: Ivan Gold) and Ashby & Geddes, P.A., 500 Delaware Avenue, 8th Floor, Wilmington, Delaware 19801 (Attention: Bill Bowden); (vi) counsel to Tesco PLC, Davis Polk & Wardwell, 450 Lexington Avenue New York, NY 10017 (Attention: Donald S. Bernstein and

Damon P. Meyer); and (vii) proposed counsel to the Creditors' Committee, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067 (Attention: Jeffrey N. Pomerantz) and 919 N. Market Street, 17th Floor, Wilmington, DE 19801 (Attention Bradford J. Sandler) (collectively, the "Service Parties") by December 5, 2013 at 4:00 p.m. (Eastern Time) with regard to the Proposed Buyer, and December 15, 2013 at 4:00 p.m. (Eastern Time) if the Successful Bidder is a bidder other than the Proposed Buyer.

10. The Sale Hearing shall be held in the United States Bankruptcy Court for the District of Delaware, Courtroom 5, 824 North Market Street, 5th Floor, Wilmington, Delaware 19801, on December 19, 2013 at 2:00 p.m. (Eastern Time) or such other date and time that the Court may later direct; provided, however, that the Sale Hearing may be adjourned, from time to time, without further notice to creditors or parties in interest other than by announcement of the adjournment in open Court or on the Court's docket; provided, further, if (i) no Qualified Bids with respect to the Lease Designation Rights other than the DRA are received on or before the Bid Deadline and (ii) no timely objection to entry of the Sale Order remains unresolved, the Sale Hearing shall not be held and instead the Debtors may submit the Sale Order under certification of counsel without further hearing before the Court.

11. If the Auction is held, as soon as practicable after the conclusion of the Auction, but no later than two days before the Sale Hearing, the Debtors shall file a final form of order approving the Sale as agreed upon between the Debtors and the Successful Bidder(s) (as defined in the Bidding Procedures). The Debtors shall provide the U.S. Trustee and the Creditors' Committee with a copy of and an opportunity to review such order at least two days prior to the Sale Hearing. Non-Debtor counterparties to the Leases may request a copy of such order prior to the Sale Hearing by sending written notice by email to the Debtors' counsel

(llaukitis@jonesday.com and jfcarroll@jonesday.com), which order shall be sent to such non-Debtor counterparties at least two days prior to the Sale Hearing.

12. Alamo Bid Protections. Pursuant to sections 105, 363, 364, 503 and 507 of the Bankruptcy Code, the Debtors are hereby authorized, empowered and directed to pay the Alamo Bid Protections to the Proposed Buyer in accordance with the terms of the DRA without further order of this Court. The dollar amount of the Break-Up Fee and Expense Reimbursement Amount are hereby approved. The Alamo Bid Protections shall be allowed as administrative expense claims in each of the Debtors' chapter 11 cases as super-priority administrative expense priority obligations under Section 364(c)(1) of the Bankruptcy Code with priority over all expenses of the kind specified in Sections 502(b) and 507(b) of the Bankruptcy Code. The Proposed Buyer shall be entitled to receive the Alamo Bid Protections in accordance with the terms and conditions of the DRA and the Bidding Procedures. In the event that an Alternative Transaction is consummated, then the Debtors will pay the Break-Up Fee and Expense Reimbursement Amount to Proposed Buyer by wire transfer of immediately available funds from the proceeds of the applicable Alternative Transaction immediately upon the consummation thereof. Notwithstanding anything to the contrary herein, the Expense Reimbursement Amount shall include only the Proposed Buyer's actual and documented expenses.

13. Notwithstanding Bankruptcy Rules 6004, 6006 or otherwise, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing.

14. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

15. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted with respect to the Debtors to the extent necessary, without further order of the Court, to

allow the Proposed Buyer to deliver any notice provided for in the DRA, including, without limitation, a notice terminating the DRA, and allow the Proposed Buyer to take any and all actions permitted under the DRA in accordance with the terms and conditions thereof.

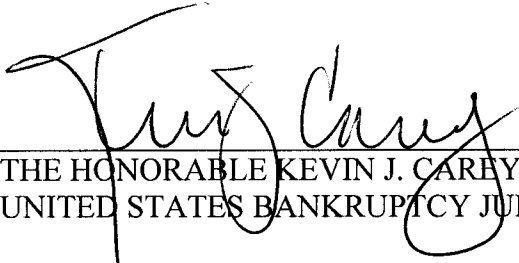
16. Nothing in this Order shall be deemed to limit or impair an objection that any landlord may have to the prospective assumption and assignment of a particular Lease following receipt of an Assumption Notice, which objections are reserved.

17. To the extent this Order is inconsistent with any prior order or pleading with respect to the Motion in these cases, the terms of this Order shall govern.

18. The Court shall retain jurisdiction over any matters related to or arising from the implementation or interpretation of this Order. To the extent any provisions of this Order shall be inconsistent with the Motion, the terms of this Order shall control.

Dated: Wilmington, Delaware

Nov 22, 2013



THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

Annex 1

Bidding Procedures

BIDDING PROCEDURES

Fresh & Easy Neighborhood Market Inc. and its affiliate Fresh & Easy Property Company LLC (together, the "Debtors"), debtors in possession in jointly administered chapter 11 cases (the "Chapter 11 Cases") currently pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") have entered into a designation rights agreement, dated October 28, 2013 (the "DRA")¹ with Alamo Group, LLC (the "Proposed Buyer").²

Pursuant to the DRA, and subject to the terms and conditions thereof, the Proposed Buyer has agreed to acquire the Lease Designation Rights from the Debtors. In order to attain the highest or otherwise best offer for the Debtors' assets, the Debtors propose these Bidding Procedures to solicit bids for the Lease Designation Rights or any portion thereof.

Any interested bidder should contact, as soon as practical, the following:³

**ALVAREZ & MARSAL
NORTH AMERICA, LLC**
600 Madison Avenue
New York, New York 10022
(212) 759-4433
Attn: Dennis Stogsdill
dstogsdill@alvarezandmarsal.com

**ALVAREZ & MARSAL
SECURITIES, LLC**
1 East Washington Street, Suite 1850
Phoenix, Arizona
(602) 459-7000
Attn: Marc Liebman
marc.liebman@alvarezandmarsal.com

These Bidding Procedures describe, among other things, (a) the Lease Designation Rights offered for sale, (b) the manner in which bidders and bids become Qualified Bidders and Qualified Bids (each as defined below), respectively, (c) the conduct of the Auction (as defined below), if necessary, (d) the selection of the Successful Bidder(s) (as defined below), and (e) the Court approval of the sale of the Lease Designation Rights to the Successful Bidder(s).

1. Participation Requirements

(a) Interested Parties

Unless otherwise ordered by the Bankruptcy Court for cause shown, to participate in the Bidding Process, each interested person or entity (each an "Interested Party") must deliver the

¹ All terms used but not defined herein have the meaning ascribed to such term in the DRA.

² The Debtors' entry into the DRA and these Bidding Procedures were approved by the Bankruptcy Court on _____, 2013 [Docket No. ____].

³ Alvarez & Marsal North America, LLC and Alvarez & Marsal Securities, LLC are collectively referred to herein as the "Financial Advisors").

following (unless previously delivered) to the Financial Advisors so as to be received no later than 5:00 p.m. (Eastern Time) on December 2, 2013:

- (A) an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors;
- (B) a statement and other factual support demonstrating to the Debtors' reasonable satisfaction, that the Interested Party has a *bona fide* interest in purchasing the Lease Designation Rights; and
- (C) sufficient information, as defined by the Debtors, to allow the Debtors, in consultation with the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (the "Creditors' Committee"), to determine that the Interested Party has the financial wherewithal and any required internal corporate, legal or other authorizations to close the designation rights sale transaction (the "Sale Transaction"), including, but not limited to, current audited financial statements of the Interested Party (or such other form of financial disclosure acceptable to the Debtors in their discretion).

The Financial Advisors shall promptly deliver any of the foregoing documents received from an Interested Party to the professionals retained by the Creditors' Committee. If the Debtors determine, after receipt of the items identified above and consultation with the Creditors' Committee, that an Interested Party has a *bona fide* interest in the Lease Designation Rights, no later than two (2) business days after the Debtors make that determination and have received all of the materials required above, such Interested Party will be deemed a "Potential Bidder" and the Debtors will deliver to such Potential Bidder: (A) an electronic copy of the DRA and (B) access information for the Debtors' confidential electronic data room concerning the Lease Designation Rights (the "Data Room"). The Debtors, in consultation with the Creditors' Committee, reserve the right to determine whether an Interested Party has satisfied the above participation requirements such that it is eligible to be a Potential Bidder.

(b) Due Diligence

Until the Bid Deadline (as defined below), in addition to access to the Data Room, the Debtors will provide any Potential Bidder such due diligence access or additional information as may be reasonably requested by the Potential Bidder that the Debtors determine to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to the Financial Advisors. The Debtors, with the assistance of the Financial Advisors, will coordinate all reasonable requests for additional information and due diligence access from Potential Bidders. In the event that any such due diligence material is in written form and has not previously been provided to any other Potential Bidder, the Debtors will simultaneously provide such materials to all Potential Bidders and the Proposed Buyer.

Unless otherwise determined by the Debtors, the availability of additional due diligence to a Potential Bidder will cease if (A) the Potential Bidder does not become a Qualified Bidder,

from and after the Bid Deadline or (B) the Bidding Process is terminated in accordance with its terms.

2. Qualified Bids

Each offer, solicitation or proposal by a Potential Bidder must satisfy, by itself or when combined with other offers, solicitations or proposals by one or more Potential Bidder, each of the following conditions to be deemed a "Qualified Bid," and for the Potential Bidder to be deemed a "Qualified Bidder."

(a) Bid Deadline

A Potential Bidder who desires to be a Qualified Bidder must deliver the Required Bid Documents (as defined below) so as to be received not later than 9:00 a.m. (Eastern Time) on December 9, 2013 (the "Bid Deadline"), to the Financial Advisors, with copies to Jones Day, 222 East 41st Street, New York, New York 10017 (Attn: Paul D. Leake and Lisa Laukitis) and counsel to the Creditors' Committee, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067 (Attn: Jeffrey N. Pomerantz) and 919 N. Market Street, 17th Floor, Wilmington, DE 19801 (Attn: Bradford J. Sandler). The Debtors may extend the Bid Deadline with the written consent of the Proposed Buyer and the Creditors' Committee. If the Debtors extend the Bid Deadline, the Debtors will promptly notify all Potential Bidders who have signed a confidentiality agreement of such extension.

(b) Bid Requirements

All bids must include the following (the "Required Bid Documents"):

- a letter stating that the bidder's offer is irrevocable until consummation of a transaction involving any other bidder for the Lease Designation Rights identified in such offer;
- a duly authorized and executed purchase agreement, including the purchase price for the Lease Designation Rights, together with all exhibits and schedules marked to show those amendments and modifications to the DRA and the proposed Sale Order; and
- written evidence of a firm commitment for financing, or other evidence of ability to consummate the proposed transaction without financing, that is satisfactory to the Debtors, in consultation with the Creditors' Committee;

A bid will be considered only if the bid:

- identifies the assets to be purchased and the leases to be assumed and assigned;
- sets forth the consideration for the assets to be purchased and the leases to be assumed and assigned;

- provides for consideration that is higher or better than the consideration provided for by the DRA, taking into account the Break-Up Fee and Expense Reimbursement Amount. In determining whether a bid is higher and better, the Debtors, in consultation with the Committee, shall consider, if applicable, the assets being acquired, the value of non-cash assets being provided to the Debtors' estate as part of the transaction, the liabilities being assumed, any increase (or decrease) in claims being left behind with the Debtors' estates as a result of the bid, any increase (or decrease) in assets being left behind with the Debtors' estates as a result of the bid and the management team and business model of the bidder;
- is not conditioned on obtaining financing or on the outcome of unperformed due diligence or corporate, stockholder or internal approval;
- provides evidence satisfactory to the Debtors, upon consultation with the Creditors' Committee, of the bidder's financial wherewithal and operational ability to consummate the transaction;
- is irrevocable until the Debtors have consummated a transaction with the Successful Bidder(s) (as defined below) or the Alternate Bidder(s) (as defined below), as applicable;
- is accompanied by a wire transfer to an escrow agent selected by the Debtors (the "Escrow Agent") equal to \$1,500,000 (the "Good Faith Deposit");
- sets forth the representatives who are authorized to appear and act on behalf of the contemplated transactions;
- indicates that the bidder will not seek any transaction or break-up fee, expense reimbursement, or similar type of payment;
- include evidence of the Qualified Bidder's ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Qualified Bidder's ability to perform in the future the leases proposed in its bid to be assumed by the Debtors and assigned to the Qualified Bidder, in a form that will permit the immediate dissemination of such evidence to the counterparties to such leases; and
- is received on or before the Bid Deadline.

A bid received from a Qualified Bidder will constitute a Qualified Bid only if it includes all of the Required Bid Documents and meets all of the above requirements. Notwithstanding the foregoing, the Proposed Buyer shall be deemed a Qualified Bidder and DRA shall be deemed a Qualified Bid for all purposes in connection with the Bidding Procedures. Within one (1) business day of the Bid Deadline, the Debtors will provide the Proposed Buyer and the Qualified Bidder(s) with copies of any Qualified Bids.

All Qualified Bids will be considered but the Debtors reserve the right to reject any and all bids other than the highest or otherwise best bid(s) in the Debtors' discretion upon

consultation with the Creditors' Committee. The Debtors may, in their discretion upon consultation with the Creditors' Committee, evaluate bids on numerous grounds including, but not limited to, those factors identified above and any delay, additional risks (including closing risks) and added costs to the Debtors including, without limitation, payment of the Alamo Bid Protections. Bids other than Qualified Bids will not be considered.

Each bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Lease Designation Rights that are the subject of the Auction prior to making any such bids; that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets in making its bid; and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Lease Designation Rights, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures or, as to the Successful Bidder(s), the asset purchase agreement(s) with such Successful Bidder(s).

3. Break-Up Fee and Expense Reimbursement Amount

Recognizing the Proposed Buyer's expenditure of time, energy, and resources, and the benefit that these efforts provided to all Interested Parties, the Debtors have agreed that if the Proposed Buyer is not the Successful Bidder, the Sellers will, in certain circumstances, pay to the Proposed Buyer a Break-Up Fee and an Expense Reimbursement Amount. The payment of the Break-Up Fee and Expense Reimbursement Amount will be governed by the provisions of the DRA and the order of the Bankruptcy Court approving these Bidding Procedures (the "Bidding Procedures Order"). The Break-Up Fee is in amount equal to \$50,000. The Expense Reimbursement Amount is in an amount up to \$50,000, and shall include only the Proposed Buyer's actual and documented expenses.

4. Auction

The Proposed Buyer is deemed a Qualified Bidder and its bid is deemed a Qualified Bid. In the event that the Debtors timely receive more than one Qualified Bid, the Debtors shall conduct an auction (the "Auction") of the Lease Designation Rights. The Auction shall be in accordance with these Bidding Procedures and upon notice to all Qualified Bidders who have submitted Qualified Bids. The Auction will be conducted at the offices of Jones Day, 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071 on December 12, 2013 at 10:00 a.m. (Pacific Time). The Auction will be transcribed and all Qualified Bidders must state on the record at the Auction that there is no collusion by or between the Qualified Bidders.

Representatives or agents of the Debtors, Tesco, the Proposed Buyer, the Creditors' Committee and any Qualified Bidder that has submitted a Qualified Bid (and the legal and financial advisors to each of the foregoing), will be entitled to attend the Auction, and only the Proposed Buyer and Qualified Bidders will be entitled to make any subsequent bids at the Auction. Creditors of the Debtors may attend the Auction if they send written notice by email to the Debtors' counsel (pdleake@jonesday.com and llaukitis@jonesday.com) and counsel to the Proposed Buyer (igold@allenmatkins.com) of their intention to attend the Auction on or before the Bid Deadline and in such notice identify the representatives who will attend on behalf of the

creditor; provided, however, that the Debtors may limit the number of attendees per creditor to a reasonable number.

At least two business days prior to the Auction, the Debtors will provide copies of the Qualified Bid or combination of Qualified Bids which the Debtors, upon consultation with the Creditors' Committee, believe is the highest or otherwise best offer (the "Starting Bid") to all Qualified Bidders which have informed the Debtors of their intent to participate in the Auction and, if requested, will provide an explanation of how the Starting Bid is valued and a list containing the identification of all Qualified Bidders.

The Debtors may employ and announce at the Auction additional procedural rules, upon consultation with the Creditors' Committee, that are reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent Bids (as defined below)) for conducting the Auction, provided that such rules are (i) not inconsistent with the Bidding Procedures Order, the Bankruptcy Code, or any Order of the Bankruptcy Court entered in connection herewith and (ii) disclosed to each Qualified Bidder; and provided further that all bids shall be made openly, in the presence of all parties at the Auction.

Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one subsequent bid is submitted by a Qualified Bidder(s) that (i) improves upon such Qualified Bidder's immediately prior Qualified Bid (a "Subsequent Bid") and (ii) the Debtors determine, in consultation with the Creditors' Committee, that such Subsequent Bid is (a) for the first round, a higher or otherwise better offer than the Starting Bid, and (b) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (defined below), in each case taking into account other Qualified Bids for other Lease Designation Rights. The Debtors, upon consultation with the Creditors' Committee, may determine appropriate minimum bid increments or requirements for each round of bidding.

After the first round of bidding and between each subsequent round of bidding, the Debtors, upon consultation with the Creditors' Committee, shall announce the bid or bids that they believe to be the highest or otherwise best offer or combination of offers (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 and written confirmation of the Leading Bid.

For the purpose of evaluating the value of the consideration provided by Subsequent Bids, the Debtors may take into account the Break-Up Fee and the Expense Reimbursement Amount that may be payable to the Proposed Buyer under the DRA.

For the purpose of evaluating Subsequent Bids, the Sellers may require a Qualified Bidder (other than the Proposed Buyer) submitting a Subsequent Bid to submit, as part of its Subsequent Bid, additional evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors upon consultation with the Creditors' Committee) demonstrating such Qualified Bidder's ability to close the proposed transaction.

If Debtors do not receive any Qualified Bid other than the Proposed Buyer's Qualified Bid on or prior to the Bid Deadline, no Auction shall occur and Sellers shall seek approval of the DRA at the Sale Hearing and no further bids shall be considered.

5. Selection Of Successful Bid(s)

The Debtors reserve the right to (i) determine in their reasonable discretion, upon consultation with the Creditors' Committee, which Qualified Bid(s) is/are the highest or otherwise best and (ii) reject at any time prior to entry of a Court order approving an offer, without liability, any bid or offer, other than the DRA, that the Debtors in their reasonable discretion, upon consultation with the Creditors' Committee, deem to be (x) inadequate or insufficient, (y) not a Qualified Bid or not otherwise in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or procedures set forth therein or herein, or (z) contrary to the best interests of the Debtors and their estates.

Prior to the conclusion of the Auction, the Debtors will, in each instance upon consultation with the Creditors' Committee: (A) review and evaluate each bid made at the Auction on the basis of financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the Sale Transaction; (B) identify the highest or otherwise best offer or collection of offers (the "Successful Bid(s)"); (C) determine which Qualified Bid is the Successful Bid(s) and which is the next highest or otherwise best offer or collection of offers (the "Alternate Bid(s)") for the Lease Designation Rights; and (D) notify all Qualified Bidders participating in the Auction, prior to its adjournment, of the successful bidder or bidders (the "Successful Bidder(s)"), the amount and other material terms of the Successful Bid(s) and the identity of the party or parties that submitted the Alternate Bid(s) (the "Alternate Bidder(s)"). Within one business day of the completion of the Auction, the Successful Bidder(s) and the applicable Debtors shall complete and execute all agreements, instruments or other documents necessary to consummate the applicable Sale(s) or otherwise contemplated by the applicable Successful Bid(s).

The Debtors will sell the Lease Designation Rights for the highest or otherwise best Qualified Bid(s) to the Successful Bidder(s) upon the approval of such Qualified Bid by the Court after the Sale Hearing. The presentation of a particular Qualified Bid to the Court for approval does not constitute the Debtors' acceptance of the Qualified Bid. The Debtors will be deemed to have accepted a Qualified Bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing. Only the Proposed Buyer or another entity or entities constituting the Successful Bidder(s) shall be entitled to purchase the Lease Designation Rights pursuant to these Bidding Procedures.

If for any reason, the entity or entities that submit(s) the highest or otherwise best Qualified Bid(s) fails to consummate the purchase of the Lease Designation Rights, or any part thereof, the Debtors and the Alternate Bidder(s) are authorized to effect the sale of the Lease Designation Rights to such Alternate Bidder(s) as soon as is commercially reasonable. If such failure to consummate the purchase is the result of a breach by the Successful Bidder(s), the Debtors reserve the right to seek all available remedies from the defaulting Successful Bidder(s), subject to the terms of the applicable purchase agreement.

6. The Sale Hearing

The Sale Hearing will be held before the Honorable Kevin J. Carey on December 19, 2013 at 2:00 p.m. (Eastern time) in the United States Bankruptcy Court for the District of Delaware, 824 N. Market St., Wilmington, Delaware 19801. The Sale Hearing may be adjourned without further notice by an announcement of the adjourned date at the Sale Hearing. If the Debtors do not receive any Qualified Bids (other than the Qualified Bid of the Proposed Buyer), the Debtors will proceed with a sale of the Lease Designation Rights to the Proposed Buyer following entry of the Sale Order, which may be submitted to the Bankruptcy Court under certification of counsel and without further hearing before the Bankruptcy Court, in accordance with the terms of the DRA. At the Sale Hearing, the Debtors will seek approval of the offer or offers constituting the Successful Bid(s), and, at the Debtors' election, the offer or offers constituting the Alternate Bid(s).

The Debtors' presentation to the Bankruptcy Court of the offer or offers constituting the Successful Bid(s) and Alternate Bid(s) will not constitute the Debtors' acceptance of either of any such bid, which acceptance will only occur upon approval of such bid(s) by the Bankruptcy Court at the Sale Hearing or by entry of the Sale Order. Following approval of the Sale to the Successful Bidder(s), if the Successful Bidder(s) fail(s) to consummate the sale because of (a) failure of a condition precedent beyond the control of either the Debtors or the Successful Bidder(s) upon which occurrence the Debtors have filed a notice with the Bankruptcy Court advising of such failure or (b) a breach or failure to perform on the part of such Successful Bidder(s) upon which occurrence the Debtors have filed a notice with the Bankruptcy Court advising of such breach or failure to perform, then the Alternate Bid(s) will be deemed to be the Successful Bid(s) and the Debtors will be authorized, but not directed, to effectuate a sale to the Alternate Bidder(s) subject to the terms of the Alternate Bid(s) of such Alternate Bidder(s) without further order of the Bankruptcy Court; provided nothing herein shall limit or alter any rights or remedies the Proposed Buyer may have under the DRA (as such agreement may be amended, modified or supplemented) arising from the selection of another bidder as a Successful Bidder(s) or the consummation of any sale.

7. Return of Good Faith Deposit

The Good Faith Deposits of all Qualified Bidders will be held in escrow by the Deposit Agent and while held in escrow will not become property of the Debtors' bankruptcy estates unless released from escrow pursuant to terms of the applicable escrow agreement or pursuant to further order of the Bankruptcy Court. The Deposit Agent will retain the Good Faith Deposits of the Successful Bidder(s) and the Alternate Bidder(s) until the closing of the Sale Transaction unless otherwise ordered by the Bankruptcy Court. The Good Faith Deposits of the other Qualified Bidders will be returned within four business days of the entry of the Sale Order. At the closing of the Sale Transaction contemplated by the Successful Bid(s), the Successful Bidder(s) will be entitled to a credit for the amount of its Good Faith Deposit. The Good Faith Deposit of the Alternate Bidder(s) will be released by the Debtors four business days after the closing of the Sale Transaction. Upon the return of the Good Faith Deposits, their respective owners will receive any and all interest that will have accrued thereon.

8. As Is, Where Is

The sale of the Lease Designation Rights shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents or their estates except as provided in any agreement with respect to the sale or sales approved by the Bankruptcy Court.

9. Free and Clear of Any and All Interests

Except as otherwise provided in the DRA or another Successful Bidder(s)'s designation rights agreement, all of Debtors' right, title and interest in and to the Lease Designation Rights subject thereto shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon (collectively, the "Interests") to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Lease Designation Rights with the same validity and priority as such Interests applied against the Lease Designation Rights.