

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

In re:	)	Chapter 11
	)	
K&W CAFETERIAS, INC.,	)	Case No. 20 - 50674
	)	
	)	
Debtor.	)	
<hr/>		

**DEBTOR’S MOTION FOR ENTRY OF ORDERS (A) AUTHORIZING AND SCHEDULING AN AUCTION FOR THE SALE OF THE SALE ASSETS, (B) APPROVING BIDDING PROCEDURES, (C) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES; (D) AUTHORIZING THE DESIGNATION OF STALKING HORSE BIDDERS AND APPROVING BREAK-UP FEES, (E) APPROVING THE FORM AND MANNER OF CERTAIN NOTICES, (F) SETTING A DATE FOR THE SALE HEARING, (G) APPROVING THE SALE OF THE SALE ASSETS TO THE HIGHEST OR BEST BIDDER, AND (H) GRANTING RELATED RELIEF**

NOW COMES K&W Cafeterias, Inc. (the “Debtor”), pursuant to 11 U.S.C. §§ 105, 363 and 365, and files this motion (the “Motion”)<sup>1</sup> seeking entry of (a) an Order authorizing and scheduling an auction for the sale of certain assets used in the Debtor’s restaurant operations and approving certain procedures and notices related thereto, and (b) an Order, after further notice and hearing, approving the sale, transferring certain liens to proceeds, and authorizing assumption and assignment of designated contracts and leases. In support of this Motion, the Debtor respectfully shows the Court as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Bidding Procedures, Sale Notice and/or Assignment Notice (each defined below).

2. The predicates for the relief requested herein 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”), and Rules 2002, 6004, 6006 and 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

**RELIEF REQUESTED**

3. By this Motion, the Debtor requests that the Court:
- a. conduct an initial hearing on this Motion (the “Sale Procedures Hearing”) to be scheduled on an expedited basis as the Court permits;
  - b. following the Sale Procedures Hearing, enter an order substantially in the form attached hereto as Exhibit B (the “Sale Procedures Order”), which, among other things:
    - i. authorizes and schedules an auction (the “Auction”) at which the Debtor, in consultation with the Official Committee of Unsecured Creditors appointed in this case (the “Committee”) and Truist Bank (“Truist,” and collectively with the Committee, the “Consultation Parties”), will solicit the highest or best bid(s) for (a) the sale of assets of the Debtor used in its restaurant operations (the “Business Assets”), and (b) subject to certain conditions precedent provided herein, the sale of certain real estate owned by affiliates of the Debtor, Allred Investment Company, LLC (“AIC”) and DGV, LLC (“DGV”, and with AIC, the “Affiliates”), that is currently leased to the Debtor for use in its restaurant operations (the Business Assets, along with the AIC Real Estate (as defined below) and DGV Real Estate (as defined below) collectively referred to as the “Sale Assets”);
    - ii. approves the proposed bidding procedures substantially in the form attached hereto as Exhibit C (the “Bidding Procedures”) related to the conduct of the Auction;

iii. authorizes and establishes a deadline for the Debtor, in consultation with the Consultation Parties, to designate one or more stalking horse bidders (each, a “Stalking Horse Bidder”) with respect to all or any portion of the Sale Assets, and approves the terms and conditions of the proposed break-up fee (the “Break-Up Fee”) with respect to a Stalking Horse Bidder;

iv. approves procedures (the “Assignment Procedures”) for the assumption and assignment of the Debtor’s executory contracts and unexpired leases;

v. approves the form and manner of notices of the proposed sale of the Sale Assets, the Auction, any proposed assumption and assignment of executory contracts or unexpired leases and any cure costs associated therewith, and the Sale Hearing, substantially in the form attached hereto as Exhibit D (the “Sale Notice”) and Exhibit E (the “Assignment Notice”);

vi. sets the time, date and place of a later hearing (the “Sale Hearing”) to consider the sale of the Sale Assets, including any proposed assumption and assignment of executory contracts and unexpired leases and proposed cure costs related thereto; and,

vii. establishes deadlines for objections to any of the foregoing.

4. The Debtor further requests that, following the Sale Hearing, the Court enter an order (the “Sale Order”), which, among other things:

a. authorizes and approves the sale of the Sale Assets to the Prevailing Bidder, and under certain circumstances to the Back-up Bidder;

b. authorizes and approves the assumption and assignment of those executory contracts and unexpired leases, if any, which are designated for assumption and assignment by the Prevailing Bidder and any Back-up Bidder;

c. subject to consummation of the sale and payment in full of all consideration under the applicable asset purchase agreement, transfers any and all claims, liens, encumbrances and interests in the Business Assets to the proceeds of sale, with the same validity and priority as such claims, liens, encumbrances and interests applied against the Business Assets immediately prior to the consummation of the sale; and,

d. grants such other and further relief as the Court deems just and proper.

### **BACKGROUND**

5. On September 2, 2020 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Middle District of North Carolina (the “Bankruptcy Court”). The Debtor has continued in possession of its assets and has continued to operate its business as a debtor-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. The Committee also has been appointed in this case.

6. The Debtor is a North Carolina corporation that presently owns and operates eighteen (18) cafeteria style restaurants in locations leased by the Debtor in North Carolina, South Carolina, and Virginia as more specifically set forth on Exhibit A (collectively, the “Business”). The Debtor is based in Winston-Salem, North Carolina and has approximately 323 full-time and 516 part-time employees.

7. AIC and DGV are affiliates of the Debtor with common ownership and management.

8. AIC is a North Carolina limited liability company formed on February 20, 1998 which owns the following interests in real property leased to the Debtor for use in its Business (the “AIC Real Estate”):

- a. Crossroads (Location No. 14): real property located at 1609 Hershberger Road NW, Roanoke, VA 24012;
- b. Myrtle Beach South (Location No. 15): real property located at 2001 South Kings Highway, Myrtle Beach, SC 29577;
- c. Healy Drive (Location No. 17): real property located at 3300 Healy Drive, Winston Salem, NC 27103;
- d. South Park (Location No. 23): real property located at 3169 Peters Creek Parkway, Winston Salem, NC 27127 (land only);
- e. Cherry Grove (Location No. 42): real property located at 1621 Highway 17, N. Myrtle Beach, SC 29582; and
- f. Home Office: real property located at 1391 Plaza West Drive, Winston Salem, NC 27103.

9. DGV is a North Carolina limited liability company formed on February 23, 1998 which owns the following interests in real property leased to the Debtor for use in its Business (the “DGV Real Estate”):

- a. Rocky Mount (Location No. 7): real property located at 1266 North Wesleyan Boulevard, Rocky Mount, NC 27804 (the “Rocky Mount Property”);
- b. South Park (Location No. 23): building and improvements on real property located at 3169 Peters Creek Parkway, Winston Salem, NC 27127;
- c. Hanes Mill Road (Location No. 36): real property located at 800 Hanes Mill Road, Winston Salem, NC 27105; and
- d. Annex Office: real property located at 3250 Healy Drive, Winston Salem, NC 27103.

10. In connection with its Business, the Debtor obtained a number of loans (the “K&W Loans”) from Branch Banking & Trust Company, now known as Truist Bank secured by a first priority security interest in the Debtor’s accounts, inventory, equipment, general intangibles and proceeds and products thereof (the “Truist Collateral”), subordinate only to the properly perfected purchase money security interests of various lenders (collectively, the “PMSI Lenders”) in certain equipment financed by the Debtor as set forth hereinafter and on Exhibit A. The Debtor also obtained two automobile loans secured by liens on two of the Debtor’s vehicles in favor of Ally Financial and Honda Financial (collectively, the “Vehicle Lenders”).

11. Truist also made certain loans to AIC (the “AIC Loans”) and DGV (the “DGV Loans”), in each case evidenced by loan agreements, promissory notes and deeds of trust imposing liens upon certain real property owned by AIC and DGV, including the AIC Real Estate and DGV Real Estate. The Debtor, AIC and DGV have each guaranteed the obligations of one another to Truist.

12. As of the Petition Date, the outstanding balances (including principal and unpaid interest) owed to Truist pursuant to the K&W Loans, AIC Loans and DGV Loans (collectively, the “Truist Loans”) were as follows:

- a. K&W Loans: \$7,733,251.13
- b. AIC Loans: \$817,367.00
- c. DGV Loans: \$2,518,937.15

13. As of the Petition Date, AIC and DGV also owed the following amounts to the Debtor pursuant to the Debtor’s books and records (collectively, the “Affiliate Loans”):

- a. AIC owed the Debtor the sum of \$944,111.00 (collectively, the “K&W-AIC Loans”); and,

b. DGV owed the Debtor the sum of \$5,878,543.00 (collectively, the “K&W-DGV Loans”);

14. Pursuant to promissory notes executed by AIC and DGV, substantially all of the Affiliate Loans were secured by certain real property owned by AIC or DGV, including without limitation, the AIC Real Estate and DGV Real Estate, with the exception of the Rocky Mount Property. Upon information and belief, no deeds of trust were recorded to evidence the liens on such property.

15. Upon information and belief, Truist and the Debtor are the primary creditors of AIC and DGV as of the Petition Date.

### **SALE PROCESS**

16. Given the economic uncertainty arising from the COVID-19 pandemic and the Debtor’s current liquidity position, a sale of the Business is necessary at this time to preserve the good will of the Business, its customer relationships and its skilled employees, and to maximize the recovery for creditors of the Debtor’s estate.

17. In connection with a potential sale of the Business, on or about August 29, 2020, the Debtor retained SC&H Group, Inc. (“SC&H”) as its financial advisor to market its Business and begin a sale process. After retaining SC&H, the Debtor engaged in discussions with SC&H, counsel for the Committee, and counsel for the Affiliates regarding the sale process and the assets to be included in such process. At the end of these discussions, the Debtor, the Committee and the Affiliates determined that including the AIC Real Estate and DGV Real Estate in the sale process would be in the best interests of the creditors of the Affiliates and the Debtor.

18. Subject to the Debtor, the Affiliates, and the Consultation Parties entering into an agreement before the Sale Procedures Hearing regarding the inclusion of the AIC Real Estate and

DGV Real Estate in the sale process (the “Affiliate Agreement”) and such agreement being approved by the Court, the AIC Real Estate and the DGV Real Estate will be included in the Sale Assets and sold along with the Debtor’s Business Assets. The Debtor anticipates that the Affiliate Agreement would provide the Debtor, in consultation with the Consultation Parties, with complete control and decision-making authority over the sale of the AIC Real Estate and DGV Real Estate, subject to a confidential reserve price (each, a “Reserve Price”) with respect to the sale of each parcel of real estate. The Affiliate Agreement also would: (a) include the Reserve Price for each parcel of real estate or the method or formula by which such Reserve Price will be determined prior to the Auction; (b) include the method or formula by which the purchase price and Closing Costs (as defined below) will be allocated as between the Business Assets, the AIC Real Estate and the DGV Real Estate at closing; (c) provide that all net proceeds from the sale of the AIC Real Estate and DGV Real Estate would be paid to Truist at closing until the Truist Loans are paid in full; (d) with respect to the balance of any net proceeds allocated to the sale of the AIC Real Estate, provide for the escrow of a portion of such funds up to the outstanding balance of the K&W-AIC Loans pending further order of the Court; and (e) with respect to the balance of any net proceeds allocated to the sale of the DGV Real Estate, provide for the escrow of a portion of such funds up to the outstanding balance of the K&W-DGV Loans pending further order of the Court. The closing costs would include the transaction fee to be paid to SC&H, any break-up fee to be paid to a Stalking Horse Bidder, and any other reasonable and ordinary costs of sale (the “Closing Costs”). The terms and provisions of the Affiliate Agreement (with the exception of the confidential Reserve Prices) will be presented to the Court at the Sale Procedures Hearing. The Affiliate Agreement may also include other terms and provisions agreed upon by the Consultation Parties, and any dispute with respect to the Affiliate Agreement would be determined by the Court at the



Sale Hearing. Notwithstanding any provision herein to the contrary, the AIC Real Estate and the DGV Real Estate may be included in the sale process over the objection of the Committee and/or Trust if the Debtor and the Affiliates reach an agreement regarding the terms of the inclusion of such real estate in the sale process prior to the Sale Procedures Hearing, and such agreement is approved by the Court.

19. Since its retention, SC&H has engaged in the following activities, all designed to expose the Business to the greatest number of qualified purchasers:

a. SC&H has assembled an electronic data room ("Data Room") containing legal, operational, and financial documents relating to the Business. The Data Room includes substantially all documents that SC&H, in its professional judgment, determined would be needed to satisfy due diligence requests received from interested parties. The Data room is substantially complete but will be periodically updated as necessary during the sale process.

b. SC&H created a short and succinct investment teaser for the Debtor, which has been approved by the Debtor. The investment teaser has been distributed to approximately 1012 prospects that SC&H believes are most likely to consider an acquisition of the Business. An email version of the investment teaser will also be distributed to over 900 prospects in SC&H's internal database, and approximately 250 additional prospects that SC&H believes would have interest in the Business.

c. SC&H has reviewed its proprietary database, consulted with representatives of the Debtor to create a list of parties who may be interested in purchasing the Business, and completed outreach calls to approximately 70 prospects.

d. SC&H has finalized a press release to be sent to newspapers, industry specific trade magazines, and mergers and acquisitions related publications.

20. To streamline the sale process, the Debtor believes that it is important that any party interested in purchasing the Sale Assets use a common asset purchase agreement template (the “Form APA”) to be prepared by counsel for the Debtor, in consultation with the Consultation Parties, and provided to potential bidders.

21. As of the date of this Motion, the Debtor and SC&H have not identified a purchaser willing to enter into a binding agreement of sale and serve as the Stalking Horse Bidder. However, the Debtor, subject to the consent of Truist, is seeking authority to designate one or more Stalking Horse Bidders as set forth herein and in the Bidding Procedures if it determines, in consultation with the Consultation Parties, that such designation will enhance the sale process.

22. Any agreement with a Stalking Horse bidder will be “tested” in the marketplace by the sale and bidding process described in the Bidding Procedures to ensure that the value of the Sale Assets are maximized for the benefit of creditors. Furthermore, the proposed break-up fee is fair and reasonable and within the range customarily approved by the Bankruptcy Court.

23. The Debtor requests authority to solicit bids for the Sale Assets utilizing Bidding Procedures, substantially in the form attached hereto as Exhibit C.<sup>2</sup> The Bidding Procedures govern the proposed sale, including any auction conducted in connection therewith, and include the following deadlines in connection with the relief sought in this Motion:

- a. Stalking Horse Designation Deadline: November 23, 2020
- b. Bid Deadline: December 8, 2020
- c. Auction Date (if necessary): December 11, 2020
- d. Report of Auction: December 14, 2020
- e. Objection Deadline for Sale Hearing: December 15, 2020
- f. Sale Hearing: December 16, 2020

---

<sup>2</sup> The Bidding Procedures attached hereto as Exhibit C assume that the AIC Real Estate and the DGV Real Estate are included in the sale process.

24. By this Motion, the Debtor intends to liquidate the Sale Assets in order to monetize such assets. The Debtor strongly believes that, in furtherance of this goal, it can and will do all that is reasonably possible to secure the highest or best possible offer for the Sale Assets under the circumstances. For the foregoing reasons, the relief requested in this Motion is a product of sound business judgment and is in the best interests of the Debtor, its creditors, employees, estate and other stakeholders, and should be granted.

25. Accordingly, the Debtor submits that the proposed Bidding Procedures, and any sale presented in accordance therewith, is warranted and appropriate under the terms and provisions of Section 363(b) of the Bankruptcy Code.

26. Further, the proposed Bidding Procedures have been designed to create a fair, open and level playing field. Accordingly, the Debtor requests that the party submitting the Prevailing Bid or Back-up Bid be determined to have acted in good faith and be entitled to the protections of a good faith purchaser under Section 363(m) of the Bankruptcy Code.

**SALE FREE AND CLEAR OF LIENS**

27. The Debtor requests that, subject to consummation of the sale and payment in full of all consideration under the applicable asset purchase agreement, the sale and transfer of the Business Assets be approved free and clear of all liens, claims, encumbrances, or interests in such property (collectively, the “Liens”), and that such Liens attach to the proceeds of sale, with the same validity and priority as such Liens applied against the Business Assets immediately prior to the consummation of the sale. All liens against the AIC Real Estate and the DGV Real Estate must be paid in full at closing or, with the consent of the lienholder, released at closing.

28. The Debtor believes that Truist, the PMSI Lenders and the Vehicle Lenders (collectively, the “Lenders”) are the only parties holding or asserting a lien upon or security interest in the Sale Assets.

29. As set forth above, Truist has a first priority security interest in the Truist Collateral, subordinate only to the properly perfected purchase money security interests in favor of the PMSI Lenders in certain equipment financed by the Debtor as follows:

a. BB&T Commercial Equipment Capital Corp. (“BB&T CEC”) has a security interest in certain equipment located at the restaurants in Fayetteville, North Carolina (Location No. 13) and Winston Salem, North Carolina (Location No. 36);

b. CIT Bank NA (“CIT”) has a security interest in the dish machines located at the two restaurants in Greensboro, North Carolina (Location Nos. 4 and 30); and at the two restaurants in Winston-Salem, North Carolina (Location Nos. 17 and 23);

c. Crestmark Vendor Finance (“Crestmark”) has a security interest in the dish machine located at the restaurants in Concord, North Carolina (Location No. 10), Roanoke, Virginia (Store No. 14), and Raleigh, North Carolina (Location No. 49);

d. De Lage Landen Financial (“De Lage Landen”) has a security interest in certain LED lighting located at the restaurants in Winston-Salem, North Carolina (Location No. 23), and Statesville, North Carolina (Location No. 29);

e. First Lease Inc. (“First Lease”) has a security interest in the dish machine located at the restaurant in Burlington, North Carolina (Location No. 45);

f. First Foundation Bank (“First Foundation”) has a security interest in the dish machines located at the restaurants in Salem, Virginia (Location No. 27), Statesville, North Carolina (Location No. 29), and Pineville, North Carolina (Location No. 48);

g. Macquarie Equipment Capital (“Macquarie”) has a security interest in certain dish machines located at the restaurants in Rocky Mount, North Carolina (Location No. 7), Myrtle Beach, South Carolina (Location No. 15), Wilmington, North Carolina (Location No. 20), N. Myrtle Beach, South Carolina (Location No. 42), and Greenville, North Carolina (Location No. 46); and

h. Navitas Credit Corp (“Navitas”) has a security interest in certain LED lighting located at the restaurant in Winston-Salem, North Carolina (Location No. 17).

30. The Vehicle Lenders have properly perfected liens as follows:

a. Ally Bank has a lien against the 2019 Ford Explorer owned by the Debtor;  
and

b. Honda Financial has a lien against the 2019 Honda Accord owned by the Debtor.

31. The Debtor anticipates that all Lenders will consent to the transaction presented for approval at the Sale Hearing, so long as upon the consummation of the sale and payment in full of all consideration under the applicable asset purchase agreement, the liens and security interests of the Lenders will attach to the proceeds of the sale with the same validity and priority as such liens and security interests applied against the Business Assets immediately prior to the consummation of the sale.

32. Truist must consent to sales which in the aggregate are less than the full amount of its indebtedness secured by the assets to be sold, except to the extent otherwise provided in the Affiliate Agreement. With respect to the PMSI Lenders and Vehicle Lenders, their collateral may be sold free and clear of all Liens to the extent one or more of the standards set forth in Section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied.

33. In the event the AIC Real Estate and DGV Real Estate are included in the sale process, the Debtor also anticipates that the liens of Truist against the AIC Real Estate and DGV Real Estate will be paid in full at closing. Alternatively, the Affiliate Agreement will provide the conditions that must be met for Truist to release its lien against any parcel of real estate at closing.

34. The relief requested herein is consistent with the provisions of Section 363(f) of the Bankruptcy Code in this case.

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

35. The Bidding Procedures contemplate the possible assumption of certain executory contracts and unexpired leases and the assignment of these contracts and leases to the Prevailing Bidder or Back-up Bidder at closing. To the extent any defaults exist under any contracts or leases to be assumed and assigned, such defaults must be cured in accordance with Section 365 of the Bankruptcy Code. Accordingly, it is important that the Debtor determine any cure costs associated with such assumption and assignment prior to the closing.

36. The Debtor proposes the following procedures (the “Assignment Procedures”) for assumption and assignment of executory contracts and unexpired leases and for fixing of amounts to be paid to satisfy obligations to cure defaults pursuant to Section 365(b)(1) of the Bankruptcy Code (the “Cure Obligations”).

37. Within three (3) business days after entry of the Sale Procedures Order, the Debtor will serve on all non-debtor counterparties to executory contracts and unexpired leases the Assignment Notice attached hereto as Exhibit E. The Debtor will attach to the Assignment Notice its calculation of the cure amounts (the “Cure Amount”) that the Debtor believes must be paid to each non-debtor counterparty to satisfy all Cure Obligations.

38. Unless the counterparty to the executory contract or unexpired lease files an objection by the applicable deadline set forth in the Assignment Notice (the “Assignment Objection Deadline”) and serves such objection on the applicable notice parties, such counterparty will: (a) be forever barred from objecting to the Cure Amount and from asserting any additional Cure Obligations, and (b) be forever barred and estopped from asserting or claiming against the Debtor or the assignee of such executory contract and/or unexpired lease that any additional Cure Obligations are due, or conditions to assumption and assignment (other than demonstration of adequate assurance of future performance) must be satisfied with respect to such executory contracts and/or unexpired leases in order for such contracts or leases to be assumed and assigned.

39. Any objection must set forth the basis for the objection and the amount the party asserts as the Cure Obligation. In the event the Debtor and the counterparty are unable to resolve the objection, the Debtor will segregate any disputed portion of the Cure Obligation pending the resolution of any such dispute by this Court.

40. The counterparty to any executory contract or unexpired lease will be permitted to assert objections to adequate assurance of future performance at the Sale Hearing without the need to first file an objection to the Sale.

41. At the Sale Hearing, the Debtor also will request that the Sale Order include provisions (i) authorizing the Debtor to assume and assign to the Prevailing Bidder or Back-up Bidder any executory contracts or unexpired leases specified by such Bidders in their respective bids (the “Assigned Contracts”) pursuant to Section 365 of the Bankruptcy Code, (ii) fixing the Cure Amounts identified in the Assignment Notice as the exact amounts that must be paid to the counterparty to the Assigned Contracts, (iii) authorizing and directing the purchaser to pay the

Cure Amounts at closing, and (iv) deeming the parties to the Assigned Contracts adequately assured of future performance.

42. The Assigned Contracts are integral assets to the Business, and the Debtor has determined, in the exercise of its business judgment, that the assumption and assignment of the Assigned Contracts in connection with the sale of the Business Assets is necessary to yield significant value to the Debtor and its estate from the sale of the Business Assets.

**WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h) AND 6006(d)**

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

44. Any delay in the Debtor’s ability to consummate the sale would be detrimental to the Debtor, its creditors and estate, and would impair the Debtor’s ability to take advantage of the substantial cost-savings that can be achieved by an expeditious closing of the sale.

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

**NOTICE**

46. Notice of this Motion has been provided to: (a) the Bankruptcy Administrator; (b) counsel to the Committee; (c) counsel to Truist; (d) all parties known to the Debtor who hold any liens or security interest in the Debtor’s Assets who have filed UCC-1 financing statements against



the Debtor, or who, to the Debtor's knowledge, have asserted any liens on any of the Debtor's Assets; (e) all non-debtor parties to the Debtor's executory contracts and unexpired leases; and (f) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is necessary.

47. The Debtor submits that the foregoing notice is sufficient and proper under the circumstances, and that no other or further notice is required.

WHEREFORE, the Debtor respectfully requests that this Court:

1. Enter an order following the Sale Procedures Hearing, substantially in the form attached hereto as Exhibit B, authorizing and scheduling the Auction, approving the Bidding Procedures and the Assignment Procedures, and approving the form and manner of the Sale Notice and Assignment Notice;

2. Following the Sale Hearing, enter the Sale Order approving the sale of the Sale Assets, approving the assumption and assignment of the Debtor's executory contracts and unexpired leases to the extent so requested, and, subject to consummation of the sale and payment in full of all consideration under the applicable asset purchase agreement, transferring all liens on the Business Assets to the proceeds of sale with the same validity and priority as such liens applied against the Business Assets immediately prior to the consummation of the sale.

3. Grant the Debtor such other relief as the Court may deem necessary and proper.

Date: October 9, 2020

/s/ Vicki L. Parrott

**Counsel for the Debtor:**

John A. Northen, NCSB #6789

[jan@nbfirm.com](mailto:jan@nbfirm.com)

Vicki L. Parrott, NCSB #25449

[vlp@nbfirm.com](mailto:vlp@nbfirm.com)

John Paul H. Cournoyer, NCSB # 42224

[jpc@nbfirm.com](mailto:jpc@nbfirm.com)

Northen Blue, LLP

Post Office Box 2208

Chapel Hill, NC 27515-2208

Telephone: 919-968-4441

**Exhibit A**

**EXHIBIT A**  
**Cafeteria Restaurants**

Location No.	Location Name	City	State	Landlord	Dish Machine Lender	Equipment Lender	LED Lighting Lender
4	Signature Place	Greensboro	NC	Signature Place LLC	CIT		
7	Rocky Mount	Rocky Mount	NC	DGV, LLC	Macquarie		
10	Concord	Concord	NC	Copperfield Center Partnership	Crestmark		
13	Fayetteville	Fayetteville	NC	Bordeaux Center	BB&T CEC	BB&T CEC	
14	Crossroads	Roanoke	VA	Allred Investment Company, LLC	Crestmark		
15	Myrtle Beach South	Myrtle Beach	SC	Allred Investment Company, LLC	Macquarie		
17	Healy Drive	Winston Salem	NC	Allred Investment Company, LLC	CIT		Navitas
20	Wilmington	Wilmington	NC	New Market Hanover LP	Macquarie		
23	South Park	Winston Salem	NC	DGV, LLC	CIT		De Lage Landen
27	Salem	Salem	VA	SVS Hospitality, Inc	First Foundation		
29	Statesville	Statesville	NC	Brixmor holdings	First Foundation		De Lage Landen
30	Holden Road	Greensboro	NC	BVP Properties, Inc	CIT		
36	Hanes Mill Road	Winston Salem	NC	DGV, LLC	BB&T CEC		
42	Cherry Grove	N. Myrtle Beach	SC	Allred Investment Company, LLC	Macquarie		
45	Burlington	Burlington	NC	I-85 Plaza	First Lease		
46	Arlington Crossing	Greenville	NC	The Overton Group	Macquarie		
48	Pineville	Pineville	NC	Tower Place NC	First Foundation		
49	Towers	Raleigh	NC	M2k CCRE	Crestmark		

**Notes:**

Outside Leases  
Affiliate Owned

11

7

**Exhibit B**

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

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>K&amp;W Cafeterias, Inc.,</b>	)	<b>Case No. 20-50674</b>
	)	
	)	
<b>Debtor.</b>	)	
<hr/>		

**ORDER (A) AUTHORIZING AND SCHEDULING AN AUCTION FOR THE SALE OF THE SALE ASSETS, (B) APPROVING BIDDING PROCEDURES, (C) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES; (D) AUTHORIZING THE DEBTOR TO DESIGNATE STALKING HORSE BIDDERS AND APPROVING BREAK-UP FEES, (E) APPROVING THE FORM AND MANNER OF CERTAIN NOTICES, AND (F) SETTING A DATE FOR THE SALE HEARING**

THIS MATTER came before the Court after due notice and hearing on October 22, 2020 for purposes of an interim order establishing bidding procedures and other relief in connection with the *Debtor’s Motion For Entry Of Orders (A) Authorizing And Scheduling An Auction For The Sale Of The Sale Assets, (B) Approving Bidding Procedures, (C) Approving Procedures For The Assumption And Assignment Of Contracts And Leases; (D) Authorizing The Debtor To Designate Stalking Horse Bidders And Approving Break-Up Fees, (E) Approving The Form And Manner Of Certain Notices, (F) Setting A Date For The Sale Hearing, (G) Approving The Sale Of The Sale Assets To The Highest Or Best*

*Bidder, And (H) Granting Related Relief* (the “Sale Motion”)<sup>1</sup> filed by K&W Cafeterias, Inc. (the “Debtor”), pursuant to §§ 105, 363 and 365 of the Bankruptcy Code and Rules 2002, 6004, 6006 and 9006 of the Federal Rules of Bankruptcy Procedure.

Upon consideration of the Sale Motion and the evidence submitted in support thereof, and it appearing that this Court has jurisdiction to consider the Sale Motion; that the relief requested in the Sale Motion is in the best interests of the Debtor, its estate, and all parties in interest; that adequate notice of the Sale Motion has been given; that exigent circumstances exist to justify a sale (the “Sale”) of certain assets as defined in the Sale Motion and Bidding Procedures (the “Sale Assets”) pursuant to Section 363 of the Bankruptcy Code, rather than pursuant to a confirmed chapter 11 plan under Section 1129 of the Bankruptcy Code; and that the Sale is within the reasonable business judgment of the Debtor and is in the best interest of the estate, subject to exposing the Sale Assets to bids and after further hearing to confirm the Sale; and sufficient cause appearing therefore:

**IT IS HEREBY ORDERED THAT:**

1. The Sale Motion is GRANTED, to the extent set forth herein.
2. The “Bidding Procedures” attached hereto as Exhibit A are hereby approved by this Court and incorporated by reference as if set forth fully herein. The failure specifically to include any provision of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Bidding Procedures are authorized and approved in their entirety.
3. The Debtor is authorized, in consultation with the Consultation Parties, to conduct an auction (the “Auction”) with respect to the Sale Assets. The Auction shall be held on **December 11, 2020**, commencing at 10:00 o’clock a.m. Eastern, at the office of Debtor’s counsel, Northen Blue, LLP, 1414 Raleigh Road, Suite 435, Chapel Hill, North Carolina 27517 (or such other location as may be determined by the Debtor, in consultation with the Consultation Parties, and communicated to all Qualified Bidders at least two (2) business days before the Auction), and shall be governed by the Bidding Procedures.
4. The notices contemplated by the Sale Motion are adequate and sufficient notice of the proposed sale of the Sale Assets, the Auction, any proposed assumption and

---

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Sale Motion, including exhibits attached thereto.

assignment of executory contracts or unexpired leases and any Cure Amounts associated therewith, and the Sale Hearing, and no additional notice need be given. Without limiting the generality of the foregoing, the Court specifically approves the “Sale Notice” attached hereto as Exhibit B and the “Assignment Notice” attached hereto as Exhibit C.

5. The procedures for the assumption and assignment of executory contracts and unexpired leases are approved. Unless the non-Debtor party to an executory contract or unexpired lease files an objection by the Assignment Objection Deadline set forth in the Assignment Notice, such counterparty shall be forever barred from objecting to the Cure Amount and forever barred and estopped from asserting or claiming any Cure Obligation (other than the Cure Amount listed on the Assignment Notice) against the Debtor, any Prevailing Bidder, any Back-up Bidder, or any other assignee of the relevant Contract or Lease.

6. The final hearing (the “Sale Hearing”) to consider the sale of the Sale Assets, including any proposed assumption and assignment of executory contracts and unexpired leases and the Cure Amounts related thereto, shall be held at 9:30 a.m. Eastern, on **December 16, 2020**, in Courtroom #1, U.S. Bankruptcy Court, 101 S. Edgeworth Street, Greensboro, North Carolina 27401 (which hearing may be held electronically and by telephone as determined by the Court).

7. Within three (3) business days after entry of this Order (the “Sale Procedures Order”), the Debtor shall serve copies of the Sale Procedures Order, the Bidding Procedures, the Sale Notice and the Assignment Notice on all known creditors and other parties-in-interest, (ii) all parties known by the Debtor to assert a lien or security interest in the Sale Assets, and (iii) all non-debtor parties to the Debtor’s executory contracts and unexpired leases.

[End of Document]



EXHIBIT A  
(BIDDING PROCEDURES)

EXHIBIT B  
(SALE NOTICE)

EXHIBIT C  
(ASSIGNMENT NOTICE)

**Exhibit C**



Plaza West Drive, Winston Salem, NC 27103; and (vi) real property located at 3300 Healy Drive, Winston Salem, NC 27103.

**3. DGV Real Estate.** The Sale Assets owned by DGV to be sold pursuant to these Bidding Procedures include the following real property or interests in real property (collectively, the “DGV Real Estate”): (i) real property located at 800 Hanes Mill Road, Winston Salem, NC 27105; (ii) real property located at 3250 Healy Drive, Winston Salem, NC 27103; (iii) building and improvements on real property located at 3169 Peters Creek Parkway, Winston Salem, NC 27127; and (iv) real property located at 1266 North Wesleyan Boulevard, Rocky Mount, NC 27804.

**4. Excluded Assets.** Specifically excluded from the Business Assets are (i) cash now or subsequently held by the Debtor in bank accounts on behalf of the bankruptcy estate, (ii) the purchase price to be delivered to the Debtor in connection with any approved sale of the Business Assets, (iii) all real property and interests in real property owned by the Debtor, excluding leasehold interests; (iv) notes receivable owed to the Debtor from insiders, including without limitation, officers, directors and/or shareholders of the Debtor, AIC, and DGV; (v) the Debtor’s books and records, (vi) the Debtor’s interest in MetLife Stock; (vii) insurance policies or the proceeds thereof, (viii) any claims or causes of action which may be asserted by or on behalf of the Debtor against any party, including but not limited to claims or causes of action under Bankruptcy Code §§ 544, 547, 548, 549, 550 and 553, and (ix) any assets that are expressly excluded by the Debtor from the Sale (collectively, the “Excluded Assets”).

**5. Diligence by Prospective Bidders.** The Debtor’s financial advisor, SC&H Group, Inc. (“SC&H”), will assist the Debtor in connection with any Sale of the Sale Assets. The Debtor shall give notice of the proposed Sale and these Bidding Procedures to prospective bidders, receive and consider unsolicited offers for the Sale Assets, provide information to any such prospective bidder, and allow any such prospective bidder to conduct due diligence in connection with its consideration of a potential bid for the Sale Assets; provided, however, that any such prospective bidder desiring to conduct due diligence shall (a) demonstrate the financial ability, as determined by the Debtor in its reasonable discretion, in consultation with the Consultation Parties, to (i) consummate a transaction for the purchase of the Sale Assets, and (ii) assure its future performance under any executory contracts and unexpired leases to be assumed by the Debtor and assigned to such prospective bidder pursuant to Section 365 of the Bankruptcy Code in connection with the Sale, and (b) execute a confidentiality agreement in a form acceptable to the Debtor in its reasonable discretion, in consultation with the Consultation Parties, which by its terms will inure to the benefit of the successful bidders, to the extent of confidential information relating to the Sale Assets acquired by such party. The Debtor shall file with the Court, on or before the Bid Deadline (as defined below), a statement identifying any prospective bidder that is not allowed to conduct due diligence because of a determination by the Debtor, in consultation with the Consultation Parties, that said person does not have the financial ability to consummate the purchase.

**6. Bankruptcy Court Jurisdiction.** In conjunction with any actions or proceedings arising from or relating to the Bidding Procedures, the Sale, the Auction (as defined below), the acts or omissions of the Sellers, SC&H, and their respective representatives and/or the construction and enforcement of the contemplated transaction documents of such parties, the Sellers, Bidders and Qualified Bidders shall: (a) be deemed to have waived any right to a jury trial and consented and submitted to the exclusive jurisdiction of the Court, (b) bring any such action or proceeding in

the Court, and (c) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

**7. Form APA.** To facilitate the sale of the Sale Assets, the Sellers, in consultation with the Consultation Parties, have prepared a template asset purchase agreement (the “Form APA”) to be used by prospective bidders. The Form APA includes a mandatory allocation of purchase price that each bidder shall be required to complete with respect to the Sale Assets (the “Purchase Price Allocation”). The Form APA is available upon request to SC&H.

**8. Stalking Horse Designation.** If the Debtor, in consultation with the Consultation Parties, desires to designate one or more stalking horse bidders (each, a “Stalking Horse Bidder”) with respect to all or any portion of the Sale Assets, then with respect to each such Stalking Horse Bidder, the applicable Seller(s) must (a) enter into an agreement of sale in the form of the Form APA with changes mutually acceptable to the Debtor, in consultation with the Consultation Parties, and the Stalking Horse Bidder (the “Stalking Horse Agreement”) on or before the Stalking Horse Designation Deadline (as defined below), (b) file with the Court a copy of the Stalking Horse Agreement and a blackline reflecting the differences, if any, between the Form APA and the Stalking Horse Agreement on or before the Stalking Horse Designation Deadline, and (c) serve a notice of such designation (with a statement that the Stalking Horse Agreement is on file and is available upon written request to counsel for the Debtor) upon all creditors and parties-in-interest (including all counterparties to executory contracts and unexpired leases proposed to be assumed and assigned to the Stalking Horse Bidder) within three (3) days of the filing of the Stalking Horse Agreement (the “Designation Notice”). Any designated Stalking Horse Bidder shall be deemed a Qualified Bidder (as defined below). All parties-in-interest shall be given an opportunity to object to any proposed Stalking Horse Agreement within five (5) days of such agreement being filed with the Court, and, if necessary, a hearing may be held to consider any objections and the need to modify the sale timeline set forth herein. Any modifications to the timeline set forth herein shall be filed with the Court.

**9. Stalking Horse Designation Deadline.** Any Stalking Horse Bidder must be designated by the Debtor, in consultation with the Consultation Parties, and the Stalking Horse Agreement filed with the Court on or before **November 23, 2020** (the “Stalking Horse Designation Deadline”). For clarity, the Debtor, in consultation with the Consultation Parties, may designate Stalking Horse Bidder(s) at any time after the approval of these Bidding Procedures and is not required to wait until the Stalking Horse Designation Deadline to make such designation.

**10. Bid Requirements.** Any entity that is interested in purchasing all or any portion of the Sale Assets (a “Bidder”) must submit to SC&H a bid (an “Initial Bid”) in conformance with this paragraph, in a manner such that the Initial Bid is received by SC&H no later than the Bid Deadline (as defined below). The Debtor, in consultation with the Consultation Parties, shall have reasonable discretion in determining whether an Initial Bid is a conforming bid in accordance with the requirements of this paragraph. Every such Initial Bid must:

- a. Include an executed copy of a definitive Asset Purchase Agreement (the “Bidder’s Agreement”) specifying the assets to be purchased at closing and include a completed Purchase Price Allocation. The Bidder’s Agreement shall include a

marked copy against the Form APA to show all changes requested by the Bidder. The Bidder's Agreement also shall (i) specify any executory contracts or unexpired leases which are to be assumed by the Debtor and assigned to the Bidder at closing, and (ii) shall require the Bidder to pay any cure costs required to be paid in order for the Debtor to assume and assign such executory contracts and unexpired leases to the Bidder at closing.

- b. If a Stalking Horse Bidder has been designated with respect to the assets to be purchased by the Bidder at closing, any Initial Bid must propose a purchase price (the "Sale Price") that in the Debtor's judgment, in consultation with the Consultation Parties, has a value to the Seller(s) of at least two times the Break-Up Fee (as defined below) greater than the Initial Bid of the Stalking Horse Bidder as set forth in the Stalking Horse Agreement.
- c. Be irrevocable, subject only to final approval of the Court, and not subject to further due diligence or conditional upon obtaining financing or any third-party approvals.
- d. Be accompanied by admissible evidence in the form of affidavits or declarations establishing the Bidder's good faith, within the meaning of section 363(m) of the Bankruptcy Code.
- e. Be accompanied by (i) financial statements or admissible evidence in the form of affidavits or declarations establishing that the Bidder is ready, willing, authorized, capable, and qualified, financially, legally, and otherwise, of unconditionally performing all obligations under the Bidder's Agreement in the event that it submits the prevailing bid at the Sale Hearing, and (ii) evidence that it is duly authorized and entitled to engage in the transaction contemplated by the Initial Bid without the consent of any entity that has not been obtained.
- f. Be accompanied by a deposit equal to five percent (5%) of the fixed purchase price under the Bidder's Agreement (the "Deposit Amount") in the form of a wire transfer or cashier's check payable to SC&H, as escrow agent for the Sellers, and to be held in a non-interest-bearing segregated account pending completion of the Auction, and subject to the provisions set forth below.

**11. Bid Deadline.** Any Initial Bid must be delivered to SC&H by 4:00 o'clock p.m. Eastern, on **December 8, 2020** (the "Bid Deadline"). SC&H shall provide counsel to the Debtor, counsel to the Committee, and counsel to Truist with copies of any Initial Bids upon its receipt of same.

**12. Non-Conforming Bids.** Any entity that submits an Initial Bid that fails to be a timely, conforming Initial Bid, as set forth above, as determined by the Debtor in its reasonable discretion, in consultation with the Consultation Parties, shall be disqualified from bidding for the Sale Assets at the Auction. At least one (1) business day prior to the Auction Date (as defined below), the Debtor shall file with the Court and serve upon such Bidder a statement explaining the grounds for disqualification ("Statement of Disqualification"). Any party in interest may contest the Debtor's determination as to whether an Initial Bid is conforming, but any such contest must be served upon the Debtor and filed with the Court by the Objection Deadline (as defined below). The Debtor, in



its reasonable discretion, in consultation with the Consultation Parties, may allow a Bidder to cure any defect or deficiency in its Initial Bid in order to render the Initial Bid conforming at any time prior to the start of the Auction.

**13. Auction Procedures.** In the event that (a) a Stalking Horse Bidder has been designated and the Debtor receives one or more timely, conforming Initial Bids, or (b) a Stalking Horse Bidder has not been designated and the Debtor receives two or more timely, conforming Initial Bids (the Stalking Horse Bidder, if any, and each person who has submitted such a timely, conforming Initial Bid shall be referred to herein as a “Qualified Bidder”), the Debtor, its counsel and SC&H, in consultation with the Consultation Parties, shall conduct the Auction in which only Qualified Bidders may participate. The Auction shall be held on **December 11, 2020** (the “Auction Date”), commencing at 10:00 o’clock a.m. Eastern, at the office of Debtor’s counsel, Northen Blue, LLP, 1414 Raleigh Road, Suite 435, Chapel Hill, North Carolina 27517 (or such other location as may be determined by the Debtor, in consultation with the Consultation Parties, and communicated to all Qualified Bidders at least two (2) business days before the Auction), and shall be governed by the following procedures:

- a. Bidding will commence at an amount of the highest or otherwise best conforming Initial Bid submitted by a Qualified Bidder, as determined by the Debtor in its reasonable discretion, in consultation with the Consultation Parties. The Debtor will conduct the bidding process sequentially or concurrently as it deems appropriate and in the best interests of the estate, in consultation with the Consultation Parties.
- b. Each subsequent bid by a Qualified Bidder shall be in increments that increase the aggregate consideration above the previous bid in an amount to be determined by the Debtor, in consultation with the Consultation Parties, at the Auction.
- c. Each Qualified Bidder should be prepared to make its best and final offer at the Auction. The Debtor, in consultation with the Consultation Parties, reserves all rights to continue or recess the Auction or the Sale Hearing.
- d. Upon conclusion of the Auction, the Debtor, in consultation with the Consultation Parties, shall designate the highest or otherwise best bidder with respect to individual lots or a combination of lots comprising the Sale Assets (each, a “Prevailing Bidder”), and the next highest or otherwise best bidder after the Prevailing Bidder with respect to individual lots or a combination of lots comprising the Sale Assets (each, a “Back-up Bidder”).
- e. The Debtor shall file a Report of Auction upon completion of the Auction, designating the Prevailing Bidder(s) and the Back-up Bidder(s), if applicable, setting forth in each instance the amount of the respective Bids.

**14. Back-up Bidder.** Any objection to the designation of the Back-up Bidder(s) shall be raised at the Sale Hearing and decided by the Court. If, for any reason, a Prevailing Bidder is unable or unwilling timely to perform its obligations under the Prevailing Bidder's definitive sale agreement and the Bidding Procedures, the Debtor, in the exercise of its business judgment, in consultation with the Consultation Parties, may sell the Sale Assets to the designated Back-up Bidder without

further notice or a hearing. The Back-up Bidder's bid shall remain open and binding until the sale to the Prevailing Bidder closes or, if the Prevailing Bidder is unable or unwilling to close and the Debtor, in consultation with the Consultation Parties, elects to sell to the Back-up Bidder, until the sale to the Back-up Bidder closes.

**15. Break-Up Fee.** Solely in the event that (i) the Debtor, in consultation with the Consultation Parties, designates a bidder as a Stalking Horse Bidder, (ii) the Court enters an order approving the sale to an entity other than the Stalking Horse Bidder, (iii) the Stalking Horse Bidder has not committed a material default under its Stalking Horse Agreement, (iv) the Seller does not sell to the Stalking Horse Bidder, and (v) the Seller closes on the sale to an entity other than the Stalking Horse Bidder, such Seller shall pay to the Stalking Horse Bidder a break-up fee equal to the lesser of \$150,000 or two percent (2%) of the Sale Price for the Sale Assets set forth in the Stalking Horse Agreement for its time spent and expenses incurred in connection with negotiating the Stalking Horse Agreement and for the value it brought to the bankruptcy estate by providing a stalking horse bid and entering into the Stalking Horse Agreement. The break-up fee shall be payable only on the closing of the sale to an entity other than the Stalking Horse Bidder. Except as expressly provided herein, the Stalking Horse Bidder shall not be entitled to any other overbid, expense reimbursement, topping or break-up fee of any nature.

**16. Objection.** Any objection to the Sale Motion, a Statement of Disqualification, the Auction, the designation of any Prevailing Bidder or any Back-up Bidder, or entry of the Sale Order (an "Objection") must be filed with the Court and served upon (i) counsel for the Debtor, John A. Northen, Northen Blue, LLP, P.O. Box 2208, Chapel Hill, North Carolina 27515-2208; (ii) the Bankruptcy Administrator, William P. Miller, 101 S. Edgeworth Street, Greensboro, North Carolina 27401; (iii) counsel for the Committee appointed in the Bankruptcy Case, Thomas W. Waldrep, Jr., Waldrep Wall Babcock & Bailey PLLC, 1076 W. Fourth Street, Winston-Salem, North Carolina 27101; and (iv) counsel for Truist Bank, Stephen E. Gruendel, Moore & Van Allen PLLC, 100 North Tryon Street, Suite 4700, Charlotte, North Carolina 28202, in a manner such that the Objection is filed and received by such parties and the Court by 4:00 o'clock p.m. Eastern, on **December 15, 2020** (the "Objection Deadline"). The Debtor and other parties-in-interest shall not be required to file responses to any Objection. The foregoing notwithstanding, counterparties to executory contracts and unexpired leases may object to the assumption and assignment of such executory contracts and unexpired leases on the basis of lack of adequate assurance of future performance (but no other basis) by raising such objection at the Sale Hearing.

**17. Sale Hearing.** The final hearing to approve the Prevailing Bidder and the Back-up Bidder (the "Sale Hearing") shall be held before the Court at 9:30 a.m. Eastern, on **December 16, 2020**, in Courtroom #1, U.S. Bankruptcy Court, 101 S. Edgeworth Street, Greensboro, North Carolina 27401 (which hearing may be held electronically and by telephone as determined by the Court). The Prevailing Bidder(s) and the Back-up Bidder(s), if designated, shall appear at the Sale Hearing, in person or through a duly authorized representative and not solely through counsel. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest. On or before 5:00 p.m. Eastern on **December 17, 2020**, the Prevailing Bidder(s) shall increase its Deposit Amount to ten percent (10%) of the fixed purchase price under the Bidder's Agreement.

**18. Business Judgment.** The Debtor may, in consultation with the Consultation Parties, (a) recommend a sale to any Qualified Bidder pursuant to a bid which the Debtor determines, exercising reasonable business judgment, in consultation with the Consultation Parties, to be in the best interests of the bankruptcy estate (subject to the Reserve Price with respect to the AIC Real Estate and the DGV Real Estate), and (b) reject, at any time before the entry of an order of the Court approving a bid from a Qualified Bidder, any bid that is deemed inadequate or insufficient, not in substantial conformity with the Bankruptcy Code or these Bidding Procedures, or contrary to the best interests of the estate and its creditors. In exercising business judgment as to which bid constitutes the highest or otherwise best bid, the Debtor, in consultation with the Consultation Parties, may consider all factors which it may deem relevant, subject to the parties' right to object and raise any such issues with the Court. The Debtor, in consultation with the Consultation Parties, also may modify these bidding procedures, exercising reasonable business judgment, if the Debtor determines such modification to be in the best interests of the bankruptcy estate.

**19. Disposition of Deposits.** Promptly following the Court's determination of the Prevailing Bidder(s), the deposits submitted by any Bidders shall be refunded to each unsuccessful bidder other than the Back-up Bidder(s), if any. The deposits of the Prevailing Bidder(s) and the Back-up Bidder(s) shall be retained as earnest money to be used in the following ways:

- a. The deposit of a Prevailing Bidder shall either be (i) applied at closing as a credit toward the purchase price of the Prevailing Bidder or, if the purchase price is paid in full at closing, returned to the Prevailing Bidder, (ii) if the sale to the Prevailing Bidder shall fail to timely close by reason of a breach or default of the Prevailing Bidder, the deposit shall be retained by the Seller as liquidated damages, or (iii) in the event that the sale to the Prevailing Bidder shall fail to timely close by reason of a breach or default of the Seller, the deposit shall be returned to the Prevailing Bidder.
- b. The deposit of a Back-up Bidder shall either be (i) returned to the Back-up Bidder upon the closing of the transaction with the Prevailing Bidder, (ii) if the sale to the Prevailing Bidder shall fail to close for any reason, applied at closing as a credit toward the purchase price of the Back-up Bidder, (iii) if the sale to the Back-up Bidder shall fail to timely close by reason of a breach or default of the Back-up Bidder, retained by the Seller as liquidated damages, or (iv) if the sale to the Back-up Bidder shall fail to timely close by reason of a breach or default of the Seller, the deposit shall be returned to the Back-up Bidder.

**20. Closing Date.** Any closing of the sale of the Sale Assets to a Prevailing Bidder must occur as soon as practicable but in any event on or before January 15, 2021 (or such later date as the Debtor, in consultation with the Consultation Parties, may agree). Any closing of the sale of the Sale Assets to a Back-up Bidder must occur on or before February 1, 2021 (or such later date as the Debtor, in consultation with the Consultation Parties, may agree).

**21. Disclaimer.** By submitting an Initial Bid, each Bidder and Qualified Bidder agrees to and acknowledges the following terms and conditions with respect to any information received from the Sellers or SC&H related to the Sale Assets ("Information"):

- (a) The Sale Assets are being offered AS-IS, WHERE-IS, with ALL FAULTS.
- (b) The Information has been prepared:
  - i. for informational purposes only;
  - ii. from materials supplied by the Sellers, local municipalities, and other sources commonly accepted as reliable sources for such type of Information; and
  - iii. to assist Bidders and Qualified Bidders in making their own evaluation of the offering and does not purport to be all-inclusive or to contain all of the information that interested parties may desire. The Sellers, SC&H and their respective officers, directors, employees, affiliates, agents, advisors and representatives (such parties, collectively, "Representatives") have not assumed responsibility for independent verification of any of the information contained herein and have not in fact in any way audited such Information. In all cases, Bidders and Qualified Bidders should conduct their own investigation and analysis of the offering, conduct site inspections, and scrutinize the Information. Bidders and Qualified Bidders should engage legal counsel, accountants, engineers, and/or such other professional advisors as Bidders and Qualified Bidders deem appropriate for evaluating the Sale Assets.
- (c) None of Bidders, Qualified Bidders or their respective Representatives are entitled to rely on the accuracy or completeness of the Information except as provided for in a Bidder's Agreement that is authorized and approved by the Court.
- (d) Although the Sellers and SC&H have endeavored for the Information to contain data which they believe to be relevant for the purpose of any Bidder's or Qualified Bidder's investigation, except as expressly set forth in a Bidder's Agreement accepted by the Seller(s) and approved by the Court, none of the Sellers, SC&H or any of their respective Representatives:
  - i. have made or make and expressly disclaim making any written or oral statements, representations, warranties, promises or guarantees, whether express or implied or by operation of law or otherwise, with respect to the Sale Assets or with respect to the accuracy, reliability or completeness of the Information;
  - ii. to the fullest extent permitted by law, shall have any liability whatsoever to Bidders, Qualified Bidders or their Representatives on any basis (including, without limitation, in contract, tort, under federal, foreign or state securities laws or otherwise) as a result of, relating or pertaining to, or resulting or arising from (i) any Bidder's, any Qualified Bidder's, or any of their Representative's reliance on the Information, (ii) Bidder's, Qualified Bidder's, or their Representatives' use or non-use of the Information, or (iii) any alleged acts or omissions of Sellers, SC&H or any of their respective Representatives, or any errors or omissions in the Information;
  - iii. shall have any liability or responsibility for any decisions made by any Bidder, Qualified Bidder or any of their Representatives in reliance on any Information;

iv. will be under any obligation or duty (express or implied) to make available any Information to any Bidders, any Qualified Bidders, or any of their Representatives; and

v. will be under any duty or obligation (express or implied) to update, supplement, revise or correct any Information disclosed under these Bidding Procedures, regardless of the circumstances.

(e) No contract or agreement providing for any sale shall be deemed to exist between a Bidder or Qualified Bidder and the Seller(s) unless and until a Qualified Bidder and the Seller(s) execute and deliver a Bidder's Agreement that is authorized and approved by the Court, and Bidders and Qualified Bidders hereby waive, in advance, any claims (including, without limitation, breach of contract) in connection with any Sale unless and until a Bidder or Qualified Bidder and the Seller(s) shall have executed and delivered such agreement(s) authorized and approved by the Court. The Debtor reserves the right, in its discretion, in consultation with the Consultation Parties, to reject any and all proposals made by any Bidder or Qualified Bidder with regard to a Sale, and to terminate discussions and negotiations with a Bidder or Qualified Bidder at any time. Subject to the terms of these Bidding Procedures, the Debtor, in consultation with the Consultation Parties, shall be free to establish and change any process or procedure with respect to a Sale as the Debtor in its sole discretion shall determine, in consultation with the Consultation Parties, (including, without limitation, negotiating with any other interested party and entering into a final definitive agreement relating to a Sale with any other party without prior notice to any Bidder, Qualified Bidder or any other person).

(f) The Sellers, SC&H and the Sellers' other advisors, individually and collectively, have not made any representations or warranties except as expressly set forth in any Bidder's Agreement executed by the Seller(s) which has been authorized and approved by the Court. Bidders and Qualified Bidders may rely only on the representations and warranties expressly set forth in such agreements authorized and approved by the Court.

[End of Document]

**Exhibit D**

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

In re: ) Chapter 11  
)  
K&W Cafeterias, Inc., ) Case No. 20-50674  
)  
)  
Debtor. )  
\_\_\_\_\_ )

**SALE NOTICE**

TAKE NOTICE that certain bidding procedures (the “Bidding Procedures”) have been approved and authorized by order (the “Sale Procedures Order”) of the United States Bankruptcy Court for the Middle District of North Carolina (the “Bankruptcy Court”) in the Chapter 11 case of K&W Cafeterias, Inc. (the “Debtor”), designated as Case No. 20-50674 (the “Bankruptcy Case”).

The Bidding Procedures govern the proposed sale (the “Sale”), including any auction (the “Auction”) conducted in connection therewith, of certain assets used in the Debtor’s restaurant operations (the “Sale Assets”) pursuant to the Debtor’s motion for an order authorizing the Sale and granting related relief (the “Sale Motion”).

This Notice and the Sale Hearing (as defined below) is subject to the fuller terms and conditions of the Sale Procedures Order, the Bidding Procedures and the Sale Motion, which shall control in the event of any conflict, and the Debtor encourages parties-in-interest to review such documents in their entirety. A copy of the Sale Procedures Order, the Bidding Procedures, the Sale Motion and the Form APA (i.e., the template asset purchase agreement) may be obtained on written request to the Debtor or its counsel.

**Stalking Horse Designation Deadline.** Any Stalking Horse Bidder must be designated by the Debtor, in consultation with the Official Committee of Unsecured Creditors appointed in the case (the “Committee”) and Truist Bank (“Truist,” and collectively with the Committee, the “Consultation Parties”), and the Stalking Horse Agreement filed with the Court on or before **November 23, 2020.**

**Initial Bid and Bid Deadline.** Any entity that is interested in purchasing the Sale Assets must submit to the Debtor a bid in conformance with the Bidding Procedures (an “Initial Bid”). Any Initial Bid must be delivered to the Debtor’s financial advisor, SC&H Group, Inc. (“SC&H”) by 4:00 o’clock p.m. Eastern, on **December 8, 2020.**

**Auction and Bidding Procedures.** In the event that (a) a Stalking Horse Bidder has been designated and the Debtor receives one or more timely, conforming Initial Bids, or (b) a Stalking Horse Bidder has not been designated and the Debtor receives two or more timely, conforming Initial Bids (the Stalking Horse Bidder, if any, and each person who has submitted such a timely,

conforming Initial Bid, a “Qualified Bidder”), the Debtor, its counsel and SC&H, in consultation with the Consultation Parties, shall conduct the Auction in which only Qualified Bidders may participate. The Auction shall be held on **December 11, 2020**, commencing at 10:00 o’clock a.m. Eastern, at the office of Debtor’s counsel, Northen Blue, LLP, 1414 Raleigh Road, Suite 435, Chapel Hill, North Carolina 27517 (or such other location as may be determined by the Debtor, in consultation with the Consultation Parties, and communicated to all Qualified Bidders at least two (2) business days before the Auction), and shall be governed by the Bidding Procedures.

**Sale Hearing.** The final hearing to approve the Prevailing Bidder and, if one is designated, the Back-up Bidder (the “Sale Hearing”) shall be held before the Bankruptcy Court at 9:30 a.m. Eastern, on **December 16, 2020**, in Courtroom #1, U.S. Bankruptcy Court, 101 S. Edgeworth Street, Greensboro, North Carolina 27401 (which hearing may be held electronically and by telephone as determined by the Court). The Prevailing Bidder and the Back-up Bidder, if designated, shall appear at the Sale Hearing, in person or through a duly authorized representative and not solely through counsel. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest.

**Objection.** Any objection to the Sale Motion, a Statement of Disqualification (as defined in the Bidding Procedures), the Auction, the designation of any Prevailing Bidder or any Back-up Bidder, or entry of the Sale Order (an “Objection”) must be filed with the Bankruptcy Court and served upon (i) counsel for the Debtor, John A. Northen, Northen Blue, LLP, P.O. Box 2208, Chapel Hill, North Carolina 27515-2208; (ii) the Bankruptcy Administrator, William P. Miller, 101 S. Edgeworth Street, Greensboro, North Carolina 27401; (iii) counsel for the Committee appointed in the Bankruptcy Case, Thomas W. Waldrep, Jr., Waldrep Wall Babcock & Bailey PLLC, 1076 W. Fourth Street, Winston-Salem, North Carolina 27101; and (iv) counsel for Truist Bank, Stephen E. Gruendel, Moore & Van Allen PLLC, 100 North Tryon Street, Suite 4700, Charlotte, North Carolina 28202, in a manner such that the Objection is filed and received by such parties and the Court by 4:00 o’clock p.m. Eastern, on **December 15, 2020** (the “Objection Deadline”). The Debtor and other parties-in-interest shall not be required to file responses to any Objection. The foregoing notwithstanding, counterparties to executory contracts and unexpired leases may object to the assumption and assignment of such executory contracts and unexpired leases on the basis of lack of adequate assurance of future performance (but no other basis) by raising such objection at the Sale Hearing.

[End of Document]



**Exhibit E**

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

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>K&amp;W CAFETERIAS, INC.,</b>	)	<b>Case No. 20-50674</b>
	)	
<b>Debtor.</b>	)	
	)	

**NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT OF EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES AND OF CURE AMOUNTS**

TAKE NOTICE that certain bidding procedures (the “Bidding Procedures”) have been approved and authorized by order (the “Sale Procedures Order”) of the United States Bankruptcy Court for the Middle District of North Carolina (the “Bankruptcy Court”) in the Chapter 11 case of K&W Cafeterias, Inc. (the “Debtor”), designated as Case No. 20-50674 (the “Bankruptcy Case”).

The Bidding Procedures govern the proposed sale (the “Sale”), including any auction (the “Auction”) conducted in connection therewith, of certain assets used in the Debtor’s restaurant operations pursuant to the Debtor’s motion for an order authorizing the Sale and granting related relief (the “Sale Motion”). A copy of the Sale Procedures Order, the Bidding Procedures, and the Sale Motion may be obtained on written request to the Debtor or its counsel.

The Bidding Procedures contemplate the possible assumption and assignment of certain executory contracts and unexpired leases (each, a “Contract or Lease”) listed on Exhibit A in conjunction with the Sale and subject to approval at the Sale Hearing (as defined below). If the Debtor assumes a Contract or Lease to which you are a party, the Debtor is required to promptly cure certain defaults under the Contract or Lease as more specifically set forth in the Bankruptcy Code (such defaults which are required to be cured are hereafter referred to as the “Cure Obligations”).

The Debtor believes that, as to each Contract or Lease identified on Exhibit A, upon payment of any amount listed opposite the name of the non-debtor counterparty (the “Cure Amount”), all Cure Obligations as to such Contract or Lease will be satisfied.

Any objection (an “Objection”) to the Cure Amount or to the Debtor’s assumption and assignment of any Contract or Lease (other than on the basis of lack of adequate assurance of future performance by the Prevailing Bidder or Back-up Bidder) must be filed with the Bankruptcy Court and served upon (i) counsel for the Debtor, John A. Northen, Northen Blue, LLP, P.O. Box 2208, Chapel Hill, North Carolina 27515-2208; (ii) the Bankruptcy Administrator, William P. Miller, 101 S. Edgeworth Street, Greensboro, North Carolina 27401; (iii) counsel for the Committee appointed in the Bankruptcy Case, Thomas W. Waldrep, Jr., Waldrep Wall Babcock & Bailey PLLC, 1076 W. Fourth Street, Winston-Salem, North Carolina 27101; and (iv) counsel

for Truist Bank, Stephen E. Gruendel, Moore & Van Allen PLLC, 100 North Tryon Street, Suite 4700, Charlotte, North Carolina 28202, in a manner such that the Objection is filed and received by such parties and the Bankruptcy Court on or before **November 23, 2020** (the “Assignment Objection Deadline”). The Objection must be made in writing and (a) state with specificity the basis for such objection, and (b) if you disagree with the Cure Amount, state what amount you believe is required in order to satisfy the Cure Obligation related to the Contract or Lease to which you are a counterparty. The Debtor and other parties in interest shall not be required to file responses to any Objection.

The final hearing to approve the Prevailing Bidder and the Back-up Bidder, and in conjunction therewith the assumption and assignment of Contracts and Leases (the “Sale Hearing”), shall be held before the Bankruptcy Court at 9:30 a.m. Eastern, on **December 16, 2020**, in Courtroom #1, U.S. Bankruptcy Court, 101 S. Edgeworth Street, Greensboro, North Carolina 27401 (which hearing may be held electronically and by telephone as determined by the Court). If an Objection is timely filed and served, a hearing with respect to the Objection will take place at the Sale Hearing. If an Objection is not timely filed and served, the counterparty to such Contract or Lease will: (a) be forever barred from objecting to the Cure Amount and from asserting any additional Cure Obligations, and (b) be forever barred and estopped from asserting or claiming against the Debtor or the assignee of such Contract or Lease that any additional Cure Obligations are due, or conditions to assumption and assignment (other than demonstration of adequate assurance of future performance) must be satisfied with respect to such Contract or Lease in order for such Contract or Lease to be assumed and assigned.

After the Auction, the Debtor will file, but not serve, a notice that identifies the Prevailing Bidder and any Back-up Bidder.

If the Prevailing Bidder and/or Back-up Bidder propose to have the Debtor assume and assign to such Bidder a Contract or Lease to which you are a counterparty, you will have the opportunity to evaluate and, if necessary, challenge the ability of such Bidder to provide adequate assurance of future performance under such Contract or Lease, whether or not you file an Objection, by appearing at the Sale Hearing and stating such objection on the record. At the Sale Hearing, the Debtor will present evidence necessary to demonstrate adequate assurance of future performance by such Bidder.

YOU WILL NOT RECEIVE A NOTICE BETWEEN THE DATE OF THE AUCTION AND THE SALE HEARING ADVISING WHETHER THE CONTRACT OR LEASE TO WHICH YOU ARE A PARTY HAS BEEN DESIGNATED FOR ASSUMPTION AND ASSIGNMENT TO THE PREVAILING BIDDER AND/OR BACK-UP BIDDER. WHILE THERE IS NO CERTAINTY THAT ANY PARTICULAR CONTRACT OR LEASE WILL BE DESIGNATED FOR ASSUMPTION AND ASSIGNMENT, IF YOU HAVE ANY OBJECTION TO THE ASSUMPTION AND ASSIGNMENT OF YOUR CONTRACT OR LEASE, YOU (1) MUST FILE A TIMELY OBJECTION AS SET FORTH HEREIN, AND (2) AS TO ANY OBJECTIONS BASED ON LACK OF ADQUATE ASSURANCE OF FUTURE PERFORMANCE, APPEAR AT THE SALE HEARING.

[End of Document]