



IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.

Dated: February 19, 2020.

**TONY M. DAVIS
UNITED STATES BANKRUPTCY JUDGE**

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE:	§	
	§	
900 Cesar Chavez, LLC,	§	Case No. 19-11527-tmd
	§	
905 Cesar Chavez, LLC,	§	Case No. 19-11528-tmd
	§	
5th and Red River, LLC,	§	Case No. 19-11529-tmd
	§	
7400 South Congress, LLC,	§	Case No. 19-11530-tmd
	§	
Debtors.	§	<i>(Jointly Administered Under</i>
	§	<i>Case No. 19-11527-tmd)</i>

AMENDED ORDER REGARDING 900 CESAR CHAVEZ, LLC, 905 CESAR CHAVEZ, LLC, AND 5TH AND RED RIVER, LLC APPROVING (A) BID PROCEDURES, INCLUDING PROCEDURES FOR SELECTION OF STALKING HORSE PURCHASERS, (B) PROCEDURES FOR ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND RELATED NOTICES, (C) NOTICE OF AUCTION, STALKING HORSE HEARING AND SALE HEARING, AND (D) RELATED RELIEF

Came on for consideration the motion (the "*Motion*")¹ of Debtors 900 Cesar Chavez, LLC, 905 Cesar Chavez, LLC and 5th and Red River, LLC, as debtors and debtors-in-possession

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

(“**Debtors**”), for an order pursuant to sections 105, 363, 365, 503 and 506 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Practice and Procedure (the “**Bankruptcy Rules**”), (i) approving the bid procedures (the “**Bid Procedures**,” attached hereto as **Exhibit 1**) for the sale of real estate and related assets owned by Debtors² (each, a “**Property**” and collectively the “**Properties**”), including the procedures for selecting a Stalking Horse Purchaser, (ii) approving the procedures for the assumption, assignment, and sale of executory contracts and unexpired leases, including notice of proposed cure costs (the “**Assumption and Assignment Procedures**”), (iii) establishing a date for an auction (the “**Auction**”) if the Debtors receive one or more timely and acceptable Qualified Bids, a hearing to approve the Debtors’ selection of a Stalking Horse Purchaser, if any, and the provision of bid protections to such Stalking Horse Purchaser (the “**Bid Protections**”), if any, (the “**Stalking Horse Hearing**”), and a final hearing (the “**Sale Hearing**”) to approve the sale of the Property (or Properties) (the “**Sale Transaction**”), (iv) approving the form and manner of notice of the Auction, Stalking Horse Hearing, Sale Hearing, and the Assumption and Assignment Procedures, and (v) granting related relief, and the Court having determined that notice of the Motion was adequate and sufficient; and all parties having been afforded due process and an opportunity to be heard with respect to the Motion and all the relief requested therein; and the Court having reviewed and considered: (i) the Motion; (ii) the objections and responsive pleadings filed in connection with the Motion, if any; and (iii) the representations of counsel made and the evidence proffered at the hearing to approve the Motion (the “**Bid Procedures Hearing**”); and the Bid Procedures Hearing having been held, and after due deliberation and sufficient cause appearing therefor, hereby finds and determines that:

² The Property owned by Debtor 7400 South Congress, LLC is the subject of a similar but separate sale motion that was filed on February 3, 2020 [Dkt. No. 95] and is not otherwise addressed herein.

A. This Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the consideration of the Motion and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157(b), and venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for relief sought in the Motion are sections 105(a), 363, 365, 503, and 506 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006.

C. The legal and factual bases set forth in the Motion establish just cause for the relief granted herein. The entry of this Order is in the best interests of the Debtors, their estates and creditors, and other parties in interest.

D. The notice of the Motion, the Bid Procedures Hearing, and the proposed entry of this Order was adequate and sufficient under the circumstances of these chapter 11 cases, and such notice complied with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. Accordingly, no further notice of the Motion, the Bid Procedures Hearing, or this Order is necessary or required.

E. The Debtors have articulated good and sufficient reasons for the Court to (i) approve the Bid Procedures for the sale of the Properties, including the procedures for selecting a Stalking Horse Purchaser, (ii) approve the Assumption and Assignment Procedures, (iii) establish a date for the Auction, the Stalking Horse Hearing, and the Sale Hearing, (iv) approve the form and manner of notice of the Auction, Stalking Horse Hearing, Sale Hearing, and the Assumption and Assignment Procedures, and (v) grant related relief. Such good and sufficient reasons were set forth in the Motion and on the record at the Bid Procedures Hearing, are incorporated by reference herein and, among other things, form the basis for the findings of fact and conclusions of law set forth herein.

F. The proposed *Notice of Auction, Stalking Horse Hearing and Sale Hearing* (the “*Sale Notice*,”) substantially in the form attached hereto as **Exhibit 2**, and the proposed *Notice of Assumption and Assignment* to be served on the Contract Notice Parties (as defined herein) (the “*Notice of Assumption and Assignment*,”) substantially in the form attached hereto as **Exhibit 3**, are each calculated to provide adequate notice concerning the proposed sale of the Assets and the proposed assumption, assignment, and sale of the Debtors’ executory contracts and unexpired leases (the “*365 Contracts*”), and will provide due and adequate notice of the relief sought in the Motion.

G. The Debtors have demonstrated that the Bid Procedures are fair, reasonable, and appropriate and are designed to maximize the value of the Debtors’ estates.

H. The findings of fact and conclusions of law herein constitute the Court’s findings of fact and conclusions of law for the purposes of Bankruptcy Rule 7052, made applicable pursuant to Bankruptcy Rule 9014. To the extent any findings of facts are conclusions of law, they are adopted as such. To the extent any conclusions of law are findings of fact, they are adopted as such.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** to the extent set forth herein.
2. All Objections to the relief requested in the Motion, if any, that have not been withdrawn, waived, settled or ruled upon as announced to the Court at the Bid Procedures Hearing are denied and overruled in their entirety except as otherwise set forth herein.
3. The Bid Procedures are hereby approved in their entirety in the form attached hereto as **Exhibit 1**. All actions of the Debtors as authorized herein may be taken by any officer or director of the Debtors. Notwithstanding the foregoing, the consummation of the Sale Transaction shall remain subject to the entry of the Sale Order.

4. The Debtors may proceed with the Sale Transaction in accordance with the Bid Procedures and are authorized to take any and all actions necessary or appropriate to implement the Bid Procedures. Furthermore, upon approval of the Court, the Debtors, in their sole discretion, may elect at any time to remove any or all Properties from the market or extend the deadlines proscribed by the Bid Procedures, after notice to ATX Lender 5, LLC (“*ATX*” or the “*Lender*”).

5. The process for submitting Qualified Bids (as defined in the Bid Procedures) is fair, reasonable and appropriate and is designed to maximize recoveries for the benefit of the Debtors’ estates, their creditors and other parties in interest. Any disputes as to the selection of a Qualified Bid, Initial Highest Bid and/or Successful Bid (all as defined in the Bid Procedures) shall be resolved by this Court.

6. The Debtors are authorized to conduct the Auction in the event they receive one or more timely and acceptable Qualified Bids. The Auction is necessary to ensure that the Debtors receive the highest or best purchase offer for the Properties, thus maximizing value to the Debtors’ estates and resulting distributions to their creditors.

7. Subject to further Court approval at the Stalking Horse Hearing, the Debtors are authorized to enter into one or more Stalking Horse Agreement(s) and to provide Bid Protections to such Stalking Horse Purchaser(s), including any potential break-up fee agreed to by the Debtors and any Stalking Horse Purchaser. Any and all Potential Bidders interested in becoming a Stalking Horse Purchaser must submit a Qualified Bid³ (other than the requirement to submit a Modified Sales Contract) by April 1, 2020 by 5:00 p.m. (prevailing Central Time).

8. The Debtors shall designate Stalking Horse Purchasers by April 6, 2020 at 5:00 p.m. (prevailing Central Time). In the event that the Debtors designate a Stalking Horse Purchaser(s),

³ The Lender will be deemed to be a Qualified Bidder and retain its rights to credit bid for the applicable Property, as more fully set forth in the Bid Procedures.

the Court shall conduct the Stalking Horse Hearing on April 10, 2020 or at such other time as the Court determines to consider the approval of any such Stalking Horse Purchaser, Stalking Horse Agreement, and accompanying Bid Protections, if any, on an expedited basis. Any and all objections to any Stalking Horse Purchaser, Stalking Horse Agreement, or Bid Protections must be filed by 5:00 p.m. (prevailing Central Time) on April 8, 2020.

9. In the event that the Debtors have not designated a Stalking Horse Purchaser on or before the Stalking Horse Bid Deadline, the Debtors may designate a Stalking Horse Purchaser at a later date. Should the Debtors designate a Stalking Horse Purchaser following the expiration of the Stalking Horse Bid Deadline, Debtors shall file and serve a notice on the Sale Notice Parties and request that a Stalking Horse Hearing be set on an expedited basis and, further, that an objection deadline be set for filing any and all objections to any such Stalking Horse Purchaser, with such objection deadline to be no fewer than two (2) business days before the proposed date for the Stalking Horse Hearing.

10. Upon the selection of a Stalking Horse Purchaser, the Debtors shall file and serve a notice on the Sale Notice Parties (as defined below) that includes: (i) the identity of the proposed Stalking Horse Purchaser, (ii) a summary of the key terms of the Stalking Horse Agreement, (iii) a summary of the type and amount of Bid Protections, if any, being offered the proposed Stalking Horse Purchaser, (iv) a summary of any necessary modifications or amendments to the Bid Procedures, and (v) a copy of each Stalking Horse Agreement.

11. The form of Sale Notice attached hereto as **Exhibit 2** is hereby approved.

12. On the later of February 14, 2020 or within three (3) days after the Court enters this Order, the Debtors (or their agents) shall serve the Sale Notice by first class United States mail on (i) the Office of the United States Trustee for the Western District of Texas (the "**U.S. Trustee**");

(ii) the Lender, (iii) all entities known by the Debtors to have asserted any lien, claim, encumbrance, or other interest in the Property or Properties (for whom identifying information and addresses are available to the Debtors); (iv) all non-Debtor parties to the 365 Contracts (for whom identifying information and addresses are available to the Debtors), if any; (v) any Governmental Authority known to have a claim in the bankruptcy cases; (vi) all parties who have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002; (vii) all of the Debtors' known creditors; and (viii) all other Persons known to Debtors that have expressed an interest in purchasing the Property (or Properties) and as directed by the Court (for whom identifying information and addresses are available to the Debtors) (collectively, the "*Sale Notice Parties*").

13. Service of the Sale Notice as approved and set forth herein shall be deemed proper, due, timely, good, and sufficient notice of, among other things, the entry of this Order, the Bid Procedures, the Auction, the Stalking Horse Hearing, the Sale Hearing, the Objection Deadlines, and the proposed Sale Transaction, including the transfer of the Debtors' right, title and interest in, to and under the Debtors' assets free and clear of any and all liens, claims, encumbrances, and other interests, and no other or further notice is necessary.

14. The form of Notice of Assumption and Assignment attached hereto as **Exhibit 3** is approved. In combination with the Sale Notice, the Notice of Assumption and Assignment (i) contains the type of information required under Bankruptcy Rule 2002 that is currently known to the Debtors and (ii) is reasonably calculated to provide due, adequate and timely notice to all counterparties of (a) the assumption and assignment of the 365 Contracts and rights thereunder, (b) once designated by a Qualified Bidder as a contract that such bidder desires to assume, the maximum amount and manner offered to satisfy the Cure Costs, and (c) the deadline to file objections to such assumption and assignment, applicable cure costs (if designated by a Qualified

Bidder as a contract that they wish to assume), the existence of any defaults, and/or adequate assurance of future performance.

15. By no later than five (5) business days following the Auction, the Debtors shall file with the Court and serve via first class mail on all counterparties to any of the Debtors' executory contracts and unexpired leases (together, the "**365 Contracts**") and all parties who have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002 (collectively, the "**Contract Notice Parties**") a notice of assumption, assignment and sale substantially in the form of the Notice of Assumption and Assignment attached to this Order as **Exhibit 3** if any executory contract or unexpired leases are being assigned.

16. If at any time after the entry of the Sale Order, the Debtors identify additional prepetition executory contracts or unexpired leases to be assumed and assigned to the Purchaser(s), the Debtors shall serve a supplemental notice of assumption and assignment (the "**Supplemental Assumption and Assignment Notice**") by facsimile, electronic transmission, hand delivery or overnight mail on the counterparty (and its attorney, if known) to each supplemental 365 Contract at the last known address available to the Debtors by no later than ten (10) days before the proposed effective date of the assignment.

17. Any counterparty to a 365 Contract shall file and serve on the Objection Recipients (as defined below) any objections to (a) the proposed assumption, assignment and sale of the 365 Contracts (and must state in its objection, with specificity, the legal and factual basis thereof) and (b) if applicable, the proposed Cure Costs (and must state in its objection, with specificity, what Cure Costs are required with appropriate documentation in support thereof) no later than one week following the filing and service of the Notice of Assumption and Assignment (the "**Assumption and Assignment Objection Deadline**") and, together with the Sale Objection Deadline (as defined

herein), the “**Objection Deadlines**”). The “**Objection Recipients**” are (i) the U.S. Trustee, Attn: Deborah A. Bynum, 903 San Jacinto Blvd., Suite 230, Austin, TX 78701, Deborah.A.Bynum@usdoj.gov, (ii) counsel to the Debtors, Waller Lansden Dortch & Davis, LLP, Morris Weiss, 100 Congress Avenue, 18th Floor, Austin, Texas 78701, morris.weiss@wallerlaw.com; (iii) counsel to the Lender, (a) Locke Lord LLP, Attn: W. Steven Bryant, 600 Congress Ave., Ste. 2200, Austin, TX 78701, SBryant@lockelord.com and (b) Locke Lord LLP, Attn: C. Davin Boldissar, 601 Poydras Street, Suite 2660, New Orleans, LA 70130, dboldissar@lockelord.com, and (iv) if applicable, any Stalking Horse Purchaser selected by the Debtors.

18. If a counterparty to a 365 Contract files a timely objection asserting a higher cure than the maximum Cure Costs set forth in the notice set forth herein, and the parties are unable to consensually resolve the dispute prior to the hearing to resolve any such objection (one week following the Assumption and Assignment Objection Deadline) (the “**Assumption/Assignment Hearing**”), the amount to be paid or reserved with respect to such objection will be determined at the Assumption/Assignment Hearing. All other objections to the proposed assumption and assignment of the Debtors’ right, title, and interest in, to and under the 365 Contracts, if it is ultimately designated a 365 Contract that the Purchaser proposes be assumed, assigned, and sold to it in connection with the transaction (a “**Desired 365 Contract**”), will also be heard at the Assumption/Assignment Hearing, unless the Desired 365 Contract has not been identified until after the Auction, in which event any determination (including the resolution of any dispute with respect to Cure Costs) shall be determined within thirty (30) days after the Closing.

19. If no objection is timely filed and served, the counterparty to a 365 Contract shall be deemed to have consented to the assumption, assignment and sale of the 365 Contract to the

Purchaser(s) if such 365 Contract is designated by the Purchaser(s) as a Desired 365 Contract and shall be forever barred from asserting any objection with regard to such assumption, assignment and sale, except with respect to the adequate assurance of future performance by the Purchaser(s). Any objections to any Purchaser's proposed form of adequate assurance of future performance must be raised at the Assumption/Assignment Hearing and shall be resolved at the Assumption/Assignment Hearing. The Cure Costs set forth in the Notice of Assumption and Assignment shall be controlling, notwithstanding anything to the contrary in any 365 Contract, or any other document, and the counterparty to the 365 Contract shall be deemed to have consented to the Cure Costs and shall be forever barred from asserting any other claims related to such 365 Contract against the Debtors or the Purchaser, or the property of any of them.

20. Any and all objections, if any, to any Sale Transaction (which are fully reserved), including, without limitation, objections under Bankruptcy Code Section 363 and objections to the Auction and to the selection of any Purchaser(s), must be filed by 5:00 p.m. (prevailing Central Time) on May 6, 2020 (the "***Sale Objection Deadline***") and be served on the Objection Recipients.

21. Any party failing to timely file an objection to any Sale Transaction shall be forever barred from objecting and shall be deemed to have consented to any Sale Transaction, including the transfer of the Debtors' right, title, and interest in, to the Property (or Properties) free and clear of any and all liens, claims, encumbrances, and other interests in accordance with a definitive agreement for a Sale Transaction.

22. Any party desiring to submit a bid for the Debtors' right, title and interest in, to and the Property (or Properties) must comply with the Bid Procedures. Only representatives of the Debtors, the Lender, and holders of Qualified Bids shall be entitled to bid at the Auction.

23. By May 1, 2020, the Debtors shall make a determination regarding whether a bid is a Qualified Bid and shall notify all bidders whether their bids have been determined to be Qualified Bids and shall provide notice to Lender of all such determinations. The Debtors, in consultation with the Broker, shall take reasonable steps to ensure the confidentiality of the bidders in communicating such information to the Lender which shall include proof satisfactory to the Debtors of the financial ability of the bidders to perform. To the extent the Lender desires to contest the Debtor's determination that a party (or parties) other than the Stalking Horse Purchaser should be a Qualified Bidder (or Qualified Bidders), the Lender shall have until May 4, 2020 (the "***Bidder Objection Deadline***") to file an objection to such determination.. If the Lender files such an objection by the Bidder Objection Deadline, then the Court shall conduct a hearing to determine whether the contested bidder(s) is (are) a Qualified Bidder(s) on May 11, 2020 at 9:00 a.m. (prevailing Central Time).

24. To the extent that one or more timely and acceptable Qualified Bids are received, the Debtors shall conduct an Auction on May 13, 2020 at 9:00 a.m. (prevailing Central time) in open Court. The Debtors have the sole right to adjourn or cancel the Auction at or prior to the Auction.

25. The Debtors may terminate discussions with any and all prospective acquirers at any time and without specifying the reasons therefor, but only to the extent not materially inconsistent with the Bid Procedures. To the extent the Debtors believe it is advisable to change or modify deposit amounts and to modify or eliminate the requirements with respect to Back-Up Bidders, the Debtor shall seek approval of the Court for such purposes.

26. Upon approval of the Court, the Debtor may make alterations to the Bid Procedures.

27. The Sale Hearing shall be take place immediately following the Auction (if required) at the Bankruptcy Court, 903 San Jacinto, Austin, Texas 78701, Courtroom #1 before the Honorable Tony Davis on May 13, 2020 at 9:00 a.m. (prevailing Central Time).

28. Notwithstanding Bankruptcy Rules 6004, 6006 or otherwise, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. To the extent applicable, the stays described in Bankruptcy Rules 6004(h) and 6006(d) are hereby waived.

29. The terms of this Order shall control to the extent of any conflict with the Motion.

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

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ORDER SUBMITTED BY:
Waller Lansden Dortch & Davis LLP
Morris D. Weiss
State Bar No. 21110850
100 Congress Avenue, Suite 1800
Austin, Texas 78701
(512) 685-6400
(512) 685-6417 (FAX)
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COUNSEL FOR DEBTORS

Exhibit 1

Bid Procedures

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE:	§	
	§	
900 Cesar Chavez, LLC,	§	Case No. 19-11527-tmd
	§	
905 Cesar Chavez, LLC,	§	Case No. 19-11528-tmd
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5th and Red River, LLC,	§	Case No. 19-11529-tmd
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7400 South Congress, LLC,	§	Case No. 19-11530-tmd
	§	
Debtors.	§	<i>(Jointly Administered Under</i>
	§	<i>Case No. 19-11527-tmd)</i>

**BID PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL
OR A PORTION OF THE DEBTORS’ ASSETS**

900 Cesar Chavez, LLC, 905 Cesar Chavez, LLC and 5th and Red River, LLC, as debtors and debtors-in-possession (collectively, the “**Debtors**”), set forth the following bid procedures (the “**Bid Procedures**”) to be employed in connection with an auction, if the Debtors receive one or more timely Qualified Bids (the “**Auction**”), for the sale of real estate and certain related assets owned by the Debtors¹ (each, a “**Property**” and collectively the “**Properties**”). At a hearing following the Auction (the “**Sale Hearing**”), the Debtors will seek the entry of an order (the “**Sale Order**”) from the United States Bankruptcy Court for the Western District of Texas, Austin Division (the “**Court**”) authorizing and approving the sale of the Property (or Properties) among the Debtors and the Qualified Bidder(s) (as defined herein) that the Debtors determine to have made the highest or otherwise best bid (a “**Purchaser(s)**”). These Bid Procedures have been approved and authorized pursuant to the *Amended Order Approving (A) Bid Procedures, Including Procedures for Selection of Stalking Horse Purchaser, (B) Procedures for Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Related Notices, (C) Notice of Auction, Stalking Horse Hearing, and Sale Hearing, and (D) Related Relief* (the “**Bid Procedures Order**”) entered by the Court on [DATE], 2020.

A. Approvals

The proposed sale(s) shall in all respects be subject to approval by the Court and in compliance with: (i) the applicable provisions of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”); (ii) the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”); and (iii) other applicable rules and law, including, without limitation, the Local Rules of

¹ The Property owned by Debtor 7400 South Congress, LLC is the subject of a similar but separate sale motion that was filed on February 3, 2020 [Dkt. No. 95] and is not otherwise addressed herein.

Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Western District of Texas (the “*Local Rules*”) and Orders of the Court.

B. Assets to Be Sold

The Auction shall consist of one or more Property² and all improvements made to the Property (or Properties) and all materials located at the Property (or Properties) owned by Debtors.

C. Preliminary Diligence

Upon execution of a valid confidentiality agreement, in form and substance satisfactory to the Debtors, any prospective bidder (each, a “*Potential Bidder*”) identified by the Debtors as reasonably likely to be a Qualified Bidder (as defined herein) that wishes to conduct due diligence on the Property (or Properties) may be granted access to the Property (or Properties).

If a Stalking Horse Purchaser is designated, any other Potential Bidder must complete its due diligence by the Bid Deadline. If a Stalking Horse Purchaser is not designated, any bidder(s) determined by the Debtors to have made the highest or otherwise best bid (“*Purchaser*”) must complete its due diligence prior to the Sale Hearing. There shall be no other provision for the completion of due diligence after the Bid Deadline.

D. Bid Deadline

Any person or entity interested in participating in the Auction must submit a Qualified Bid (as defined herein) by 5:00 p.m. (prevailing Central Time) on April 27, 2020 (the “*Bid Deadline*”) in writing, to (i) the attorneys for the Debtors, Waller Lansden Dortch & Davis LLP, Attn: Morris D. Weiss, 100 Congress Avenue, 18th Floor, Austin, Texas 78701, morris.weiss@wallerlaw.com and (ii) McAllister & Associates, Attn: Daniel Tristan, 201 Barton Springs Road, Austin, Texas 78704, dani@matexas.com. The Debtors may, with the consent of any designated Stalking Horse Purchaser, if any, extend the Bid Deadline, but shall promptly notify the Stalking Horse Purchaser, the Lender and all Potential Bidders of any such extension.

E. Potential Stalking Horse Bid

The Debtors will entertain the possibility of entering into a Stalking Horse Agreement with a Qualified Bidder. Any and all Potential Bidders interested in becoming a Stalking Horse Purchaser must submit a Qualified Bid (other than the requirement to submit a Modified Sales Contract) by April 1, 2020 by 5:00 p.m. (prevailing Central Time) (the “*Stalking Horse Bid Deadline*”). Any Stalking Horse Purchasers may be so designated by the Debtors by 5:00 p.m. (prevailing Central Time) on April 6, 2020.

If the Debtors enter into an agreement with a Stalking Horse Purchaser, the Debtors will file and serve notice of the proposed Stalking Horse Agreement on the Sale Notice Parties (as defined in the Bid Procedures Order). The notice will include (i) the identity of each proposed Stalking Horse Purchaser selected, (ii) a summary of the key terms of each Stalking Horse Agreement, (iii) a

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bid Procedures Order.

summary of the type and amount of Bid Protections, if any, being offered to each proposed Stalking Horse Purchaser, (iv) a summary of any necessary modifications or amendments to the Bid Procedures, and (v) a copy of each Stalking Horse Agreement. The Debtors will request that the Court set a hearing on April 10, 2020 to approve the Stalking Horse Purchaser, Stalking Horse Agreement, and accompanying Bid Protections, if any, on an expedited basis.

In the event that the Debtors have not designated a Stalking Horse Purchaser on or before the Stalking Horse Bid Deadline, the Debtors may designate a Stalking Horse Purchaser at a later date. Should the Debtors designate a Stalking Horse Purchaser following the expiration of the Stalking Horse Bid Deadline, Debtors shall file and serve a notice on the Sale Notice Parties and request that a Stalking Horse Hearing be set on an expedited basis and, further, that an objection deadline be set for filing any and all objections to any such Stalking Horse Purchaser, with such objection deadline to be no fewer than two (2) business days before the proposed date for the Stalking Horse Hearing.

In certain circumstances, the Debtors may determine that it is appropriate to provide the Stalking Horse Purchaser with Bid Protections, including a break-up fee or expense reimbursement. All Bid Protections will be negotiated at arm's length with Potential Bidders and with the intent of maximizing the value to be received by the Debtors' estates, and the Debtors shall provide evidence at the Stalking Horse Hearing to the extent necessary to prove that the Bid Protections are appropriate under the circumstances and should be approved by the Court. Any objections to the approval of any Stalking Horse Purchaser, Stalking Horse Agreement, and Bid Protections must be filed by 5:00 p.m. (prevailing Central Time) on April 8, 2020.

Any Stalking Horse Purchaser approved at the Stalking Horse Hearing shall be deemed to be a Qualified Bidder, and any Modified Sales Contracts (as defined herein) and the transactions contemplated thereby shall be deemed to be Qualified Bids for all purposes.

F. Qualified Bids

To participate in the bidding process and be deemed a "*Qualified Bidder*," each Potential Bidder must submit a "*Qualified Bid*" by the Bid Deadline. To constitute a Qualified Bid, a bid must:

- (a) be in writing;
- (b) identify the Property (or Properties);
- (c) include a proposed list of the Debtors' 365 Contracts that the Potential Bidder proposes be assumed, assigned, and sold to it in connection with the transaction, if any, (the "*Desired 365 Contracts*") and proposed adequate assurance of future performance;
- (d) fully disclose the legal identity of each entity that will be bidding or otherwise participating in connection with such bid for the Property or otherwise participating in connection with such bid, and the complete terms of any such participation, as well as its officers or directors and its beneficial owners, and indicate whether they have any relationship with the Lender;

- (e) fully disclose any connections or agreements with the Debtors, any other known Potential Bidder or Qualified Bidder, and/or any officer or director of the Debtors;
- (f) provide an irrevocable offer in the form of an executed copy of an Sales Contract (with any modifications, the “*Modified Sales Contract*”), including all exhibits and schedules contemplated thereby (other than exhibits and schedules that by their nature must be prepared by the Debtors);
- (g) include a marked copy of the Modified Sales Contract reflecting the differences between the Modified Sales Contract and the Sales Contract;
- (h) state that such bidder is financially capable of consummating the transactions contemplated by the Modified Sales Contract and detail the source(s) of funds that will be used to consummate the transactions;
- (i) include satisfactory evidence of committed financing or other financial ability to consummate the transactions contemplated by the Modified Sales Contract in a timely manner;
- (j) expressly acknowledge and represent that the Potential Bidder (i) has had an opportunity to conduct any and all due diligence regarding the Property (or Properties) prior to making its bid (unless the bidder (a) has been designated a Stalking Horse Purchaser, in which case such bidder must perform any and all due diligence by the Competing Bid Deadline, or (b) the Debtors have not designated a Stalking Horse Purchaser, in which case any Purchaser at the Auction may perform any and all due diligence until the time of the Sale Hearing, (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and the Property (or Properties) in making its Bid, and (iii) 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 Property (or Properties) or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Modified Sales Contract ultimately accepted and executed by the applicable Debtor;
- (k) not contain any financing contingencies of any kind;
- (l) not contain any condition to closing of the transaction on the receipt of any third party approvals (excluding required Court approval and any required governmental and/or regulatory approval, if any);
- (m) include evidence of authorization and approval from the bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Modified Sales Contract;

- (n) be able to close the Sale Transaction within fourteen (14) business days following the Auction; and
- (o) include a good faith deposit (the “*Good Faith Deposit*”) in the form of a certified or bank check (or other form acceptable to the Debtors in their sole and absolute discretion) payable to the order of the Debtor owning the Property sought to be purchased, and if more than one Property is included within the Good Faith Deposit, then payable to the Debtor identified by the Debtors, in an amount no less than three percent (3%) of the purchase price offered to purchase the Assets. All Good Faith Deposits shall be held in a segregated account by the Debtors until no later than ten (10) days after the Sale Hearing and thereafter returned to the respective bidders in accordance with these Bid Procedures, unless the bidder has been selected as the Back-Up Bidder (as defined herein).

The Debtors shall make a determination regarding whether a bid is a Qualified Bid and shall notify bidders, with notice to Lender, whether their bids have been determined to be Qualified Bids by 5:00 p.m. (prevailing Central Time) on May 1, 2020. To the extent a Stalking Horse Purchaser is designated, the Stalking Horse Purchaser will be deemed a Qualified Bidder, and any Stalking Horse Agreement will constitute a Qualified Bid for all purposes.

Notwithstanding the preceding paragraph, to the extent the Lender desires to contest the Debtors’ determination that a party (or parties) should be deemed a Qualified Bidder (or Qualified Bidders), the Lender shall have until May 4, 2020 (the “*Bidder Objection Deadline*”) to file an objection to such determination. If the Lender files such an objection by the Bidder Objection Deadline, then the Court shall conduct a hearing to determine whether the contested bidder(s) is (are) a Qualified Bidder(s) on May 11, 2020 at 9:00 a.m. (prevailing Central Time).

G. Credit Bid

The Lender may submit a credit bid (the “*Credit Bid*”) pursuant to section 363(k) of the Bankruptcy Code. The Credit Bid shall be deemed a Qualified Bid, but is subject to the applicable requirements under Paragraph F of the Bid Procedures (i) with requirements (a), (b), (c), (f) and (l) of Paragraph F being applicable to the Credit Bid and (ii) (with requirements (d), (e), (h), (i), (j), (k), (m), (n), and (o) of Paragraph F all being inapplicable to the Credit Bid).

H. Auction, Auction Procedures, and Overbids

In the event that the Debtors receive one or more timely bids that are determined to be Qualified Bids with an acceptable purchase price, the Debtors shall conduct the Auction. The Auction, if required, will be held on May 13, 2020 at 9:00 a.m. (prevailing Central time) in open Court. The Debtors have the sole right to adjourn or cancel the Auction at or prior to the Auction.

The Auction shall be governed by the following procedures, subject to modification by the Debtors at the Auction:

- (a) The Qualified Bidders shall appear in person at the Auction, or through a duly authorized representative.

- (b) Only representatives of the Debtors, the Lender, and the holders of Qualified Bids may attend the Auction.
- (c) Only the Qualified Bidders (including the Lender if the Lender is submitting a Credit Bid) shall be entitled to make any subsequent bids at the Auction.
- (d) Each Qualified Bidder (including the Lender if the Lender is submitting a Credit Bid) shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale.
- (e) Bidding shall commence at the amount of the Stalking Horse Bid, or if there is no Stalking Horse Bid, the Qualified Bid that the Debtors determine in its business judgment to be the highest or best Qualified Bid (the “**Initial Highest Bid**”).
- (f) Qualified Bidders (including the Lender if the Lender is submitting a Credit Bid) may then submit successive bids higher than the previous bid, based on and increased from the Initial Highest Bid, in increments of \$50,000. The Debtors (in consultation with the Broker) reserve the right, in their discretion and subject to the exercise of their business judgment, to announce reductions or increases in minimum incremental bids at any time during the Auction. All Qualified Bidders shall have the right to submit additional bids and make additional modifications to the Sales Contract or their respective Modified Sales Contract, as applicable, at the Auction to improve such bids. The Auction may include individual negotiations with the Qualified Bidders and/or open bidding in the presence of all other Qualified Bidders.
- (g) The Debtors reserve the right to (x) determine, in their reasonable discretion, which bid is the highest or otherwise best and (y) reject at any time, without liability, any offer that the Debtors, in their reasonable discretion, deem to be (1) inadequate or insufficient, (2) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or procedures set forth therein or in the Bid Procedures Order, or (3) contrary to the best interests of the Debtors and the estates.
- (h) The Auction among Qualified Bidders shall continue according to these procedures until the Debtors determine, subject to Court approval at the Sale Hearing, that the Debtors have received the Successful Bid. In making this decision, the Debtors may consider, without limitation, the amount of the purchase price, the form of consideration being offered, the likelihood of the Qualified Bidder’s ability to close a given transaction, the proposed timing thereof, and rights of such Qualified Bidder and the Debtors with respect to the termination thereof, the number, type and nature of any changes reflected in the Modified Sales Contract requested by each Qualified Bidder, and the net benefit to the Debtors’ estates. The Qualified Bidder submitting the Successful Bid(s) for the Property (or Properties) shall become the

Purchaser(s) and shall have such rights and responsibilities of a purchaser, as set forth in the Modified Sales Contract or Sales Contract, as applicable.

Bids made after the close of the Auction shall not be considered by the Debtors. All Qualified Bidders at the Auction shall be deemed to have consented to the exclusive jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction.

Within one week following the Auction, the Debtors shall cause the results of the Auction, including a copy of the Successful Bid, the identity of the Purchaser, and the Purchaser's proposed form of adequate assurance of future performance, to be filed with the Bankruptcy Court.

I. Back-Up Bidder and Return of Good Faith Deposits

If an Auction is conducted, the Qualified Bidder with the next highest or otherwise best Qualified Bid for the Property (or Properties) at the Auction (the "**Back-Up Bid**") shall be required to serve as the back-up bidder (the "**Back-Up Bidder**") and keep such Back-Up Bid open and irrevocable until the first to occur of (i) sixty (60) days after the completion of the Auction, (ii) consummation of the transaction with the Purchaser, or (iii) the Back-Up Bidder's receipt of notice from the Debtors of the release by the Debtors of the Back-Up Bidder's obligations. Following the Sale Hearing, if the Purchaser fails to consummate an approved Sale Transaction because of a breach or failure to perform on the part of such Successful Bidder or otherwise, the Back-Up Bidder will be deemed to be the new Purchaser, and the Debtors will be authorized, but not required, to consummate the sale with the Back-Up Bidder without further order of the Court.

Except as provided herein, Good Faith Deposits shall be returned without interest to each bidder not selected by the Debtors as the Purchaser or the Back-Up Bidder by no later than the tenth (10th) business day following the conclusion of the Auction. The Good Faith Deposit of the Back-Up Bidder shall be held by the Debtors until ten (10) business days after the closing of the Sale Transaction with the Purchaser or termination of the Back-Up Bid as provided above.

J. Reservation of Rights

The Debtor reserves the right, in its sole and absolute discretion and subject to the exercise of its business judgment, to terminate discussions with any and all prospective acquirers at any time and without specifying the reasons therefor. Subject to the approval of the Court, the Debtor may make alterations to these Bid Procedures.

K. Sale Hearing

The Successful Bid(s) will be subject to approval by the Court. The Sale Hearing will take place immediately following the Auction (if required) at the Bankruptcy Court, 903 San Jacinto, Austin, Texas 78701, Courtroom #1 before the Honorable Tony Davis on May 13, 2020 at 9:00 a.m. (prevailing Central Time), or such other date that the Court is available. 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 on the date scheduled for the Sale Hearing or on the Court's docket.

The Debtors' presentation to the Court for approval of a Successful Bid does not constitute the Debtors' acceptance of the bid. The Debtors will be deemed to have accepted a bid only when the bid has been approved by order of the Court.

Respectfully submitted,

WALLER LANSDEN DORTCH & DAVIS, LLP

By: _____

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ATTORNEYS FOR DEBTORS AND DEBTORS IN
POSSESSION

Exhibit 2

Sale Notice

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE:	§	
	§	
900 Cesar Chavez, LLC,	§	Case No. 19-11527-tmd
	§	
905 Cesar Chavez, LLC,	§	Case No. 19-11528-tmd
	§	
5th and Red River, LLC,	§	Case No. 19-11529-tmd
	§	
7400 South Congress, LLC,	§	Case No. 19-11530-tmd
	§	
Debtors.	§	<i>(Jointly Administered Under Case No. 19-11527-tmd)</i>
	§	

NOTICE OF SALE

PLEASE TAKE NOTICE that on November 4, 2019 (the “**Petition Date**”), the above-captioned Debtors each filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code.

PLEASE TAKE NOTICE that on February ____, 2020, the United States Bankruptcy Court for the Western District of Texas, Austin Division (the “**Bankruptcy Court**”) entered an order (the “**Bid Procedures Order**”) approving the *Motion of Debtors for (I) Order Approving: (A) Bid Procedures, Including Procedures for Designation and/or Selection of Stalking Horse Purchaser; (B) Procedures for Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Related Notices; (C) Notice of Auction, Stalking Horse Hearing and Sale Hearing; and (D) Related Relief and (II) Order: (A) Approving the Sale of Real Estate and Related Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests Pursuant to Bankruptcy Code Sections 105, 363(b), (f), and (m); (B) Approving Assumption, Assignment and Sale of Certain Executory Contracts and Unexpired Leases Pursuant to Bankruptcy Code Sections 363 and 365 and Related Cure Amounts; and (C) Granting Related Relief [Doc. No. 98] (the “**Sale Motion**”), filed by Debtors 900 Cesar Chavez, LLC, 905 Cesar Chavez, LLC and 5th and Red River, LLC¹. The Sale Motion and Bid Procedures Order also sought to establish (i) an auction (the “**Auction**”), (ii) a hearing (the “**Stalking Horse Hearing**”) to approve the Debtors’ selection of any stalking horse purchaser (“**Stalking Horse Purchaser**”) and provision of bid protections thereto (the “**Bid Protections**”), if any, and (iii) a final hearing (the “**Sale Hearing**”) to approve the sale of real estate*

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Sale Motion.

and certain related assets owned by the Debtors² (each, a “*Property*” and collectively the “*Properties*”), all as more fully described in the Sale Motion.

PLEASE TAKE FURTHER NOTICE that pursuant to the Bid Procedures Order, the Debtors are authorized to enter into an agreement (the “*Stalking Horse Agreement*”) with a Stalking Horse Purchaser for a Property or the Properties. Any and all Potential Bidders interested in becoming a Stalking Horse Purchaser must submit a Qualified Bid (other than the requirement to submit a Modified Sales Contract) **by April 1, 2020 by 5:00 p.m. (prevailing Central Time)**. In the event the Debtors enter into a Stalking Horse Agreement, the Debtors will file and serve notice of the designation of the proposed Stalking Horse Purchaser and the proposed Stalking Horse Agreement on the Notice Parties by **April 6, 2020**.

PLEASE TAKE FURTHER NOTICE that in the event that the Debtors have not designated a Stalking Horse Purchaser by the Stalking Horse Designation Deadline, the Debtors may, in their sole discretion, designate a Stalking Horse Purchaser at a later date. In the event that the Debtors designate a Stalking Horse Purchaser after the Stalking Horse Designation Deadline, the Debtors will file and serve notice of the designation of the proposed Stalking Horse Purchaser and the proposed Stalking Horse Agreement on the Sale Notice Parties as soon as practicable and will request that the Court set a Stalking Horse Hearing on an expedited basis and, further, that it set an objection deadline for filing any and all objections to any such Stalking Horse Purchaser, with such objection deadline to be no fewer than two (2) business days before the proposed date for the Stalking Horse Hearing.

PLEASE TAKE FURTHER NOTICE that in the event the Debtors enter into a Stalking Horse Agreement, the Stalking Horse Hearing to approve the Stalking Horse Purchaser, Stalking Horse Agreement, and accompanying Bid Protections on an expedited basis will be held before the Honorable Tony M. Davis, United States Bankruptcy Judge, at the Bankruptcy Court, 903 San Jacinto, Austin, Texas 78701, Courtroom #1, Austin, Texas 78701, on April 10, 2020, or at such other time as the Court is available. Any objections to the approval of any Stalking Horse Purchaser, Stalking Horse Agreement, and Bid Protections must be filed and served so as to be actually received by the Objection Recipients (as defined below) by **5:00 p.m. (prevailing Central Time) on April 8, 2020**.

PLEASE TAKE FURTHER NOTICE that pursuant to the Bid Procedures Order, if the Debtors receive one or more timely and acceptable Qualified Bids (as defined in the Bid Procedures Order) for the Property (or Properties), the Auction and Sale Hearing to consider approval of the sale of the Property to the winning bidder at the Auction, free and clear of all liens, claims, encumbrances and other interests, will be held before the Honorable Tony Davis at the Bankruptcy Court, 903 San Jacinto, Austin, Texas 78701, Courtroom #1 on May 13, 2020 at 9:00 a.m. (prevailing Central Time) in open court or at such other time as the Court is available as noticed by the Debtors in a notice to all Qualified Bidders. Only parties that have submitted a Qualified Bid, as set forth in the Bid Procedures Order, by **5:00 p.m. (prevailing Central Time) on April 27, 2020** (the “*Bid Deadline*”) may bid at the Auction. Any party that wishes to take part in this process

² The Property owned by Debtor 7400 South Congress, LLC was the subject of a similar but separate sale motion that was filed on February 3, 2020 [Dkt. No. 95] and is not otherwise addressed herein.

and submit a bid for the Assets must submit their competing bid prior to the Bid Deadline and in accordance with the Bid Procedures.

PLEASE TAKE FURTHER NOTICE that objections to the sale, if any, must be filed and served so as to be actually received by the Objection Recipients no later than **5:00 p.m. (prevailing Central Time) on May 6, 2020.**

PLEASE TAKE FURTHER NOTICE that the Objection Recipients are (i) the United States Trustee for the Western District of Texas, Attn: Deborah A. Bynum, 903 San Jacinto Blvd., Suite 230, Austin, TX 78701, Deborah.A.Bynum@usdoj.gov; (ii) counsel to the Debtors, Waller Lansden Dortch & Davis, LLP, Attn: Morris D. Weiss, 100 Congress Avenue, 18th Floor, Austin, Texas 78701, morris.weiss@wallerlaw.com; (iii) counsel to the Lender, (a) Locke Lord, LLP, Attn: W. Steven Bryant, 600 Congress Ave., Suite 2200, Austin, TX 78701, sbryant@lockelord.com and (b) Locke Lord LLP, Attn: C. Davin Boldissar, 601 Poydras Street, Suite 2660, New Orleans, LA 70130, dboldissar@lockelord.com; and (iv) if applicable, any Stalking Horse Purchaser selected by the Debtors.

PLEASE TAKE FURTHER NOTICE THAT UNLESS AN OBJECTION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THIS NOTICE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE SALE MOTION WITHOUT FURTHER HEARING AND NOTICE.

PLEASE TAKE FURTHER NOTICE that this Notice of Auction, Stalking Horse Hearing and Sale Hearing is subject to the fuller terms and conditions of the Sale Motion and the Bid Procedures Order, with such Bid Procedures Order controlling in the event of any conflict, and the Debtors encourage parties in interest to review such documents in their entirety. Parties interested in receiving more information regarding the sale of the Properties and/or copies of any related document, including the Sale Motion, the form of Sales Contract filed in connection with the Sale Motion, or the Bid Procedures Order, may make a written request to Waller Lansden Dortch & Davis, LLP, Morris D. Weiss, 100 Congress Avenue, 18th Floor, Austin, Texas 78701. In addition, copies of the Sale Motion, the Bid Procedures Order and this Notice may be examined by interested parties on the Court's electronic docket for the Debtors' chapter 11 cases, which is posted on the Internet at PACER for a fee (a PACER login and password are required and can be obtained through the PACER Service Center at www.pacer.psc.uscourts.gov).

Dated: _____, 2020
Austin, Texas

Respectfully submitted,

WALLER LANSDEN DORTCH & DAVIS, LLP

By: _____

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ATTORNEYS FOR DEBTORS AND DEBTORS IN
POSSESSION

Exhibit 3

Notice of Assignment and Assumption

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE:	§	
	§	
900 Cesar Chavez, LLC,	§	Case No. 19-11527-tmd
	§	
905 Cesar Chavez, LLC,	§	Case No. 19-11528-tmd
	§	
5th and Red River, LLC,	§	Case No. 19-11529-tmd
	§	
7400 South Congress, LLC,	§	Case No. 19-11530-tmd
	§	
Debtors.	§	<i>(Jointly Administered Under</i>
	§	<i>Case No. 19-11527-tmd)</i>

NOTICE OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES WHICH MAY BE ASSUMED AND ASSIGNED IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS AND THE PROPOSED CURE AMOUNT WITH RESPECT THERETO

You are receiving this Notice of Executory Contracts and Unexpired Leases Which May Be Assumed and Assigned in Connection With the Sale of Substantially All of the Debtors’ Assets and the Proposed Cure Amount With Respect Thereto (the “*Notice of Assumption and Assignment*”) because you may be a counterparty to an executory contract or unexpired lease with one or more of the above-captioned debtors and debtors-in-possession (collectively, the “*Debtors*”). Please read this notice carefully as your rights may be affected by the transactions described herein.

PLEASE TAKE NOTICE that on _____, 2020, the United States Bankruptcy Court for the Western District of Texas, Austin Division (the “*Bankruptcy Court*”) entered an order (the “*Bid Procedures Order*”) approving the *Motion of Debtors for (I) Order Approving: (A) Bid Procedures, Including Procedures for Designation and/or Selection of Stalking Horse Purchaser; (B) Procedures for Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Related Notices; (C) Notice of Auction, Stalking Horse Hearing and Sale Hearing; and (D) Related Relief and (II) Order: (A) Approving the Sale of Real Estate and Related Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests Pursuant to Bankruptcy Code Sections 105, 363(b), (f), and (m); (B) Approving Assumption, Assignment and Sale of Certain Executory Contracts and Unexpired Leases Pursuant to Bankruptcy Code Sections 363 and 365 and Related Cure Amounts; and (C) Granting Related Relief* [Doc. No. 98] (the “*Sale Motion*”¹), filed by Debtors 900 Cesar Chavez, LLC, 905 Cesar Chavez, LLC and 5th and Red

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Sale Motion.

River, LLC. The Sale Motion and Bid Procedures Order set forth certain procedures (the “***Bid Procedures***”) in connection with the sale of the Property² (or Properties) (the “***Sale Transaction***”).

PLEASE TAKE FURTHER NOTICE that pursuant to the Bid Procedures Order, the Debtors have established procedures for the assumption, assignment and sale of certain executory contracts and unexpired leases (collectively, the “***365 Contracts***”) to a potential purchaser and the determination of related Cure Costs (as defined herein). The Debtors are parties to 365 Contracts and, in accordance with the Bid Procedures Order, hereby file this notice identifying (i) the 365 Contracts which may be assumed and assigned to a Purchaser in connection with the Sale Transaction and (ii) the proposed amounts, if any, the Purchaser believes are owed to the counterparty to the 365 Contract to cure all defaults or arrears existing under the 365 Contract (the “***Cure Costs***”), both as set forth on **Exhibit 1** attached hereto.

PLEASE TAKE FURTHER NOTICE that the listing of a 365 Contract on **Exhibit 1** does not constitute an admission that the agreement is an executory contract or unexpired lease as contemplated by section 365(a) of the Bankruptcy Code or that the Debtors have any liability thereunder, and the Debtors expressly reserve all of its rights, claims, causes of action and defenses with respect to the 365 Contracts listed on **Exhibit 1**.

PLEASE TAKE FURTHER NOTICE that any objections to the assumption, assignment, and sale of any 365 Contract identified in this Notice (except with respect to the adequate assurance of future performance by any Purchasers), must be (i) in writing, (ii) filed with the Bankruptcy Court and (iii) served on (a) the United States Trustee for the Western District of Texas, Attn: Deborah A. Bynum, 903 San Jacinto Blvd., Suite 230, Austin, TX 78701, Deborah.A.Bynum@usdoj.gov; (b) counsel to the Debtors, Waller Lansden Dortch & Davis, LLP, Attn: Morris D. Weiss, 100 Congress Avenue, 18th Floor, Austin, Texas 78701, morris.weiss@wallerlaw.com; (c) counsel to the Lender, Locke Lord, LLP, Attn: W. Steven Bryant, 600 Congress Ave., Suite 2200, Austin, TX 78701, sbryant@lockelord.com & Locke Lord LLP, Attn: C. Davin Boldissar, 601 Poydras Street, Suite 2660, New Orleans, LA 70130, dboldissar@lockelord.com; and (d) the Purchaser (collectively, the “***Objection Recipients***”) by **5:00 P.M.** (prevailing Central time) **on the date that is one week following the filing and service of the Notice of Assumption and Assignment** (the “***Assumption and Assignment Objection Deadline***”). Any such objections must set forth any objection to the possible assumption, assignment, and sale of the 365 Contracts (and must state, with specificity, the legal and factual basis thereof) and, if applicable, the proposed Cure Costs (and must state, with specificity, what Cure Costs are required with appropriate documentation in support thereof).

PLEASE TAKE FURTHER NOTICE that if a counterparty to a 365 Contract files a timely objection asserting a higher cure amount than the maximum Cure Costs, and the parties are unable to consensually resolve the dispute prior to the hearing to resolve any such objection (one week following the Assumption and Assignment Objection Deadline) (the “***Assumption/Assignment Hearing***”), the amount to be paid or reserved with respect to such objection will be determined at the Assumption/Assignment Hearing. All other objections to the proposed assumption and assignment of the Debtors’ right, title, and interest in, to and under the 365 Contracts, if it is

² The Property owned by Debtor 7400 South Congress, LLC was the subject of a similar but separate sale motion that was filed on February 3, 2020 [Dkt. No. 95] and is not otherwise addressed herein.

ultimately designated a 365 Contract that the Purchaser proposes be assumed, assigned, and sold to it in connection with the transaction (a “***Desired 365 Contract***”), will also be heard at the Assumption/Assignment Hearing, unless the Desired 365 Contract has not been identified until after the Auction, in which event any determination (including the resolution of any dispute with respect to Cure Costs) shall be determined within thirty (30) days after the Closing.

PLEASE TAKE FURTHER NOTICE that if no objection is timely filed and served, the counterparty to a 365 Contract shall be deemed to have consented to the assumption, assignment and sale of the 365 Contract to any Purchaser if such 365 Contract is designated by any Purchaser as a Desired 365 Contract and shall be forever barred from asserting any objection with regard to such assumption, assignment and sale, except with respect to the adequate assurance of future performance by any Purchaser. Any objections to any Purchaser’s proposed form of adequate assurance of future performance must be raised at the Assumption/Assignment Hearing and will be resolved at the Assumption/Assignment Hearing. The Cure Costs provided to the contract counterparty shall be controlling, notwithstanding anything to the contrary in any 365 Contract, or any other document, and the counterparty to the 365 Contract shall be deemed to have consented to the Cure Costs and shall be forever barred from asserting any other claims related to such 365 Contract against the Debtors or the Purchaser, or the property of any of them.

PLEASE TAKE FURTHER NOTICE that within one week following the Auction, the Debtors will file the Purchaser’s proposed form of adequate assurance of future performance with the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that although the Debtors have made a good faith effort to identify all 365 Contracts that may be susceptible to being assumed and assigned in connection with the Sale Transaction, they may discover additional contracts that the Debtors and the Purchaser desire to assume and assign in connection therewith. Accordingly, if at any time after the entry of the Sale Order, the Debtors identify additional prepetition executory contracts that may be subject to being assumed and assigned to the Purchaser(s), the Debtors shall serve a supplemental notice of assumption and assignment (the “***Supplemental Assumption and Assignment Notice***”) by facsimile, electronic transmission, hand delivery or overnight mail on (i) the counterparty to each supplemental 365 Contract at the last known address available to the Debtors and ii) all parties who have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002 by no later than ten (10) days before the proposed effective date of the assignment. Each such Supplemental Assumption and Assignment Notice shall set forth (i) the name and address of the contract counterparty, (ii) notice of the proposed effective date of the assignment (subject to the right of Purchaser to withdraw such request for assumption and assignment of the contract prior to the Closing), (iii) identification of the Contract, (iv) the Cure Costs, if any, to the extent such 365 Contract has been designated for assumption and assignment by a Purchaser, and (v) the proposed adequate assurance.

PLEASE TAKE FURTHER NOTICE that this Notice of Assumption and Assignment is subject to the fuller terms and conditions of the Sale Motion and the Bid Procedures Order, with such Bid Procedures Order controlling in the event of any conflict, and the Debtors encourage parties-in-interest to review such documents in their entirety. Parties with questions regarding the proposed assumption, assignment, and sale procedures contained herein should contact the Debtors’ counsel at the contact information provided below.

The inclusion of a 365 Contract on **Exhibit 1** does not mean that such 365 Contract will be assumed or assigned in connection with the Sale Transaction or that the Debtors or any Purchaser will make any cure payment in connection with such 365 Contract.

Dated: _____, 2020
Austin, Texas

Respectfully submitted,

WALLER LANSDEN DORTCH & DAVIS, LLP

By: _____

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ATTORNEYS FOR DEBTORS AND DEBTORS IN
POSSESSION

Exhibit 1

365 Contracts