

## **BIDDING PROCEDURES**

Set forth below are the bid procedures (the “Bidding Procedures”) to be employed by Harry Davis LLC. and A.J. Willner Auctions (collectively, the “Auctioneers”) for the auction sale (the “Auction”) of the assets described below of the Estate of Castelli America, LLC, a debtor (the “Debtor”) in a chapter 7 proceeding in the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”), at Case No. 19-33830 in which Jay L. Lubetkin is the Chapter 7 Trustee (the “Trustee”). The Assets are being sold under section 363 of title 11 of the United States Code (the “Bankruptcy Code”) and their sale is subject to confirmation by the Bankruptcy Court.

1. Assets to be Sold. The assets to be sold (the “Assets”) are being sold as complete package consisting of the real property located at 5151, 5152, and 5183 Fairbanks Road, 5158 Route 474, and Route 74 in Ashville, New York, being Parcel ID numbers 064889-383.04-1-34, 064889-383.04-1-35, 064889-400.00-2-25, 064889-400.00-2-26, 064889-400.00-2-27, and 064889-400.00-2-28, and the cheese processing machinery and equipment located on the premises thereof as an “intact” cheese processing plant on an “as is” “where is” basis, free and clear of liens, claims, interests, and encumbrances.

2. Participation Requirements. Any person who wishes to be a bidder (“Bidder”) must register with the Auctioneers by completing the bidder registration attached hereto as Exhibit A (the “Bidder Registration”) and send it to the Auctioneers by email directed to Leonard A. Davis at [LDavis@HarryDavis.com](mailto:LDavis@HarryDavis.com) and Harry Byrnes at [hbyrnes@ajwillner.com](mailto:hbyrnes@ajwillner.com). On submission of the Bidder Registration the Bidder must deposit \$50,000 (the “Deposit”) by wire transfer of immediately available funds to the account of Harry Davis LLC set forth on Exhibit B hereto. The Bidder Registration and Deposit must be received no later than 1:00 PM, EDST on September 23, 2020 (the “Bid Deadline”) together with a bid (the “Bid”) that offers to purchase all of the Assets upon all of the terms and conditions set forth in the Asset Purchase Agreement attached hereto as Exhibit C (the “Purchase Agreement”). The Bid must not contain any conditions to closing other than Bankruptcy Court approval, must include a waiver of any right to an attorney review period, and must acknowledge that the successful bidder (the “Successful Bidder”) will be required to pay a buyer’s premium for the Auctioneers of five percent (5%) that will be added to the purchase price and paid at closing. The Bidder Registration and the Bid are subject to acceptance by the Auctioneers and the Trustee and will not be accepted unless they meet all of the requirements herein and the Auctioneers receive the Deposit.

3. Inspection. Prospective bidders prior to registration may inspect the Assets by appointment only to be scheduled with Harry Byrnes of A.J. Willner Auctions by telephone at 908-789-9999.

4. Time and Place of the Auction. The Auction will be held on a Zoom conference call on September 24, 2020 at 10:00 AM EDST. Upon acceptance of the Bidder Registration Bidder will be provided with the participation information for the Auction. In order to participate in the Auction, the Bidder must be present on the call or have a duly authorized representative present on the call to participate on its behalf identified to the Auctioneers prior to the Bid Deadline with confirmation that the representative has full authority to bind the Bidder by email sent to Leonard A. Davis at [LDavis@HarryDavis.com](mailto:LDavis@HarryDavis.com) and Harry Byrnes at [hbyrnes@ajwillner.com](mailto:hbyrnes@ajwillner.com).

5. Auction Procedure. Upon commencement of the Auction, the Auctioneers will announce the name of the Bidder who submitted the highest offer and the amount of the Bid which shall become the baseline bid (the “Baseline Bid”). Thereafter bidding will be opened to all duly registered Bidders on such terms as directed by the Auctioneers beginning with the Baseline Bid. The first subsequent bid must exceed the Baseline Bid by a minimum increment to be set by the Auctioneers. The Auctioneers shall have the right to determine minimum increments for any subsequent overbids thereafter. Each subsequent bid must be on all of the same contract terms and conditions established for the original bid as set forth herein. At the conclusion of the bidding the Auctioneers will announce the successful bidder (the “Successful Bidder”) and the amount of the winning bid (the “Winning Bid”). The Successful Bidder shall within twenty-four (24) hours of the Auction to increase its Deposit to ten percent (10%) of the Winning Bid by wire transfer of immediately available funds to the account designated on Exhibit A and execute the Purchase Agreement in the form of Exhibit C. The executed Purchase Agreement shall be delivered by email to the Auctioneers directed to Leonard A. Davis at [LDavis@HarryDavis.com](mailto:LDavis@HarryDavis.com) and Harry Byrnes at [hbyrnes@ajwillner.com](mailto:hbyrnes@ajwillner.com) with a copy to the Trustee at [jlubetkin@rltlawfirm.com](mailto:jlubetkin@rltlawfirm.com) within twenty-four (24) hours of the designation of Successful Bidder. All bids shall be deemed irrevocable, non-contingent offers, not subject to any due diligence for the purchase of the Assets. The contract executed by Successful Bidder shall be subject to approval by the Trustee and the Bankruptcy Court. If the Trustee accepts the executed contract, the Trustee shall draft and file the pleadings to confirm and obtain Bankruptcy Court approval of the sale as soon as possible.

6. Bankruptcy Court Confirmation. The Winning Bid will be subject to confirmation by the Bankruptcy Court. The hearing to confirm the Winning Bid shall be held before the Honorable John K. Sherwood, United States Bankruptcy Judge at the United States Bankruptcy Court, Courtroom No. 3D, 50 Walnut Street, 3<sup>rd</sup> Floor, Newark, New Jersey 07102 on a date determined by the Bankruptcy Court upon the submission by the Trustee of the pleadings requesting confirmation and approval of the sale.

7. Return of Deposits. All Deposits, other than the Deposit of the Successful Bidder and the Deposit of the next highest bidder (the “Second Bidder”), shall be returned without interest within five (5) business days of completion of the Auction. The Deposit of the Second Bidder shall be returned upon closing of the sale to the Successful Bidder. If the Successful Bidder fails to increase its Deposit to ten percent (10%) of the Winning Bid and execute the Purchase Agreement and thereafter close on the sale its Deposit shall be nonrefundable unless the Bankruptcy Court does not confirm the sale and the Second Bidder shall become the Successful Bidder. The Second Bidder shall then be required to increase its Deposit to ten percent (10%) of its bid (the “Backup Bid”) and execute the Purchase Agreement to purchase the Assets for the amount of the Backup Bid and thereafter close on the sale. The Second Bidder’s Deposit shall become nonrefundable if it fails to increase it to ten percent (10%) of the Second Bid or fails to close on the sale unless the Bankruptcy Court does not confirm the sale to the Second Bidder.

8. Closing. Closing on the sale of the Assets to the Successful Bidder shall take place as provided in the Purchase Agreement within two (2) business days following the entry of the order of the Bankruptcy Court confirming the sale.

## **EXHIBIT A**

### **BIDDER REGISTRATION**

#### **Auction of Assets of the Estate of Castelli America LLC September 24, 2020**

The undersigned bidder (the “Bidder”) hereby registers with Harry Davis, LLC and A.J. Willner Auctions (the “Auctioneers”) to bid at the above auction (the “Auction”) of the Assets of the Estate of Castelli America, LLC, a debtor (the “Debtor”) in a chapter 7 proceeding in the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”) at Case No. 19-33830 in which Jay L. Lubetkin is the Chapter 7 Trustee, to be conducted in accordance with the Bid Procedures as established by the Auctioneers (the “Bid Procedures”) to which this registration is attached. Capitalized terms herein shall have the same meaning as in the Bid Procedures unless specifically defined otherwise herein.

**Bidder acknowledges that the Assets are being offered for sale in their current condition, “as-is” “where-is” subject to confirmation by the Bankruptcy Court and that there are no representations or warranties, oral, written, express or implied with respect to the condition of or any other matter with respect to the Assets, including, without limitation, habitability, merchantability or fitness or use for a particular purpose, and is relying entirely on its own or its representatives inspection and investigation of the Assets before submitting a bid for the purchase of the Assets and is not relying on any oral statement, written documentation or other information concerning the physical condition or any other matters with respect to the Assets made or furnished by the Auctioneers, the Trustee or any agent, employee or representative of the Auctioneers, the Debtor, the Trustee or any third party, including, without limitation, any information regarding the Assets posted on the Auctioneers’ websites.**

**In the event of any conflict between this Bidder Registration, the Bid Procedures, any terms of sale announced by the Auctioneers at the Auction and the Purchase Agreement, the terms and provisions of the Purchase Agreement shall prevail.**

**Whenever used herein the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.**

**Bidder acknowledges prior to submitting this Bidder Registration and its bid for the Assets that it has (i) reviewed the Bid Procedures, (ii) reviewed the Purchase Agreement, (iii) conducted all due diligence it deemed necessary or desirable to its satisfaction, and (iv) has consulted with an attorney of its choosing or had the opportunity to consult with an attorney of its choosing and choose not to do so.**

**Bidder agrees to bound by all of the terms and conditions set forth above and any terms of sale announced by the Auctioneers at the start of the Auction. The person signing below**

**warrants that he/she is duly authorized to bind the Bidder on all matters with respect to the Auction.**

Date: \_\_\_\_\_

Bidder Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Bidder Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone No. \_\_\_\_\_

Email: \_\_\_\_\_

**EXHIBIT A**

**WIRE INSTRUCTIONS FOR DEPOSIT**

Key Bank  
11 Stanwix St.  
Pittsburgh, PA 15222

Harry Davis LLC  
Account # 0981379467  
Key Bank, ABA #021300077  
Swift Code: KEYBUS33

Beneficiary: Harry Davis LLC  
1725 Boulevard of the Allies  
Pittsburgh, PA 15219

## **EXHIBIT C**

### **PURCHASE AGREEMENT**

#### **CONTRACT OF SALE OF REAL ESTATE AND RELATED FURNITURE, FIXTURES AND EQUIPMENT**

This Contract of Sale, (the “Contract”), is subject to, and Buyer and Seller agree to be bound by, the provisions of the Bidding Procedures respecting the auction of the Assets of the bankruptcy estate of Castelli America, LLC, conducted on September 24, 2020. All of such Bidding Procedures are expressly incorporated herein. By signing this Contract, Buyer agrees to be bound by its terms, and by the terms incorporated herein.

Seller’s obligations under this Contract are subject to approval by the Bankruptcy Court in the bankruptcy case of Castelli America, LLC.

The undersigned Buyer, (“Buyer”) has this day agreed to purchase for the purchase price of \$\_\_\_\_\_ (the “Purchase Price”), the real estate at the addresses known as 5151, 5152, and 5183 Fairbanks Road, 5158 Route 474, and Route 74 in Ashville, New York being Parcel ID numbers 064889-383.04-1-34, 064889-383.04-1-35, 064889-400.00-2-25, 064889-400.00-2-26, 064889-400.00-2-27, and 064889-400.00-2-285151 and the improvements thereon, and equipment located thereon, (collectively, the “Assets”), , Fairbanks Road, Ashville, New York 14710, (the “Property”). In accordance with the Bidding Procedures Buyer has deposited with the auctioneers retained by the bankruptcy estate a deposit towards the Purchase Price in the amount of \$\_\_\_\_\_, which shall be non-refundable except in the event the Bankruptcy Court does not approve the sale to Buyer. In addition to the Purchase Price, at Closing, Buyer shall pay a five percent (5%) premium which shall be added to the Purchase Price and distributed by the Seller to the auctioneers. The bankruptcy estate’s auctioneers are express third-party beneficiaries

of this Contract. This Contract shall not be enforceable against Seller unless and until approved by the Bankruptcy Court; provided however, that this Contract shall become enforceable against Buyer immediately upon Buyer's execution hereof. Seller shall use reasonable efforts to schedule a hearing before the Bankruptcy Court to approve this Contract promptly after Buyer's execution hereof, and closing shall occur no later two (2) business days after such approval is obtained, unless the parties agree to extend such time period. Closing upon this Contract shall be subject to no due diligence and no contingencies whatsoever, including without limitation, any title review by Buyer or any environmental due diligence. Closing upon this Contract is an irrevocable, indefeasible obligation of Buyer upon execution, the closing upon which only, shall be subject to Bankruptcy Court approval hereof. At closing, Seller shall execute a Trustee's Deed transferring title to the real property to Buyer, a Bill of Sale transferring title to the improvements and equipment, and such other documents as are reasonably requested by Buyer and are acceptable to Seller.

Buyer acknowledges, agrees, represents and warrants to Seller that Buyer is buying the Assets on an "AS IS, WHERE IS, WITH ALL FAULTS" basis and is a sophisticated buyer, familiar with the ownership and operation of property similar to the Property. Prior to bidding for the Assets at the Auction: (a) Buyer fully inspected the Property to the extent it deemed necessary or desirable in connection with this transaction; (b) reviewed to its satisfaction the description of the Assets and all conditions of the Assets including, without limitation any encroachments, and all documents and disclosures on the Auctioneers' websites; (c) obtained, reviewed and approved title work, if desired and (d) consulted with an attorney of Buyer's choosing or had the opportunity to consult with an attorney of its choosing and choose not to do so. Buyer further acknowledges and agrees that as of the Closing, to take possession of and accept the Property, including the condition of the Property and the Assets, on an "AS IS, WHERE IS, WITH ALL FAULTS" basis,

including, without limitation, any encroachments, the surface and subsurface and any improvements thereon, any matters pertaining to compaction, soil condition, bearing ability, environmental conditions and/or Hazardous Materials (as hereinafter defined), and all matters affecting title to the Property and the Assets. As used in this Agreement, the term “Hazardous Materials” shall mean asbestos, asbestos-containing materials, PCBs, petroleum products, urea formaldehyde, foam insulation, lead and lead paint and any other substance which at any time has been determined by any governmental authority of or within the United States or the State of New York to be capable of posing a risk of injury to health, safety, property or the environment, including without limitation all of those materials and substances at any time and from time to time designated as hazardous or toxic by the United States Environmental Protection Agency or the State of New York, or any other governmental or other appropriate agency. Without limiting the generality of the foregoing, the term “Hazardous Materials” shall include all of those substances defined as “hazardous substances,” “hazardous materials,” “toxic substances,” “solid waste,” “hazardous waste” or “toxic materials” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; the Water Pollution Control Act, 33 U.S.C. Section 1251, et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300(f) et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Clean Air Act, 42 U.S.C. Section 7401, et seq; the New York state environmental laws and/or related rules and regulations, any corresponding law or laws of the State of New York of related or similar scope or effect; and in the amendments and regulations adopted and publications promulgated pursuant to said laws (collectively, “Hazardous Material Laws”). Buyer represents and warrants that it has not relied

upon, and that neither Seller nor the Auctioneers have made and in no manner were obligated to make, any representations or warranty by or on behalf of Seller or Auctioneers, their respective officers, members, agents, employees or representatives, including without limitation, any matters pertaining to environmental conditions and/or Hazardous Materials, zoning, survey, development rights, or permissible uses, access to utilities and applicable laws, rules, or regulations or compliance with such laws, rules and regulations. These warranties and representations of Buyer shall be extended to and shall be in full force and effect as of the Closing and shall survive the Closing and the delivery and recordation of the Deed and execution of a Bill of Sale. From and after the Closing, the parties agree that Seller shall have no prior or future responsibility for the condition and existing defects of the Property or the Assets (specifically including, without limitation, any matters pertaining to Hazardous Materials), whether known or unknown, disclosed or undisclosed, latent or patent, suspected or unsuspected, liquidated or unliquidated, nor for compliance with applicable governmental laws, rules and regulations, including specifically, but without limitation, any environmental conditions or Hazardous Materials now or hereafter discovered at, on, under or about the Property, and Buyer expressly assumes any and all costs, liabilities and/or obligations arising from or in connection with such matters. SELLER HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY AND THE ASSETS; PROVIDED, HOWEVER, BUYER AGREES THAT ITS SOLE RECOURSE FOR BREACH OF ANY DEED OR BILL OF SALE WARRANTY SHALL BE TO ANY TITLE COMPANY PURSUANT TO ANY TITLE POLICY WHICH MAY BE OBTAINED BY BUYER.

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IN WITNESS WHEREOF, the parties hereunto set their hands and seals on this \_\_\_\_\_  
day of \_\_\_\_\_, 2020.

**BUYER:**

**SELLER:**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

Print: Jay L. Lubetkin, Ch. 7 Trustee

Its: \_\_\_\_\_

Its: Ch. 7 of Castelli Ameri