

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

LEISURE INVESTMENTS HOLDINGS LLC,  
*et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 25-10606 (LSS)

(Jointly Administered)

Docket Ref. Nos. 299, 402, & 512

**NOTICE OF FILING OF PROPOSED SALE ORDER**

PLEASE TAKE NOTICE that, on July 2, 2025, the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) filed the *Debtors’ Motion for (I) an Order Establishing Bidding Procedures and Granting Related Relief and (II) an Order or Orders Approving the Sale of the Assets* [Docket No. 299] (the “**Bidding Procedures Motion**”)<sup>2</sup> with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

PLEASE TAKE FURTHER NOTICE that, on July 29, 2025, the Court entered an order approving the Bidding Procedures Motion [Docket No. 402] (the “**Bid Procedures Order**”), including, among other things, the Bidding Procedures.

PLEASE TAKE FURTHER NOTICE that, on September 5, 2025, in accordance with the Bid Procedures Order, the Debtors filed the *Notice of Proposed Sale, Bidding Procedures, Auction and Sale Hearing* [Docket No. 512] (the “**Notice of Sale Hearing**”). Pursuant to the Notice of Sale Hearing, the Court scheduled a hearing for October 27, 2025, at 2:00 p.m.

<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases a complete list of the Debtors is not provided herein. A complete list of the Debtors along with the last four digits of their tax identification numbers, where applicable, may be obtained on the website of the Debtors’ noticing and claims agent at <https://veritaglobal.net/dolphinco>, or by contacting counsel for the Debtors. For the purposes of these chapter 11 cases, the address for the Debtors is Leisure Investments Holdings LLC, c/o Riveron Management Services, LLC, 600 Brickell Avenue, Suite 2550, Miami, FL 33131.

<sup>2</sup> Capitalized terms used herein but not otherwise defined shall have the meanings given to such terms in the Bidding Procedures Motion or Bid Procedures Order, as applicable.



(prevailing Eastern Time) (the “**Sale Hearing**”) to approve one or more Sales of the Debtors’ assets.

**PLEASE TAKE FURTHER NOTICE** that the Debtors hereby file a proposed form of order (the “**Proposed Sale Order**”), a copy of which is attached hereto as **Exhibit 1**, approving the sale of substantially all or a portion of the Debtors’ Assets as contemplated by the Bidding Procedures Motion.<sup>3</sup>

**PLEASE TAKE FURTHER NOTICE** that an auction (the “**Auction**”) for the Other Florida Assets<sup>4</sup> will be held on October 13, 2025 at 10:00 a.m. (prevailing Eastern Time), unless cancelled or adjourned.

**PLEASE TAKE FURTHER NOTICE** that the Debtors intend to present the Proposed Sale Order for the Court’s consideration at the Sale Hearing. The Debtors reserve all rights to modify the Proposed Sale Order at or prior to the Sale Hearing.

*[Signature Page Follows]*

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<sup>3</sup> Any Qualified Bidder may request a copy of the Proposed Sale Order, in an editable format, at or prior to the Auction.

<sup>4</sup> As defined in the Notice of Sale Hearing.

Dated: October 2, 2025

*/s/ Jared W. Kochenash*

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**EXHIBIT 1**

**Proposed Sale Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

LEISURE INVESTMENTS HOLDINGS LLC,  
*et al.*,<sup>1</sup>  
  
Debtors.

Chapter 11

Case No. 25-10606 (LSS)

(Jointly Administered)

Docket Ref. Nos. 299, 402, 512, & \_\_\_\_

**ORDER (I) APPROVING ASSET PURCHASE AGREEMENT, (II) APPROVING  
THE SALE OF [●], FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND  
ENCUMBRANCES, (III) APPROVING THE ASSUMPTION AND ASSIGNMENT  
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED  
LEASES, AND (IV) GRANTING RELATED RELIEF**

Upon the *Debtors' Motion for (I) an Order Establishing Bidding Procedures and Granting Related Relief and (II) an Order or Orders Approving the Sale of the Assets* [Docket No. 299] (the “**Motion**”),<sup>2</sup> pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, and 9014, and Local Rules 2002-1, 6004-1, and 9006-1, seeking entry of an order (this “**Order**”): (i) approving that certain asset purchase agreement, dated as of [●], 2025, by and between [●] as Seller, and [●] and/or its permitted assignee, as Buyer (the “**Buyer**”), a copy of which is attached hereto as **Exhibit A** (including all exhibits, annexes and schedules related thereto, and as the same may be amended from time to time in accordance with the terms thereof and hereof, the “**Purchase Agreement**”); (ii) authorizing and approving consummation of the transactions contemplated by the Purchase Agreement, including the sale of

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion, the Bidding Procedures Order, or the Purchase Agreement (as defined herein), as applicable.

the Purchased Assets to the Buyer, in accordance with the terms and conditions contained in the Purchase Agreement, free and clear of all liens, claims, and encumbrances to the fullest extent permitted by law, except where the Debtors agreed to transfer, and the Buyer has expressly agreed to permit or assume, certain encumbrances and certain liabilities of the Debtors (solely to the extent expressly set forth and defined in the Purchase Agreement, the “**Permitted Encumbrances**” and the “**Assumed Liabilities**”); (iii) authorizing the assumption and assignment of the Purchased Contracts; and (iv) granting related relief; and this Court having entered an order on July 29, 2025 [Docket No. 402] (the “**Bidding Procedures Order**”) approving, among other things, the Bidding Procedures in connection with one or more Sales (as defined herein), including the process, timeline, and notice thereof; and the Debtors having determined after an extensive marketing and sale process, and after the Auction held on October 13, 2025, that the Buyer has submitted the highest or otherwise best bid to purchase the Purchased Assets; and the Debtors having selected the Buyer as the Successful Bidder in accordance with the Bidding Procedures; and upon due, adequate, and sufficient notice of the Motion, the Purchase Agreement, and all other related transactions contemplated thereunder and in this Order (such transactions collectively, the “**Sale**”); and upon the declaration of [●] in support of the Motion [Docket No. [●]] (the “[●] **Declaration**”); and upon the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion, the Sale Hearing (as defined herein), and the form of this Order having been provided to the Notice Parties, and it appearing that no other or further

notice need be provided; and this Court having reviewed and considered the Motion, the [●] Declaration, the Purchase Agreement, and all relief related thereto, any objections or other responses thereto and all replies in support thereof, and the full record in the Chapter 11 Cases, including the record related to the hearing to consider approval of the Bidding Procedures Order (and the Bidding Procedures); and this Court having held a hearing to consider the relief requested in the Motion (the “**Sale Hearing**”) and having considered the presentations of counsel made, and the evidence proffered or adduced, at the Sale Hearing, and after due deliberation, this Court having determined that the legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein; and this Court having determined that the relief requested is in the best interests of the Debtors, their estates, their creditors, and all parties in interest,

**THE COURT HEREBY FINDS THAT:<sup>3</sup>**

**I. Jurisdiction, Final Order, and Statutory Predicates.**

A. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. Venue of these Chapter 11 Cases and the Motion is proper in this District and in the Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b).

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). This Court may enter a final order with respect to the Motion, the Sale, and all related

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<sup>3</sup> These findings and determinations constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. Where appropriate, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact. All findings of fact and conclusions of law announced by this Court at the Sale Hearing in relation to the Motion are hereby incorporated herein to the extent not inconsistent herewith.

relief, in each case, consistent with Article III of the United States Constitution. Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order, and, thus, waives any stay and expressly directs that this Order be effective immediately upon entry.

C. The statutory and legal bases for the relief requested in the Motion are sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, and 9014, and Local Rules 2002-1, 6004-1, and 9006-1.

## **II. Notice.**

D. As further evidenced by the affidavits of service previously filed with the Court, and based on the representations of counsel at the Sale Hearing, due, proper, timely, adequate, and sufficient notice of the Motion, the Sale Hearing, the Sale, the assumption and assignment of the Purchased Contracts to be assumed and assigned to the Buyer, the cure payments, if any, proposed in respect of each Purchased Contract (each, a “**Cure Cost**”), and all deadlines related thereto, has been provided to all interested parties and entities, including the Sale Notice Parties, in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Bidding Procedures Order. The aforementioned notices were and are timely, proper, sufficient, appropriate, fair, and equitable under the circumstances, and reasonably calculated to provide the Sale Notice Parties and all other interested parties with timely and proper notice under the circumstances of these Chapter 11 Cases. The Auction was duly noticed. See Docket No. 512. No other or further notice with respect to such matters is, or shall be, required.



E. A reasonable opportunity to object and be heard with respect to the Sale, the Motion, and the relief requested therein, including but not limited to the assumption and assignment of the Purchased Contracts and the Cure Costs, has been afforded to all interested parties.

F. The disclosures made by the Debtors concerning the Motion, the Purchase Agreement, the Bidding Procedures, the Auction, and the Sale Hearing were good, complete, and adequate.

### **III. Business Justification.**

G. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for entering into the Purchase Agreement, which provides for, among other things, the sale of the Purchased Assets to the Buyer. The Debtors have, among other things, determined in their business judgment that, under the circumstances, the benefits of consummating the Sale on the terms and conditions embodied in the Purchase Agreement are in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

### **IV. Compliance with Bidding Procedures and Bidding Procedures Order**

H. As demonstrated by the [●] Declaration, the testimony and other evidence proffered or adduced at the Sale Hearing and the representations of counsel made on the record at the Sale Hearing, the Debtors have adequately marketed the Purchased Assets and conducted the sale process in compliance with the Bidding Procedures and the Bidding Procedures Order, and the sale process was conducted in a non-collusive, fair, and good-faith manner. The Debtors have afforded potential purchasers a full and fair opportunity to participate in the bidding process for the Purchased Assets and to make higher or otherwise better offers. In accordance with the Bidding Procedures Order, the bid submitted by the Buyer and memorialized by the Purchase Agreement was deemed a Qualified Bid and the Buyer was a Qualified Bidder eligible to

participate at the Auction. In accordance with the Bidding Procedures and the Bidding Procedures Order, the Debtors determined that the bid submitted by the Buyer and memorialized by the Purchase Agreement is the highest or otherwise best offer for the Purchased Assets received by the Debtors.

**V. Sale in Best Interests.**

I. Approval of the Purchase Agreement, the Sale, and all related transactions at this time, and the actions to be taken by the Debtors and the Buyer, are appropriate under the circumstances of these Chapter 11 Cases and are in the best interests of the Debtors, their estates and creditors, and all other parties in interest. The Debtors have demonstrated both (i) good, sufficient, and sound business purposes and justifications, and (ii) compelling circumstances for the Sale other than in the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code, outside of a plan, in that, among other things, the immediate consummation of the Sale to the Buyer is necessary and appropriate to maximize the value of the Debtors' estates.

J. The Debtors determined, in their reasonable business judgment, in a manner consistent with their fiduciary duties and after consultation with the Committee and the Lenders that the Buyer's Qualified Bid, as documented in the Purchase Agreement, was the highest or otherwise best Qualified Bid for the Purchased Assets. Consummating the Sale will yield greater value to the Debtors' estates than would have been provided by any other available alternative transaction.

**VI. Good Faith of Buyer.**

K. The Debtors and the Buyer, and their respective counsel and other advisors, have not engaged in any conduct that would cause or permit the Purchase Agreement or the consummation of the Sale to be avoided, or costs or damages to be imposed, under Bankruptcy Code section 363(n). The Buyer has not acted in a collusive manner with any Person, and the

purchase price was not controlled by any agreement among bidders, all of whom acted in good faith, at arm's length, and in a non-collusive manner. The Purchase Agreement was negotiated, proposed, and entered into by the Debtors and the Buyer without collusion, in good faith, and from arm's-length bargaining positions.

L. None of the Debtors or the Buyer has engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code. Among other things, (i) the Buyer recognized that the Debtors were free to deal with any other party interested in acquiring the Purchased Assets; (ii) the Debtors and the Buyer complied with the provisions of the Bidding Procedures Order and the Bidding Procedures; (iii) the Buyer's bid was selected after an open, competitive bidding process in accordance with the Bidding Procedures Order and the Bidding Procedures; (iv) the Debtors and the Buyer, and their respective management, board of directors, board of managers (or comparable governing authority), employees, agents, advisors, and representatives, each actively participated in the bidding process and in the Auction, and each acted in good faith and without collusion or fraud of any kind; (v) all payments to be made by the Buyer, and other agreements or arrangements entered into by the Buyer in connection with the Sale have been disclosed; (vi) the Buyer was designated the Successful Bidder for the Purchased Assets in accordance with the Bidding Procedures and the Bidding Procedures Order; and (vii) no common identity of directors or controlling stockholders exists between the Buyer, on the one hand, and the Debtors, on the other hand.

M. The Buyer is purchasing the Purchased Assets in good faith and for fair and reasonable consideration, and the Buyer is a good-faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and is not an "insider" of any Debtor (as defined under section 101(31) of the Bankruptcy Code). The protections afforded by section 363(m) of the Bankruptcy

Code are integral to the Sale, and the Buyer would not consummate the Sale without such protections. The Buyer is therefore entitled to the full rights, benefits, privileges, and protections afforded under section 363(m) of the Bankruptcy Code and any other applicable or similar bankruptcy and nonbankruptcy law in connection with this proceeding, the Sale, each term of the Purchase Agreement (and any ancillary documents executed in connection therewith), and each term of this Order.

## **VII. Highest or Otherwise Best Offer**

N. As demonstrated by the [●] Declaration, the evidence proffered or adduced at the Sale Hearing, and the arguments of counsel made on the record at the Sale Hearing, the Debtors' marketing and sale process with respect to the Purchased Assets in accordance with the Bidding Procedures (including the Debtors' stalking horse marketing process with respect to the Purchased Assets and the marketing and auction process set forth in the Bidding Procedures and the Bidding Procedures Order) afforded a full, fair, and reasonable opportunity for any Person to make a higher or otherwise better offer to purchase the Purchased Assets. The Debtors conducted a marketing and auction process in accordance with, and have otherwise complied in all respects with, the Bidding Procedures and the Bidding Procedures Order. The Auction was conducted in a non-collusive, fair, and good faith manner.

O. As demonstrated by the [●] Declaration, the evidence proffered or adduced at the Sale Hearing, and the arguments of counsel made on the record at the Sale Hearing, the Sale constitutes the highest or otherwise best offer for the Purchased Assets, and the Debtors' determination (after consultation with the Committee and the Lenders) that the Sale maximizes value for the benefit of the Debtors' estates and constitutes the highest or otherwise best offer for the Purchased Assets each constitutes a valid and sound exercise of the Debtors' business judgment and is in accordance and compliance with the Bidding Procedures and the Bidding Procedures

Order. The Purchase Agreement provides fair and reasonable terms for the purchase of the Purchased Assets.

P. Approval of the Motion and the Sale and the prompt consummation of the transactions contemplated thereby will maximize the value of each of the Debtors' estates and are in the best interests of the Debtors, their estates, their creditors, and other parties in interest.

#### **VIII. Corporate Authority.**

Q. Each applicable Debtor (i) has full requisite corporate or other organizational power and authority to execute, deliver, and perform the Purchase Agreement, and to consummate the Sale contemplated thereby, and such execution, delivery, and performance have been duly and validly authorized by all necessary corporate or other organizational action of each applicable Debtor, (ii) has taken all requisite corporate or other organizational action and formalities necessary to authorize and approve the execution, delivery, and performance of the Purchase Agreement and the consummation by the Debtors of the Sale contemplated thereby, including as required by their respective organizational documents, and, upon execution thereof, each such agreement executed by such Debtor will be duly and validly executed and delivered by such Debtor and enforceable against such Debtor in accordance with its terms and, assuming due authorization, execution, and delivery thereof by the other parties thereto, will constitute a valid and binding obligation of such Debtor. No government, regulatory, or other consents or approvals, other than those expressly provided for in the Purchase Agreement, are required for the execution, delivery, and performance by the Debtors of the Purchase Agreement, for the consummation of the Sale contemplated thereby, or for the parties to take, or cause to be taken, all such other actions as may be reasonably necessary to effectuate or evidence the Sale contemplated by the Purchase Agreement.

**IX. No Merger; Buyer Not an Insider; No Successor Liability.**

R. The Buyer is not a “successor” to, a mere continuation of, or an alter ego of the Debtors or their estates, and there is no continuity of enterprise or common identity between the Buyer and the Debtors by reason of any theory of law or equity. The Buyer is not holding itself out to the public as a successor to or a continuation of the Debtors or their estates. The Sale does not amount to a consolidation, succession, merger, mere continuation of, combination of, or de facto merger of Buyer and the Debtors. Immediately prior to the Closing Date, the Buyer was not an “insider” or “affiliate” of the Debtors, as those terms are defined in the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders existed between the Debtors and the Buyer. The transfer of the Purchased Assets to the Buyer, except as otherwise explicitly set forth in the Purchase Agreement or this Order and except with respect to the Permitted Encumbrances and the Assumed Liabilities, does not, and will not, subject the Buyer to any liability whatsoever, with respect to the Debtors or the operation of the Debtors’ businesses prior to the Closing or by reason of such transfer, including under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, or any foreign jurisdiction, based, in whole or in part, directly or indirectly, on any, or any theory of, successor, vicarious, antitrust, environmental, revenue, pension, ERISA (except any obligations to provide COBRA continuation coverage), tax, labor (including any WARN Act), employment or benefits, de facto merger, business continuation, substantial continuity, alter ego, derivative, transferee, veil piercing, escheat, continuity of enterprise, mere continuation, product line, products liability, or other applicable law, rule, or regulation (including filing requirements under any such law, rule, or regulation), or theory of liability, whether now known or unknown, now existing or hereafter arising, whether fixed or contingent, whether asserted or unasserted, whether legal or equitable, whether matured or unmatured, whether liquidated or unliquidated, whether arising prior to or

subsequent to the Commencement Date, whether imposed by agreement, understanding, law, equity, or otherwise, including, but not limited to, liabilities on account of warranties, loans, and receivables among the Debtors, and any taxes, arising, accruing, or payable under, out of, in connection with, or in any way relating to the cancellation of debt of the Debtors, or in any way relating to the operation of any of the Purchased Assets prior to the Closing (collectively, the **“Successor or Other Liabilities”**). Pursuant to the Purchase Agreement, the Buyer shall have no liability for the Excluded Liabilities.

**X. Binding and Valid Transfer.**

S. The transfer of the Purchased Assets to the Buyer will be a legal, valid, and effective transfer of the Purchased Assets, and will vest the Buyer with all right, title, and interest of the Debtors to the Purchased Assets free and clear, to the fullest extent permitted by law, of all Interests (as defined below) (other than the Permitted Encumbrances and the Assumed Liabilities), as set forth in the Purchase Agreement. Immediately prior to consummating the Sale, the Purchased Assets constitute property of the Debtors’ estates, good title is vested in the Debtors’ estates within the meaning of section 541(a) of the Bankruptcy Code, and the Debtors are the sole and rightful owners of the Purchased Assets. Upon and following the consummation of the Sale, the Buyer shall be vested with good and marketable title to the Purchased Assets and shall be the sole and rightful owner of the Purchased Assets.

T. The Purchase Agreement is a valid and binding contract between the Debtors and the Buyer. The Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession, or the District of Columbia, or foreign jurisdiction. As demonstrated by the [●] Declaration, the consideration provided by the Buyer in respect of the Sale (i) is fair and reasonable, (ii) is the highest or otherwise best offer for the Purchased Assets, (iii) will provide a

greater recovery for the Debtors' creditors more expeditiously than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia, and any foreign jurisdiction (including the Uniform Fraudulent Conveyance Act, the Uniform Voidable Transactions Act, the Uniform Fraudulent Transfer Act, and similar laws and acts). Neither the Debtors nor the Buyer is entering into the Sale contemplated by the Purchase Agreement fraudulently for the purpose of statutory and common-law fraudulent conveyance and fraudulent transfer claims.

**XI. Section 363(f) Is Satisfied.**

U. The conditions of section 363(f) of the Bankruptcy Code have been satisfied in full with respect to each Interest in the Purchased Assets; therefore, the Debtors may sell the Purchased Assets free and clear of all Interests (other than the Permitted Encumbrances and the Assumed Liabilities), including, but not limited to, the Successor or Other Liabilities.

V. The Buyer would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby if (i) the sale of the Purchased Assets to the Buyer was not free and clear of all Interests (other than the Permitted Encumbrances and the Assumed Liabilities) of any kind or nature whatsoever, or (ii) if the Buyer would, or in the future could, be liable for any of the Interests (other than the Permitted Encumbrances and the Assumed Liabilities). The Buyer will not consummate the transactions contemplated by the Purchase Agreement unless this Court expressly orders that none of the Buyer or the Buyer's Affiliates or Subsidiaries or any of their respective officers, directors, partners, principals, direct and indirect shareholders, parents, divisions, agents, professionals, representatives, successors, or assigns (collectively, the "**Buyer Parties**" and each a "**Buyer Party**"), or their respective assets or properties, including, without limitation, the Purchased Assets will have any liability whatsoever



with respect to, or be required to satisfy in any manner, whether at law or in equity, or by payment, setoff, recoupment, or otherwise, directly or indirectly, any Interests (other than the Permitted Encumbrances and the Assumed Liabilities), including rights or claims based on any Successor or Other Liabilities. The total consideration to be provided under the Purchase Agreement reflects the Buyer's reliance on this Order to provide it, pursuant to sections 105(a) and 363 of the Bankruptcy Code, with title to and possession of the Purchased Assets free and clear of all Interests (other than the Permitted Encumbrances and the Assumed Liabilities) of any kind or nature whatsoever (including, without limitation, any potential Successor or Other Liabilities).

W. Not transferring the Purchased Assets free and clear of all Interests (other than the Permitted Encumbrances and the Assumed Liabilities), including rights or claims based on any successor, transferee, derivative, or vicarious liability or any similar theory and/or applicable state, federal, or foreign law or otherwise, would adversely impact the Debtors' efforts to maximize the value of their estates, and the transfer of the Purchased Assets other than pursuant to a transfer that is free and clear of all Interests (other than the Permitted Encumbrances and the Assumed Liabilities) of any kind or nature whatsoever would be of substantially less benefit to the Debtors' estates.

X. The Debtors may sell the Purchased Assets free and clear of all Interests (other than the Permitted Encumbrances and the Assumed Liabilities) because, in each case, one or more of the standards set forth in section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied. Those holders of Interests that did not timely object to the Sale or the Motion or withdrew objections to the Sale or the Motion are deemed to have consented to the Sale and the Motion pursuant to section 363(f)(2) of the Bankruptcy Code. All other Interests (except to the extent that such Encumbrances are Permitted Encumbrances or Assumed Liabilities) fall within one or more of the other

subsections of section 363(f) of the Bankruptcy Code. All holders of Interests are adequately protected by having their Interests, if any, in each instance against the Debtors, their estates, or any of the Purchased Assets attach to the net cash proceeds of the Sale ultimately attributable to the Purchased Assets in which such holder alleges an Interest, in the same order of priority, with the same validity, force, and effect that such Interest had prior to the Sale, subject to any claims and defenses the Debtors and their estates may possess thereto.

## **XII. Cure Costs and Adequate Assurance of Future Performance.**

Y. The assumption and assignment of the Purchased Contracts pursuant to the terms of this Order is integral to the Purchase Agreement and is in the best interests of the Debtors and their estates, their creditors, and all other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtors. The assumption and assignment of the Purchased Contracts (i) is necessary to sell the Purchased Assets to the Buyer, (ii) allows the Debtors to maximize the value of the Purchased Assets, including the Purchased Contracts, (iii) limits the losses suffered by counterparties to the Purchased Contracts (the “**Counterparties**”), and (iv) maximizes the recoveries to other creditors of the Debtors by limiting the amount of claims against the Debtors’ estates by avoiding the rejection of the Purchased Contracts. For these reasons, the Debtors have exercised sound business judgment in assuming and assigning the Purchased Contracts and such assumption and/or assignment is in the best interests of the Debtors’ estates.

Z. Pursuant to section 365(f) of the Bankruptcy Code, each Purchased Contract to be assumed and assigned under the Purchase Agreement shall be assigned and transferred to, and remain in full force and effect for the benefit of, the Buyer, notwithstanding any provision in such contract prohibiting, restricting, or conditioning its assignment or transfer. No section of any of the Purchased Contracts that would prohibit, restrict, or condition, whether directly or indirectly,

the use, assumption, or assignment of any of the Purchased Contracts in connection with the Sale shall have any force or effect.

AA. Subject to the terms of the Purchase Agreement, the Debtors have cured or have demonstrated the ability to cure any default under any Purchased Contract with respect to any act or omission that occurred prior to the date of assignment of such Purchased Contract. The Debtors' promises to pay the Cure Costs on or prior to the applicable assignment date and the Buyer's promises to perform the obligations under the Purchased Contracts thereafter shall constitute adequate assurance of their future performance of and under the Purchased Contracts, within the meaning of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code. Pursuant to the Bidding Procedures Order, all Counterparties that failed to file with the Court and serve on the Objection Notice Parties a timely objection are forever barred from asserting any such objection with regard to the assumption or assignment of their Purchased Contract. The Court finds that, with respect to all such Purchased Contracts, the payment of Cure Costs is appropriate and is deemed to fully satisfy the Debtors' obligations under section 365(b) of the Bankruptcy Code. Accordingly, all of the requirements of sections 365(b) and 365(f) of the Bankruptcy Code have been satisfied for the assumption and the assignment by the applicable Debtor to the Buyer of each of the Purchased Contracts. To the extent any Purchased Contract is not an executory contract or unexpired lease within the meaning of section 365 of the Bankruptcy Code, it shall be transferred to the Buyer in accordance with the terms of this Order that are applicable to the Purchased Assets.

### **XIII. Not a *Sub Rosa* Plan.**

BB. The Sale does not constitute a *sub rosa* chapter 11 plan or an element of such plan for which approval has been sought without the protection that a disclosure statement would afford. The Sale neither impermissibly restructures the rights of any Debtor's creditors nor impermissibly dictates a liquidating plan for any Debtor.

**XIV. Necessity of Order.**

CC. The Buyer would not have entered into the Purchase Agreement and would not consummate the Sale without all of the relief provided for in this Order. The consummation of the Sale pursuant to this Order and the Purchase Agreement is necessary for the Debtors to maximize the value of their estates and make cash distributions to creditors as swiftly as possible for the benefit of the Debtors, their estates and creditors, and all other parties in interest.

**XV. Compelling Circumstances for an Immediate Sale.**

DD. The Debtors' decision to enter into the Purchase Agreement and to consummate the Sale represents an exercise of sound business judgment. The Debtors have demonstrated both (i) good, sufficient, and sound business purposes and justifications for approving the Purchase Agreement and (ii) compelling circumstances for the immediate approval and consummation of the Sale contemplated by the Purchase Agreement outside the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code before, and outside of, a plan of reorganization or liquidation, in that the prompt consummation of the Sale to the Buyer is necessary and appropriate to maximize the value of the Debtors' estates and to expedite cash distributions to creditors. Accordingly, there is cause to lift the stay contemplated by Bankruptcy Rules 6004 and 6006 with respect to the transaction contemplated by this Order.

**XVI. Final Order.**

EE. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h), 6006(d), and 7062, and to the extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of judgment as set forth herein.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

**I. General Provisions.**

1. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to these Chapter 11 Cases pursuant to Bankruptcy Rule 9014. To the extent that any of the findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law constitute findings of fact, they are adopted as such.

2. The Motion and the relief requested therein is granted and approved, and the Sale and the transactions contemplated in the Motion and the Purchase Agreement are approved, in each case as set forth herein and on the record of the Sale Hearing, which is incorporated herein as if fully set forth in this Order.

3. All objections to, reservations of rights regarding, or other responses to the Motion or the relief requested therein, the Purchase Agreement, the Sale, the entry of this Order, or the relief granted herein, including any objections to Cure Costs or the assumption and/or assignment of any of the Purchased Contracts, that have not been withdrawn, waived, or settled, or that have not otherwise been resolved pursuant to the terms hereof, as announced to the Court at the Sale Hearing, or by stipulation filed with the Court, are hereby denied and overruled on the merits with prejudice. Those parties who did not timely object to the Motion or the entry of this Order, or who withdrew their objections thereto, are deemed to have consented to the relief granted herein for all purposes, including without limitation, pursuant to section 363(f)(2) of the Bankruptcy Code.

4. The Court's findings of fact and conclusions of law in the Bidding Procedures Order are incorporated herein by reference as if fully set forth in this Order.

## **II. Approval of the Purchase Agreement.**

5. The Purchase Agreement and any amendments, supplements, and modifications thereto, and all of the terms and conditions thereof, are hereby approved.

6. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, the Debtors are authorized and empowered to take any and all actions necessary or appropriate to (a) consummate the Sale pursuant to and in accordance with the terms and conditions of the Purchase Agreement, (b) close the Sale as contemplated in the Purchase Agreement and this Order, and (c) execute and deliver, perform under, consummate, implement, and take any and all other acts or actions as may be reasonably necessary or appropriate to the performance of their obligations as contemplated by the Purchase Agreement, including the assumption and assignment to the Buyer of the Purchased Contracts and the Assumed Liabilities, in each case without further notice to or order of this Court and including any actions that otherwise would require further approval by the Counterparties, shareholders, members, or boards of directors or managers, or similar governing bodies, as the case may be, without the need of obtaining such approvals, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and the Sale. The Debtors are further authorized to pay, without further order of this Court, whether before, at, or after the Closing, any amounts that become payable by the Debtors pursuant to the Purchase Agreement, together with other fees and expenses approved by the Court.

7. The Purchase Agreement and this Order shall be binding in all respects upon the Debtors, their estates, all creditors, all holders of equity interests in any Debtor, all holders of Claims (whether known or unknown) against the Debtors, all holders of Liens (as defined below) or other Interests against, in, or on all or any portion of the Purchased Assets, all counterparties to any executory contract or unexpired lease of the Debtors (including all Counterparties), the Buyer, and all successors and assigns of each of the foregoing, including, without limitation, any trustee

subsequently appointed in these Chapter 11 Cases or upon a conversion of these Chapter 11 Cases to cases under chapter 7 under the Bankruptcy Code, and any Person seeking to assert rights on behalf of any of the foregoing or that belong to the Debtors' estates.

### **III. Transfer of the Purchased Assets.**

8. Pursuant to sections 105(a), 363(b), 363(f), 365(b), and 365(f) of the Bankruptcy Code, the Debtors shall transfer the Purchased Assets, including, but not limited to, the Purchased Contracts, to the Buyer in accordance with the terms of the Purchase Agreement; such transfer shall constitute a legal, valid, binding, and effective transfer of such Purchased Assets; and the Buyer shall take title to and possession of such Purchased Assets free and clear of all Interests. Any and all valid and perfected Interests in the Purchased Assets shall attach solely to the net proceeds of the Sale with the same validity, force, and effect, if any, and in the same order of priority, that they have now as against the Purchased Assets, subject to any rights, claims, and defenses the Debtors or their estates, as applicable, may possess with respect thereto.

9. The transfer of the Purchased Assets to the Buyer in accordance with the terms of the Purchase Agreement will be a legal, valid, enforceable, and effective sale and transfer of the Purchased Assets and the Assumed Liabilities and (i) will vest the Buyer with all legal, equitable, and beneficial right, title, and interest of the Debtors to the Purchased Assets free and clear of all Interests (other than the Permitted Encumbrances and the Assumed Liabilities) of any kind or nature whatsoever, including, without limitation, rights or claims based on any Successor or Other Liabilities, and (ii) will render the Buyer fully liable for any and all Assumed Liabilities, and assumption of any Assumed Liabilities by the Buyer shall constitute a legal, valid, and effective delegation of any Assumed Liabilities to the Buyer and shall divest the Debtors of all liability with respect to any Assumed Liabilities. Notwithstanding anything to the contrary in this Order or the Purchase Agreement, upon the Closing, no Person shall be permitted to commence or continue,

and all such Persons are hereby barred, estopped and permanently enjoined from commencing or continuing, any action against, or seeking payment from, the Debtors or their Affiliates with respect to the Assumed Liabilities, other than with respect to any administrative action necessary to change the applicable party in any proceeding from the Debtors or their Affiliates to the Buyer.

10. To the extent provided for in the Purchase Agreement, any and all of the Debtors' security deposits, or other security held by landlords, lessors and other counterparties to the contracts, leases, and licenses that are Purchased Contracts are being transferred and assigned to, and shall be the property of, the Buyer from and after the Closing, which transfer and assignment of security deposits, other deposits, or security shall satisfy in full the requirements of section 365(l) of the Bankruptcy Code for all Purchased Contracts assumed and assigned pursuant to this Order or the Purchase Agreement.

11. The transfer of each of the Purchased Assets to the Buyer will be a legal, valid, and effective transfer of the Purchased Assets, which transfer vests or will vest the Buyer with all right, title, and interest to the Purchased Assets free and clear of (i) all liens (including any liens as that term is defined in section 101(37) of the Bankruptcy Code) and Encumbrances (as defined in the Purchase Agreement) relating to, accruing, or arising any time prior to the Closing Date (collectively, the "**Liens**"), and (ii) all debts (as that term is defined in section 101(12) of the Bankruptcy Code) arising under, relating to, or in connection with any act of the Debtors or claims (as that term is defined in section 101(5) of the Bankruptcy Code), liabilities, obligations, demands, guaranties, options in favor of third parties, rights, contractual commitments, restrictions, interests, mortgages, hypothecations, charges, indentures, loan agreements, instruments, collective bargaining agreements, leases, licenses, deeds of trust, security interests or similar interests, conditional sale or other title retention agreements and other similar impositions, restrictions on



transfer or use, pledges, judgments, claims for reimbursement, contribution, indemnity, exoneration, infringement, products liability, alter ego liability, suits, defenses, credits, allowances, options, limitations, causes of action, choses in action, rights of first refusal or first offer, rebates, chargebacks, credits, or returns, proxies, voting trusts or agreements or transfer restriction under any shareholder or similar agreement or encumbrance, easements, rights of way, encroachments, and matters of any kind and nature, whether arising prior to or subsequent to the Commencement Date, whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether imposed by agreement, understanding, law, equity, or otherwise (including, without limitation, rights with respect to Claims (as defined below) and liens (including any Liens) (A) that purport to give to any party a right or option to effect a setoff or recoupment against, or a right or option to effect any forfeiture, modification, profit sharing interest, right of first refusal, purchase or repurchase right or option, or termination of, any of the Debtors' or the Buyer's interests in the Purchased Assets, or any similar rights, if any, or (B) in respect of taxes, restrictions, rights of first refusal, charges of interests of any kind or nature, if any, including without limitation, any restriction of use, voting, transfer, receipt of income, or other exercise of any attribute of ownership) (collectively, as defined in this clause (ii), the "**Claims**," and together with the Liens and any other interests of any kind or nature whatsoever, the "**Interests**"), relating to, accruing, or arising any time prior to the Closing Date or from and after the Closing but which arise out of or relate to any act, omission, circumstances, breach, default, or other event occurring prior to the Closing, with the exception of the Permitted Encumbrances and the Assumed Liabilities, which Permitted Encumbrances and the Assumed Liabilities shall be assumed by the Buyer, pursuant to this Order to the extent set forth in the Purchase Agreement.

12. Except as expressly assumed by the Buyer under the Purchase Agreement, the transfer of the Purchased Assets to the Buyer and the assignment to the Buyer of the Purchased Contracts will not subject the Buyer to any liability whatsoever which may become due or owing under the Purchased Contracts prior to the Closing Date, or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, or foreign jurisdiction, based, in whole or in part, directly or indirectly, on any theory of law or equity, including any Successor or Other Liabilities.

13. The Purchase Agreement is valid and binding contracts between the Debtors and the Buyer and shall be enforceable pursuant to its terms. The Purchase Agreement, the Sale, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtors and any chapter 7 or chapter 11 trustee appointed in these Chapter 11 Cases, or any converted or successor cases, and shall not be subject to rejection or avoidance by the foregoing parties or any other Person. The Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession, or the District of Columbia, or foreign jurisdiction. As demonstrated by the [●] Declaration, the consideration provided by the Buyer for the Purchased Assets pursuant to the Purchase Agreement (i) is fair and reasonable, (ii) is the highest or otherwise best offer for the Purchased Assets, (iii) will provide a greater recovery for the Debtors' creditors than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia, and any foreign jurisdiction (including the Uniform Fraudulent Conveyance Act, the Uniform Voidable Transactions Act, the Uniform Fraudulent Transfer Act, and similar

laws and acts). Neither the Debtors nor the Buyer is entering into the transactions contemplated by the Purchase Agreement with any fraudulent or otherwise improper purpose, including for the purpose of statutory and common-law fraudulent conveyance and fraudulent transfer.

14. Each and every federal, state, local, and other governmental agency, governmental department, filing agent, filing officer, title agent, recording agency, secretary of state, federal, state, and local official, and any other persons and entity who may be required by operation of law, the duties of their office or contract, to accept, file, register, or otherwise record or release any documents or instruments or who may be required to report or insure any title in or to the Purchased Assets, is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the Sale contemplated by the Purchase Agreement. Neither the Debtors nor the Buyer shall be required to execute or file releases, termination statements, assignments, consents, or other instruments or documents in order to effectuate, consummate, and implement the provisions of this Order. The Buyer may, but shall not be required to, file a certified copy of this Order in any filing or recording office in any federal, state, county, or other territory or jurisdiction in which any of the Debtors or their Affiliates is incorporated or has real or personal property, or with any other appropriate clerk or recorded with any other appropriate recorder, and such filing or recording shall be accepted and shall be sufficient to release, discharge, and terminate any of the Interests as set forth in this Order as of the Closing Date.

15. On the Closing Date, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be reasonably necessary to release its Liens, if any, in the Purchased Assets, as such Liens may otherwise exist. If any Person that has filed a financing statement, mortgage, mechanic's lien, *lis pendens*, or other statement, document, or agreement evidencing an Interest in any portion of the Purchased Assets (other than statements

or documents with respect to Permitted Encumbrances or Assumed Liabilities) shall not have delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases, and/or other similar documents necessary for the purpose of documenting the release of all Interests that such Person has in the Purchased Assets, then (i) the Debtors are hereby authorized to execute and file such statements, instruments, releases, and/or other similar documents on behalf of such Person with respect to the Purchased Assets, (ii) the Buyer is hereby authorized to file, register, or otherwise record a certified copy of this Order that, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Interests of any kind or nature in the Purchased Assets, and (iii) the Buyer may seek in this Court, or any other court of appropriate jurisdiction, to compel the appropriate parties to execute termination statements, instruments of satisfaction, releases, and/or other similar documents with respect to all Interests that such Person has in the Purchased Assets. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department, or office.

16. The Debtors and the Buyer shall have no obligation to proceed with the Closing until all conditions precedent to their obligations to proceed have been met, satisfied, or waived in accordance with the terms of the Purchase Agreement.

17. Unless the Buyer otherwise consents, all Persons that are in or come into possession of any portion of the Purchased Assets, at any time prior to the Closing Date, are hereby directed to surrender possession of such Purchased Assets to the Buyer on the Closing Date, or at such time thereafter as the Buyer may request. Subject to the terms of this Order, all Persons are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere

with the ability of the Debtors to sell and transfer the Purchased Assets to the Buyer in accordance with the terms of the Purchase Agreement and this Order. Following the Closing, no holder of an Interest in the Debtors shall interfere with the Buyer's title to or use and enjoyment of the Purchased Assets and the Purchased Contracts based on or related to such Interest or any actions that the Debtors may take in these Chapter 11 Cases.

18. This Order is and shall be binding upon and govern the acts of all Persons (including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons or entities) who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing Persons shall accept for filing any and all of the documents and instruments necessary and appropriate to release, discharge, and terminate any of the Interests or to otherwise consummate the transactions contemplated by the Purchase Agreement and this Order.

19. To the maximum extent permitted under applicable law, the Buyer shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval of the Debtors with respect to the Purchased Assets, and all such licenses, permits, registrations, and governmental authorizations or approvals are deemed to have been, and hereby are, authorized to be transferred to the Buyer as of the Closing Date. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the Purchased Assets on account of the filing or pendency of these Chapter 11 Cases or the

consummation of the transactions contemplated by the Purchase Agreement, including the Sale and the assumption and assignment of the Purchased Contracts. To the extent any license or permit necessary for the operation of the business of the Debtors is determined not to be an executory contract assumable and assignable under section 365 of the Bankruptcy Code or otherwise transferable to the Buyer, the Buyer may apply for and obtain any necessary license or permit promptly and the Debtors are hereby authorized to cooperate with the Buyer in connection with any such application as the Buyer deems reasonably necessary or desirable, pursuant to the provisions of the Purchase Agreement.

20. Notwithstanding anything to the contrary herein, as of or following the Closing Date, as applicable, the Buyer shall assume, discharge, perform, or otherwise satisfy or address the Assumed Liabilities, subject to the terms of the Purchase Agreement.

#### **IV. Assumption and Assignment of Purchased Contracts.**

21. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, and subject to and conditioned upon the Closing of the Sale, the applicable Debtors' assumption and assignment, to the Buyer, and the Buyer's acceptance of, the Purchased Contracts, on the terms set forth in the Purchase Agreement, is hereby approved, and the requirements of section 365(b)(1) and 365(f)(2) with respect thereto are hereby found and deemed to be satisfied.

22. The Debtors are hereby authorized and, unless the Debtors (in consultation with the Committee, the DIP Lenders, and the Prepetition First Lien Secured Parties) and the Buyer otherwise agree, directed in accordance with sections 105(a), 363, and 365 of the Bankruptcy Code to (a) assume and assign to the Buyer, effective upon the Closing Date, the Purchased Contracts free and clear of all Interests (other than the Permitted Encumbrances and the Assumed Liabilities) and (b) execute and deliver to the Buyer such documents or other instruments as Buyer deems may be necessary to assign and transfer the Purchased Contracts to the Buyer.

23. With respect to the Purchased Contracts, and with respect to the Sale of the Purchased Assets to the Buyer: (a) the Debtors may assume each of the Purchased Contracts in accordance with section 365 of the Bankruptcy Code; (b) the Debtors may assign each Purchased Contract in accordance with the Purchase Agreement and sections 363 and 365 of the Bankruptcy Code, and, to the extent provided in section 365 of the Bankruptcy Code, such assignment may occur notwithstanding and without giving effect to any provisions in any Purchased Contract that prohibit or condition the assignment of such Purchased Contract or allow the party to such Purchased Contract to terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Purchased Contract, which provisions constitute unenforceable anti-assignment or ipso facto provisions which are void and of no force and effect; (c) all other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment, as applicable, to the Buyer of each Purchased Contract have been satisfied; and (d) effective upon the Closing Date, the Purchased Contracts shall be transferred and assigned to, and from and following the Closing Date remain in full force and effect for the benefit of, the Buyer, notwithstanding any provision in any Purchased Contract that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the Purchased Contracts after such assumption and assignment to the Buyer. For the avoidance of doubt, the Buyer shall be responsible for obligations arising under Purchased Contracts solely to the extent provided for in the Purchase Agreement, including, without limitation, with respect to the Permitted Encumbrances and the Assumed Liabilities. To the extent any provision in any Purchased Contract assumed and assigned pursuant to this Order (i) prohibits, restricts, or conditions, or purports to prohibit, restrict, or condition, such assumption and

assignment or assignment (including, without limitation, any “change of control” provision), or (ii) is modified, breached, or terminated, or deemed modified, breached, or terminated by any of the following: (A) the commencement of these Chapter 11 Cases, (B) the insolvency or financial condition of any of the Debtors at any time before the closing of these Chapter 11 Cases, (C) the Debtors’ assumption and/or assignment of such Purchased Contract, (D) a change of control or similar occurrence, or (E) the consummation of the Sale, then such provision shall be deemed modified so as not to entitle the non-Debtor party thereto to prohibit, restrict, or condition such assumption and assignment or assignment, to modify, terminate, or declare a breach or default under such Purchased Contract, or to exercise any other default-related rights or remedies with respect thereto. With respect to the Sale of the Purchased Assets to the Buyer, all such provisions constitute unenforceable anti-assignment or ipso facto provisions that are void and of no force and effect pursuant to sections 365(b), 365(e), and 365(f) of the Bankruptcy Code.

24. All defaults or other obligations of the Debtors under the Purchased Contracts arising or accruing prior to the Closing Date, or required to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Purchased Contracts, shall be cured by the Debtors to the extent set forth in the Purchase Agreement and this Order.

25. All requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Buyer of the Purchased Contracts have been satisfied. Each of the Purchased Contracts shall be deemed to be valid and binding and in full force and effect and enforceable in accordance with their terms as of the Closing Date, subject to any amendments or modifications agreed to between a Counterparty and the Buyer. Upon the Closing Date, in accordance with sections 363 and 365 of the Bankruptcy Code, the Buyer shall be fully and irrevocably vested with all right, title, and interest of the Debtors in and



under the Purchased Contract, and each Purchased Contract shall be fully enforceable by the Buyer in accordance with its respective terms and conditions, except as limited or modified by this Order. To the extent provided in the Purchase Agreement, the Debtors shall cooperate with, and take all actions reasonably requested by, the Buyer to effectuate the foregoing.

26. Upon payment of the Cure Costs pursuant to the terms hereof and the Purchase Agreement, and the Debtors' assignment of the Purchased Contracts to the Buyer under the provisions of this Order, no default or other obligations arising prior to the Closing Date shall exist under any Purchased Contract, and each Counterparty is forever barred, estopped, and permanently enjoined from (a) declaring a default by the Debtors or the Buyer under such Purchased Contract based on acts or occurrences arising prior to or existing as of the Closing Date, (b) raising or asserting against the Debtors or the Buyer, or the property of either of them, any assignment fee, default, breach, or claim of pecuniary loss, or condition to assignment, arising under or related to the Purchased Contracts, or (c) taking any other action against the Buyer as a result of any Debtor's financial condition, bankruptcy, or failure to perform any of its obligations under the relevant Purchased Contract. Each Counterparty hereby is also forever barred, estopped, and permanently enjoined from (i) asserting against the Debtors or the Buyer, or the property of any of them, any default or Claim arising out of any indemnity or other obligation or warranties for acts or occurrences arising prior to or existing as of the Closing Date, and (ii) imposing or charging against Buyer or its affiliates any rent accelerations, assignment fees, increases, or any other fees as a result of the Debtors' assumption and assignment to Buyer of the Purchased Contracts.

27. Subject to the terms and conditions of the Purchase Agreement, and upon the Closing Date, the Debtors shall have: (i) to the extent necessary, cured or provided adequate assurance of cure of, any default existing prior to the date hereof under the Purchased Contracts,

within the meaning of sections 365(b)(1)(A) and 365(f)(2)(A) of the Bankruptcy Code and (ii) to the extent necessary, provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under the Purchased Contracts, within the meaning of sections 365(b)(1)(B) and 365(f)(2)(B) of the Bankruptcy Code. The Debtors' obligations to pay the Cure Costs under the Purchase Agreement and the Buyer's agreement to perform the obligations under the Purchased Contracts in accordance with the terms of the Purchase Agreement shall constitute adequate assurance of future performance within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code to the extent that any such assurance is required and not waived by the Counterparties.

28. To the furthest extent permitted by law, any party that may have had the right to consent to the assumption or assignment of a Purchased Contract is deemed to have consented to such assumption and assignment or assignment for purposes of section 365(e)(2)(A)(ii) of the Bankruptcy Code if such party failed to timely object to the assumption or assignment of such Purchased Contract in accordance with the Bidding Procedures Order, and the Buyer shall be deemed to have demonstrated adequate assurance of future performance with respect to such Purchased Contract pursuant to sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code. Any counterparty to an applicable Purchased Contract that may be assumed and assigned to the Buyer who has not timely filed and served an objection shall be barred from objecting, or asserting monetary or non-monetary defaults, with respect to any such applicable Purchased Contract, and such applicable Purchased Contract, if designated as a Purchased Contract in accordance with the terms of the Purchase Agreement, shall be deemed assumed by the Debtors and assigned to the Buyer on the Closing Date pursuant to this Order.

29. To the extent a Counterparty failed to timely object to the Cure Costs for any applicable Purchased Contract in accordance with the Bidding Procedures Order, such Cure Costs shall be deemed to be finally determined and any such counterparty shall be prohibited from challenging, objecting to, or denying the validity and finality of the Cure Costs at any time.

30. The requirements of Bankruptcy Rule 6006(f)(6) are hereby waived, for cause shown, with respect to the Motion and the relief requested therein.

31. Upon and as of the Closing Date, the Buyer shall be deemed to be substituted for the applicable Debtor as a party to the applicable Purchased Contracts and the Debtors shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Purchased Contracts.

32. The Counterparties shall cooperate and expeditiously execute and deliver, upon the reasonable requests of the Buyer, any instruments, applications, consents, or other documents that may be required or requested by any public authority or other party or entity to effectuate the applicable transfers in connection with the Sale of the Purchased Assets.

33. From the date of the entry of the Order, the Debtors may, in their sole discretion, settle objections to assumption and assignment of any applicable Purchased Contract, including to proposed Cure Costs, without, except as required herein, any further notice to or action by any party or order of the Court (including by paying any agreed Cure Cost); *provided* that notice to and consent of the Buyer shall be required to the extent (a) required under the Purchase Agreement, (b) the Buyer is liable for such Cure Cost pursuant to the Purchase Agreement, or (c) the Buyer's rights and remedies are otherwise altered in any way by the resolution; and *provided* further that the Debtors shall provide (i) the DIP Lenders (only to the extent the DIP Obligations have not been fully satisfied), (ii) the Prepetition First Lien Noteholders, and (iii) the Committee (each as defined

in the DIP Financing Order) with three (3) Business Days' advance written notice and an opportunity to object with respect to any settlement that requires payment of a Cure Cost in excess of any Cure Costs set forth in that *Notice of Executory Contracts and Unexpired Leases That May Potentially be Assumed and Assigned in Connection with the Sale of the Debtors' Assets and the Proposed Cure Costs with Respect Thereto* [Docket No. 535]. Unless the Court orders otherwise, contemporaneously with the resolution of any such objection, the executory contract or unexpired lease underlying such objection shall be deemed a Purchased Contract without the necessity of obtaining any further order of the Court.

34. Notwithstanding anything to the contrary herein, no executory contract or unexpired lease as to which a Counterparty timely files and serves an objection shall be considered a Purchased Contract under this Order unless and until any timely objection to the assumption and assignment of such executory contract or unexpired lease has been resolved or overruled in accordance with the procedures set forth in the Bidding Procedures Order.

35. Nothing in this Order, the Motion, or any other notice or any other document is or shall be deemed an admission by the Debtors or the Buyer that any contract is an executory contract or must be assumed and assigned pursuant to the Purchase Agreement or in order to consummate the Sale.

**V. No Successor Liability; Prohibition of Actions Against the Buyer.**

36. The Buyer is not a "successor" to, a mere continuation of, or an alter ego of, any of the Debtors or their estates, and there is no continuity of enterprise or common identity between the Buyer and the Debtors by reason of any theory of law or equity. Neither the purchase of the Purchased Assets by the Buyer nor the fact that the Buyer is using any of the Purchased Assets previously operated by the Debtors will cause the Buyer to be deemed a successor to, combination of, or alter ego of, in any respect, any of the Debtors or the Debtors' businesses, or incur any

liability derived therefrom within the meaning of any foreign, federal, state, or local revenue, tax, antitrust, environmental, labor law (including any WARN Act), employment, pension, ERISA or other benefits law (except any obligations to provide COBRA continuation coverage), de facto merger, business continuation, substantial continuity, successor, vicarious, alter ego, derivative, transferee, veil piercing, escheat, continuity of enterprise, mere continuation, product line, or other law, rule, regulation (including filing requirements under any such laws, rules, or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule, or regulation or doctrine, whether now known or unknown, now existing or hereafter arising, whether fixed or contingent, whether asserted or unasserted, whether legal or equitable, whether matured or unmatured, whether contingent or noncontingent, whether liquidated or unliquidated, whether arising prior to or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity, or otherwise, including, but not limited to, liabilities on account of warranties, intercompany loans, and receivables among the Debtors, and any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the cancellation of debt of the Debtors or their Affiliates, or in any way relating to the operation of any of the Purchased Assets or ratings experience of the Debtors prior to the Closing Date, in each case other than the Permitted Encumbrances and Assumed Liabilities.

37. Except with respect to the Permitted Encumbrances and the Assumed Liabilities, the Buyer shall not have, assume, or be deemed to assume, or in any way be responsible for, any liability or obligation of any of the Debtors or their estates, or any of the Debtors' predecessors or Affiliates with respect to the Purchased Assets or otherwise. Without limiting the generality of the foregoing, and except as otherwise specifically agreed in the Purchase Agreement, the Buyer shall not have any liability, responsibility, or obligation for any Interests of the Debtors or their

estates, including any claims, liabilities, or other obligations related to the Purchased Assets, including, for the avoidance of doubt, and without limiting the generality of the foregoing, any Successor or Other Liabilities, which may become due or owing (a) prior to the Closing Date or (b) from and after the Closing Date but which arise out of or relate to any act, omission, circumstance, breach, default, or other event occurring prior to the Closing Date. For the avoidance of doubt, the Buyer shall not have any liability, responsibility, or obligation for and the Purchased Assets shall be sold and transferred to the Buyer free and clear of any bidding protections that may be payable to any other bidders in connection with the Sale.

38. Except with respect to Permitted Encumbrances, Assumed Liabilities, or as otherwise specifically set forth in the Purchase Agreement, all Persons (including but not limited to, all debt holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors, litigation claimants, contract counterparties, customers, landlords, licensors, employees, and other holders of Interests against or in any of the Debtors or any portion of the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, known or unknown, contingent or noncontingent, liquidated or unliquidated, senior or subordinate, asserted or unasserted, whether arising prior to or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity, or otherwise), arising under or out of, in connection with, or in any way relating to, the Debtors, the Purchased Assets, the operation of the Debtors' business prior to the Closing, or the transfer of the Purchased Assets to the Buyer (including without limitation any Successor or Other Liabilities or rights or claims based thereon)) shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing against the Buyer or any Buyer Party, or their respective assets or properties, including, without limitation, the Purchased Assets, any Interests of any kind or nature whatsoever

that such Person had, has, or may have against or in the Debtors, their estates, officers, directors, shareholders, or the Purchased Assets, including, without limitation, the following actions: (a) commencing or continuing in any manner any action or other proceeding, the employment of process, or any act (whether in law or equity, in any judicial, administrative, arbitral, or other proceeding) against the Buyer or any Buyer Party, or their respective assets or properties, including the Purchased Assets; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Buyer or any Buyer Party, or their respective assets or properties, including the Purchased Assets; (c) creating, perfecting, or enforcing any Interest against the Buyer or any Buyer Party, or their respective assets or properties, including the Purchased Assets; (d) asserting any setoff, or right of subrogation, of any kind against any obligation due the Buyer or any Buyer Party, or their respective assets or properties, including the Purchased Assets; (e) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Order or other orders of the Court, or the agreements or actions contemplated or taken in respect thereof; or (f) to the extent prohibited by section 525 of the Bankruptcy Code, revoking, terminating, or failing or refusing to transfer or renew any license, permit, or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with the Purchased Assets.

39. Except as provided in the Purchase Agreement and except with respect to the Permitted Encumbrances and the Assumed Liabilities and without limiting other applicable provisions of this Order, the Buyer is not, by virtue of the consummation of the Sale, assuming, nor shall it be liable or responsible for any liabilities, debts, commitments, or obligations (whether known or unknown, disclosed or undisclosed, absolute, contingent, inchoate, fixed, or otherwise) in any way whatsoever relating to or arising from the Debtors, the Purchased Assets, or the Debtors’

operation of their businesses or use of the Purchased Assets on or prior to the Closing Date or any such liabilities, debts, commitments, or obligations that in any way whatsoever relate to periods on or prior to the Closing Date or are to be observed, paid, discharged, or performed on or prior to the Closing Date (in each case, including, without limitation, any Excluded Liabilities, any Successor or Other Liabilities and any liabilities that result from, relate to, or arise out of tort or product liability claims), or any liabilities calculable by reference to the Debtors or their assets or operations or relating to continuing conditions existing on or prior to the Closing Date, including with respect to any of the Debtors' predecessors or Affiliates, which liabilities, debts, commitments, and obligations are hereby extinguished insofar as they may give rise to Successor or Other Liability.

#### **VI. Other Provisions.**

40. The transactions contemplated by the Purchase Agreement and this Order are undertaken by the Buyer without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not alter, affect, limit, or otherwise impair the validity of the Sale (including the assumption, assignment, and/or transfer of the Purchased Contracts), unless such authorization and consummation of the Sale are duly stayed pending such appeal. The Buyer is a good-faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to, and hereby granted, the full rights, benefits, privileges, and protections of section 363(m) of the Bankruptcy Code. As a good-faith purchaser of the Purchased Assets, the Buyer has not entered into any agreement with any other potential bidders and has not colluded with any potential or actual bidders, and therefore, neither the Debtors nor any successor in interest to the Debtors' estates shall be entitled to bring an action against the



Buyer, and the Sale may not be avoided, pursuant to section 363(n) of the Bankruptcy Code. The Purchase Agreement shall not be subject to rejection or avoidance under any circumstances.

41. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the transactions contemplated under the Purchase Agreement.

42. For cause shown, pursuant to Bankruptcy Rules 6004(h), 6006(d), 7062, and 9014, this Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the stays provided in Bankruptcy Rules 6004(h) and 6004(d) are hereby expressly waived and shall not apply. Accordingly, the Debtors and Buyer are authorized and empowered to close the Sale immediately upon entry of this Order.

43. The failure to include or specifically reference any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety.

44. To the extent that this Order is inconsistent with the Motion, the terms of this Order shall control and govern. To the extent that there are any inconsistencies between the terms of this Order, on the one hand, and the Purchase Agreement on the other hand, the terms of this Order shall control and govern. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Motion in these Chapter 11 Cases, the terms of this Order shall govern. Unless otherwise provided herein, to the extent this Order is inconsistent with the Bidding Procedures Order or any other prior order or pleading in these Chapter 11 Cases, this Order shall govern.

45. The Purchase Agreement may be modified, amended, or supplemented in a writing signed by the parties thereto and in accordance with the terms thereof, in consultation with the

Committee, the DIP Lenders, and the Prepetition First Lien Noteholders, without further notice to or order of the Court; provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates and does not otherwise conflict with this Order, and prior written notice of such modification is provided by the Debtors to the affected parties.

46. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted to the extent necessary, without further order of the Court, to allow the Buyer and the Debtors to deliver any notice provided for in the Purchase Agreement and allow the Buyer and the Debtors to take any and all actions permitted under the Purchase Agreement.

47. From time to time, as and when requested by the other, the Debtors and the Buyer, as the case may be, shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the Sale, including, such actions as may be necessary to vest, perfect or confirm, or record or otherwise, in the Buyer its right, title and interest in and to the Purchased Assets and the Purchased Contracts, subject to the provisions of the applicable Agreement.

48. The Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order, the Purchase Agreement, and any amendments thereto and any waivers and consents given thereunder, and to adjudicate, if necessary, any and all disputes concerning or in any way relating to the Sale, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Purchased Assets to the Buyer, (b) interpret, implement, and enforce the provisions of this Order, including but not limited to the injunctions and limitations of liability set forth in this Order, (c) protect the Buyer against any Interests in or against the

Debtors or the Purchased Assets of any kind or nature whatsoever that are not Assumed Liabilities or Permitted Encumbrances, including, without limitation, to enjoin the commencement or continuation of any action seeking to impose successor liability or bulk sale liability on the Buyer, (d) decide any disputes concerning this Order and the Purchase Agreement, or the rights and duties of the parties hereunder or thereunder or any issues relating to the Purchase Agreement and this Order including, but not limited to, the interpretation of the terms, conditions, and provisions hereof and thereof, the status, nature, and extent of the Purchased Assets and any Purchased Contracts and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the assets free and clear of all Interests (other than the Permitted Encumbrances and the Assumed Liabilities), (e) enter any orders under sections 105, 363, and 365 of the Bankruptcy Code, or otherwise, with respect to the Purchased Assets and the Purchased Contracts, and (f) re-open the Chapter 11 Cases to determine any of the foregoing.

**EXHIBIT A**

**Purchase Agreement**

[To Be Attached]