

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

Supply Source Enterprises, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11054 (___)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF
ORDERS (I)(A) APPROVING BIDDING PROCEDURES FOR THE SALE
OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) DESIGNATING
THE STALKING HORSE BIDDER, (C) SCHEDULING AN AUCTION AND
APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (D) APPROVING
ASSUMPTION AND ASSIGNMENT PROCEDURES, (E) SCHEDULING A
SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE
THEREOF AND (F) GRANTING RELATED RELIEF; AND (II)(A) APPROVING
THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF
LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (B) APPROVING
THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, AND (C) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (the "Debtors") hereby file this motion (the "Motion")² for the entry of (a) an order, substantially in the form attached hereto as **Exhibit A** (the "Bidding Procedures Order"), (i)(a) approving bidding procedures, substantially in the form attached to the Bidding Procedures Order as **Exhibit 1** (the "Bidding Procedures"), to be used in connection with the sale (the "Sale") of all or substantially all of the Debtors' assets (the "Assets"), (b) designating a newly formed entity by the DIP Lender as the staking horse bidder (the "Stalking Horse Bidder"), (c) scheduling an auction of the Assets (the "Auction") and

¹ The Debtors in these chapter 11 proceedings, together with the last four digits of each Debtor's federal tax identification number, are: Supply Source Enterprises, Inc. (0842); SSE Intermediate, Inc. (1772); SSE Buyer, Inc. (5901); Impact Products, LLC (7450); and The Safety Zone, LLC (4597). The Debtors' headquarters are located at 385 Long Hill Road, Guilford, Connecticut 06437.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration (as defined herein) or the Bidding Procedures (as defined herein).



approving the form and manner of notice thereof, if any, and scheduling the hearing to approve a sale of the Assets (the “Sale Hearing”) and approving the form and manner of notice thereof, (ii) approving the form and manner of notice of the proposed Bidding Procedures, the Auction, and the Sale Hearing, substantially in the form attached to the Bidding Procedures Order as **Exhibit 2** (the “Sale Notice”), (iii) authorizing procedures governing the assumption and assignment of certain executory contracts and unexpired leases (the “Contracts”) in connection with any Sale (the “Assumption and Assignment Procedures”), (iv) approving the form and manner of notice to each relevant non-debtor counterparty to a Contract (each, a “Counterparty”) of (A) the Debtors’ calculation of the amount necessary to cure any defaults under an applicable Contract (the “Cure Costs”) and (B) certain other information regarding the potential assumption and assignment of Contracts in connection with the Sale, substantially in the form attached to the Bidding Procedures Order as **Exhibit 3** (the “Assumption and Assignment Notice”), and (v) granting related relief.

The Debtors will seek entry of a sale order (the “Sale Order”), substantially in the form attached hereto as **Exhibit B** at the Sale Hearing. The proposed Sale Order, among other things: (a) authorizes and approves the Sale to the Stalking Horse Bidder (as defined below) or other Successful Bidder, on the terms substantially set forth in the Successful Bid; (b) authorizes and approves the Sale of the Assets free and clear of any claim, lien, or encumbrance to the extent set forth in the asset purchase agreement with the Successful Bidder, which may be pursuant to the terms of that certain asset purchase agreement, attached to the Bidding Procedures as **Exhibit A**, the form of which has been agreed to by the Debtors and the Stalking Horse Bidder (the “Stalking Horse APA”), and the bid contained therein, (the “Stalking Horse Bid”); (c) authorizes and approves the assumption and assignment of the purchased contracts to the Successful Bidder; and (d) grants related relief.

In support of this Motion, the Debtors rely upon and incorporates by reference the *Declaration of Lisa K. Lansio in Support of the Debtors' Motion for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets, (B) Designating the Stalking Horse Bidder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption And Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief*, filed contemporaneously herewith (the "Sale Declaration") and the *Declaration of Thomas Studebaker in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"). In further support of this Motion, the Debtors, by and through their undersigned proposed counsel, respectfully represents:

PRELIMINARY STATEMENT

1. After facing funding shortfalls and retaining Triple P RTS, LLC and Triple P Securities, LLC (collectively, "Portage Point") in early January 2024 to provide restructuring advisory and investment banking services to the Debtors, including to run a comprehensive sale process, the Debtors commenced these chapter 11 cases (these "Chapter 11 Cases") to implement a value-maximizing transaction through a sale of all or substantially all of their Assets. Shortly before the Petition Date, the Debtors agreed to the form of the Stalking Horse APA with the Stalking Horse Bidder, subject to Court approval.

2. The Stalking Horse APA provides a "floor bid" from the Debtors' secured lender, which is a commitment by the lender to credit bid up to the full amount of its secured debt in a sale transaction for substantially all of the Debtors' assets. In the meantime, Portage Point

continues to market the Assets to determine if there is a higher or better transaction available than the Stalking Horse Bid. As consideration for the purchase of the Assets, the Stalking Horse APA includes a credit bid of \$63 million, comprised of (i) all outstanding obligations under the DIP Facility at closing, plus (ii) any outstanding obligations under the Prepetition ABL Facility at closing necessary to equal \$63 million.

3. Through this Motion, the Debtors seek the Court's approval of Bidding Procedures pursuant to which the Debtors will seek overbids for all or a subset of their Assets. In light of the limited liquidity available to the Debtors and the requirements of their DIP financing, and to capitalize on the opportunity presented by the proposed going-concern Stalking Horse Bid, the Debtors believe it is critical that the sale process be consummated on the timeline set forth below. The Debtors do not have the liquidity to support a protracted sale process which, in any event, would threaten key relationships and close the door to any future for the Debtors. The Debtors believe that the proposed timeline maximizes value to the estates both by providing for a robust sale process and minimizing value-destructive business disruption from a prolonged stay in chapter 11.

Timeline for Sale

Three business days after the entry of the Bidding Procedures Order	Deadline for Debtors to file and serve Sale Notice
Three business days after the entry of the Bidding Procedures Order	Deadline for Debtors to file and serve Assumption and Assignment Notice
June 18, 2024, at 4:00 p.m. (prevailing Eastern Time)	Sale Objection Deadline, Cure Objection Deadline, and Contract Objection Deadline

June 24, 2024, at 4:00 p.m. (prevailing Eastern Time)	Bid Deadline
June 26, 2024, at 10:00 a.m. (prevailing Eastern Time)	Auction (if necessary)
One business day after the conclusion of the Auction	Deadline for Debtors to file and serve Notice of Auction Results
June 28, 2024 at 4:00 p.m. (prevailing Eastern Time)	Supplemental Sale Objection Deadline and Adequate Assurance Objection Deadline (if necessary)
June 30, 2024, at 12:00 p.m. (prevailing Eastern Time)	Deadline to Reply to any Sale Objections or Supplemental Sale Objections
July 1, 2024 at [●:● a/p.m.] (prevailing Eastern Time)	<i>Proposed</i> Sale Hearing (if Auction is held)

JURISDICTION AND VENUE

4. This Court has jurisdiction to consider this Motion under 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 February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b), and pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors confirm their consent to the entry of a final order or judgment by the Court with respect to this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

5. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The statutory and legal predicates for the relief sought herein are sections 105, 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rules 2002-1, 6004-1 and 9006-1.

GENERAL BACKGROUND

7. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code. The Debtors have also filed a motion requesting joint administration of these Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their business and managing their properties, as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made, and no official committees have been appointed in these Chapter 11 Cases.

8. The Debtors are leading distributors of branded and private label personal protective equipment and janitorial, safety, hygiene, and sanitation products. The Debtors’ key products fall into the categories of gloves, core cleaning, safety, and food service. Working directly with suppliers and vendors in in the United States and Asia, the Debtors source, supply, and ship their products to a diverse customer base, including janitorial and sanitation providers, supply distributors, safety products resellers and wholesalers, and food service and food processing distributors and retailers. Additionally, the Debtors offer advanced customization capabilities, hot stamping, pad printing, and silk-screening labeling services for unique design, logo, or packaging specification requested by customers.

9. Additional factual background regarding the Debtors, including their business operations, their corporate and capital structure, and the events leading to the filing of these Chapter 11 Cases is set forth in the First Day Declaration, which is incorporated herein by reference.³

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

SALE PROCESS

A. Prepetition Marketing Process

10. The Debtors engaged Portage Point on January 5, 2024 to provide a chief restructuring officer and associated personnel. In that role, Portage Point has, among other things: (a) solicited third-party interest in an acquisition of the Debtors, (b) assisted the Debtors with negotiating and documenting the DIP Facility, including assisting management in developing the Approved Budget, and (c) assisted the Debtors in negotiating and documenting the Stalking Horse APA and developing the Bidding Procedures for their postpetition marketing process. Sale Declaration ¶ 7.

11. Beginning in early February 2024, Portage Point began marketing the sale of substantially all of the Debtors' business and assets (the "Marketing Process"). *Id.* ¶ 11. Portage Point, on behalf of the Debtors, contacted over 70 potential investors, including strategic and financial investors, to solicit proposals to acquire the Debtors' business or assets. *Id.* In connection with this solicitation, the Debtors and their advisors prepared, among other things, a confidential information memorandum and an electronic data room. *Id.* Ultimately, 25 interested parties executed confidentiality agreements and were granted access to the electronic data room. Interested parties were also given an opportunity to have a virtual meeting with Debtors' management. *Id.* Portage Point informed each of these parties that the Marketing Process was expeditious and driven by the Debtors' limited liquidity and challenged operational needs. The interested parties were invited to submit a non-binding indication of interest ("IOI") for the purchase of the Debtors' business and assets. *Id.*

12. The Debtors received five (5) IOIs for various portions of the Debtors' business. *Id.* ¶ 12. The Debtors invited each of the five bidders into the second, more comprehensive round

of diligence and the Debtors worked with each bidder to attempt to improve their bids in advance of the letter of intent (“LOI”) deadline. *Id.* As part of this diligence phase, prospective bidders were invited to meet with the Company’s management and visit its facilities. The data room also contained a form purchase agreement for bidders to deliver in connection with the submission of their LOIs. *Id.*

13. Following several weeks of additional diligence, the Debtors ultimately received two, non-binding LOIs for the purchase of substantially all of the Assets. *Id.* ¶ 13. One LOI contemplated an out-of-court asset sale, while the other contemplated a sale through chapter 11. In evaluating the LOIs, the Debtors analyzed, among other considerations: (i) the structure of the proposed transaction; (ii) the form and amount of consideration offered; (iii) the assets to be acquired and liabilities to be assumed; (iv) certainty of close, and (v) execution risks. *Id.* The Debtors met regularly with their advisors and consulted with their key stakeholders before and after LOIs were submitted. *Id.*

14. The LOI submitted by an affiliate of The Tranzonic Companies (“Tranzonic”), Peak Rock Capital LLC (the “Tranzonic Affiliate”) contemplated a chapter 11 sale scenario with a short timeline to complete confirmatory diligence and execute a purchase agreement and requested a 45 day exclusivity period (the “Original Tranzonic LOI”). *Id.* ¶ 14. The Debtors pushed back on the exclusivity request, but after reviewing the two LOIs with the Debtors’ board, management and key stakeholders, including the Prepetition ABL Lenders, the Debtors granted Tranzonic Affiliate exclusivity for 10 business days to complete its confirmatory diligence and deliver a draft purchase agreement. *Id.*

15. At the same time, the Company and its advisors continued discussions with the Prepetition ABL Lenders to gauge their willingness to fund the Company to the completion of a

sale transaction through chapter 11. *Id.* ¶ 15. The Prepetition ABL Lenders communicated their strong desire to have their existing indebtedness purchased by any stalking horse buyer prior to the commencement of a chapter 11 case. *Id.* The Prepetition ABL Lenders also indicated they were unwilling to consent to a priming DIP facility by Tranzonic Affiliate or any other third party in a chapter 11 case. *Id.* The Prepetition ABL Lenders were unwilling to provide their own DIP facility but expressed a willingness to fund the Company with incremental liquidity to bridge to the debt purchase to the extent Tranzonic Affiliate would agree to purchase their debt. *Id.* The Debtors did not have access to funds to continue to operate the business without the support and consent of the Prepetition ABL Lenders. *Id.*

16. The Debtors terminated Tranzonic Affiliate’s exclusivity following the conclusion of the 10-day period and used this opportunity to continue discussions with the party that provided the second LOI (the “Alternative Bidder”). *Id.* ¶ 16. Despite limited additional diligence, the Alternative Bidder submitted a revised LOI (the “Revised Alternative Bid”), which contemplated a 30-day period to provide additional time for confirmatory diligence (which had not begun in earnest) and close an out of court sale. *Id.* ¶ 17. Following additional discussions between the Company, its advisors, and the Alternative Bidder in an attempt to have the Alternative Bidder increase the recovery to the Prepetition ABL Lenders and commit to a more timely close, the Alternative Bidder communicated it had decided not to submit a revised proposal. *Id.* ¶ 20.

17. At the same time, the Debtors’ professionals continued to negotiate with Tranzonic Affiliate regarding the Prepetition ABL Lenders’ request to have their debt purchased. *Id.* ¶ 18. Tranzonic Affiliate submitted a revised LOI providing for the purchase of the ABL Facility and Term Loan to be consummated immediately prior to a chapter 11 filing and the funding of a \$17 million debtor-in-possession financing (“DIP Financing”) to fund a chapter 11 case and sale

closing and wind-down expenses (the “Revised Tranzonic LOI”). *Id.* The Revised Tranzonic LOI required the Prepetition ABL Lenders to fund the operations of the business and certain chapter 11 preparation expenses up until the filing date. *Id.* The Revised Tranzonic LOI provided the Prepetition ABL Lenders with a greater recovery than the Revised Alternative Bid. *Id.*

18. After numerous discussions with their advisors and the Prepetition ABL Lenders, the Debtors determined that pursuing the Revised Tranzonic LOI was in their best interests and the only viable alternative that existed at the time. *Id.* ¶ 21. The Debtors and their advisors held numerous calls and discussions and engaged in extensive negotiations with Tranzonic Affiliate over the terms of the potential agreement to purchase substantially all of the assets of the Debtors. *Id.*

B. The Stalking Horse APA

19. Faced with no other actionable sale proposal, the Debtors executed the Stalking Horse APA with the Stalking Horse Bidder, pursuant to which the Stalking Horse Bidder agreed to (a) serve as the Stalking Horse Bidder pursuant to the terms of the Stalking Horse APA; (b) acquire substantially all of the Debtors’ Assets as a going concern through the Stalking Horse APA; (c) expose the Stalking Horse APA to higher and/or better offers through a competitive chapter 11 auction process; and (d) support the process by agreeing to provide necessary debtor-in-possession financing to the Debtors. The Stalking Horse Bidder is not seeking any break-up fee.

20. Under the terms of the Stalking Horse APA, the Stalking Horse Bidder will purchase the Assets for an aggregate purchase price consisting of: (a) a credit bid of \$63 million, comprised of (i) all outstanding obligations under the DIP Facility at closing, plus (ii) any outstanding obligations under the Prepetition ABL Facility at closing necessary to equal \$63 million; (b) assumption of certain other assumed liabilities as provided in the Stalking Horse APA;

and (c) assumption and assignment of the Assumed Contracts (as defined in the Stalking Horse APA) to the Stalking Horse Bidder and payment of any cure obligations in excess of \$100,000 associated with such Assumed Contracts.

21. The Stalking Horse APA not only represents a going concern sale of substantially all of the Debtor's assets, but also provides that a significant amount of prepetition unsecured claims will be assumed and paid by the Stalking Horse Bidder.

22. With the benefit of the Stalking Horse APA, the Debtor intends to continue the marketing and sale process by requesting the Court's approval of bidding procedures to govern the sale process, including an Auction.

23. The Stalking Horse APA represents the current highest or otherwise best offer for the assets and will enhance the bidding process by providing a floor that prospective bidders must clear and ensuring that only serious, financially capable bidders participate in the Auction.

24. After the Petition Date, Portage Point will continue to market the Assets to potential buyers and engage in discussions with any party that executed or executes a confidentiality agreement, with the goal of having such parties participate in the Auction.

C. Need For A Timely Process

25. The facts and circumstances of the Chapter 11 Cases require that the Debtors run an expedited, but robust, sale process. Speed and certainty are critical here, especially because the Stalking Horse Bid (which will allow for the Debtors' business to emerge from these Chapter 11 Cases as a going concern) and the Debtors' ability to access the DIP Facility and cash collateral (which will provide the Debtors with the necessary liquidity to fund continued operations and these Chapter 11 Cases) are both conditioned upon adherence to strict sale milestones. The Debtors simply do not have liquidity to support a protracted sale process. *Id.* ¶ 30. In addition, the Debtors

believe that a protracted sale process could be detrimental to their relationships with key vendors and suppliers, without whose support the Debtors will not be able to succeed. *Id.*

26. The proposed sale timeline is designed to minimize any further deterioration of the Assets and is in the best interests of all stakeholders. Thus, pursuing the Sale in the manner and within the time periods prescribed in the Bidding Procedures is in the best interest of the Debtors' estates and will provide interested parties with sufficient opportunity to participate. *Id.* ¶ 31.

**OVERVIEW OF BIDDING PROCEDURES, NOTICE PROCEDURES AND
ASSIGNMENT PROCEDURES**

A. Bidding Procedures

27. The Bidding Procedures are intended to facilitate a competitive marketing and sale process, including identifying the highest or otherwise best offer or offers for the Assets. The Sale may be for all of the Assets or for a portion thereof to one or more purchasers as potential purchasers may direct, and based on the highest or otherwise best return for the Debtors' estates.

28. As the Bidding Procedures are attached to the Bidding Procedures Order, they are not restated in their entirety herein. Pursuant to Local Rule 6004-1, certain of the key terms of the Bidding Procedures are highlighted in the chart below.⁴

MATERIAL TERMS OF THE BIDDING PROCEDURES AND BIDDING PROCEDURES ORDER	
<p>Provisions Governing Qualification of Bidders and Qualified Bids</p> <p>L.R. 6004-1(c)(i)(A)-(B)</p>	<p>Due Diligence, Qualified Bid and Qualified Bidder⁵ Requirements are set forth in Sections III, V, and VI of the Bidding Procedures.</p> <p style="text-align: center;">A. Due Diligence.</p> <p>Each person or entity that desires to participate in the Auction process (each, a “<u>Prospective Bidder</u>”) must first deliver to Portage Point the following:</p> <ul style="list-style-type: none"> • documentation identifying the Prospective Bidder, its principals, and the representatives thereof who are authorized to appear and act on its behalf for all purposes regarding the contemplated Sale; • an executed confidentiality agreement, in form and substance satisfactory to the Debtors; • a statement and other factual support demonstrating to the Debtors and their advisors, in its sole judgment, that the Prospective Bidder has a bona fide interest in purchasing some or all of the Assets; and • preliminary proof by the Prospective Bidder of its financial capacity to close a proposed sale transaction, which may include current unaudited or verified financial statements of, or verified financial commitments obtained by, the Prospective Bidder (or, if the Prospective Bidder is an entity formed for the purpose of acquiring the Assets to be sold, the party that will bear liability for a breach by the Prospective Bidder of an asset purchase agreement or other agreement entered into in respect of the sale transaction), the adequacy of which the Debtors and their advisors will determine in their sole judgment. <p>Without the need for any further action, the Stalking Horse Bidder is a Qualified Bidder.</p>

⁴ In the event of any conflict between the summary of Bidding Procedures set forth in this Motion and the Bidding Procedures, the Bidding Procedures as approved by the Court shall govern in all respects. Capitalized terms used but not defined in this section shall have the meanings ascribed to such terms in the Bidding Procedures.

⁵ Pursuant to the terms of the Bidding Procedures Order, a bid received for the Assets that the Debtors determine satisfies the requirements set forth in Sections V and VI.A of the Bidding Procedures will qualify as a “Qualified Bid,” and any bidder that submits a Qualified Bid will qualify as a “Qualified Bidder.”

Upon execution of a valid confidentiality agreement and subject to the other limitations and guidelines set forth herein, the Debtors may grant a Prospective Bidder that the Debtors identify as reasonably likely to become a Qualified Bidder with access to information contained in the Debtors' confidential electronic data room (the "Data Room") allowing such Prospective Bidder to conduct due diligence with respect to the potential acquisition of some or all of the Assets. Access may be terminated by the Debtors in their reasonable discretion at any time for any reason whatsoever, including that a Potential Bidder does not become a Qualified Bidder, these Bidding Procedures are terminated, the Potential Bidder breaches any obligations under its confidentiality agreement or the Debtors become aware that information submitted by the Potential Bidder for requesting access to the Data Room is inaccurate or misleading. The Debtors may restrict or limit access of a Potential Bidder to the Data Room if the Debtors determine, based on their reasonable business judgment that certain information in the Data Room is sensitive, proprietary, or otherwise not appropriate for disclosure to such Potential Bidder.

If the Debtors determine that a Prospective Bidder is unlikely to qualify as a Qualified Bidder or fails to become a Qualified Bidder, then such Prospective Bidder shall have no further right to access due diligence or any other non-public information. The Prospective Bidder shall return or destroy any non-public information the Debtors or their advisors provided to the Prospective Bidder in accordance with the terms of the confidentiality agreement executed by the Debtors and the Prospective Bidder. For purposes hereof, the term "Consultation Parties" shall include the Committee and, solely to the extent it is no longer the Stalking Horse Bidder or otherwise participating in the Auction as a bidder, the DIP Lender.

All due diligence requests shall be directed to Jason A. Cohen (jcohen@ppllc.com) and Lisa K. Lansio (llansio@ppllc.com).

Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Debtors' businesses or assets to any person or entity who (i) is not a Potential Bidder, (ii) does not comply with the participation requirements set forth herein, or (iii) in the case of competitively sensitive information, is a competitor of the Debtors, in the reasonable business judgment of the Debtors after consulting with the Consultation Parties.

Each Qualified Bidder shall be deemed to acknowledge and represent (i) that it has had an opportunity to (x) conduct any and all due diligence regarding the [Applicable] Acquired Assets prior to making a bid and (y) investigate and/or inspect any documents and the Applicable Acquired Assets in making its bid; (ii) that it has relied solely upon its own independent review in making its bid; and (iii) that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise regarding the Applicable Acquired Assets, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures. The Debtors and their respective estates are not responsible for, and will have no liability with respect to, any information obtained by, or provided to, any Potential Bidders in connection with these Bidding Procedures and the Sale Transactions.

B. Bid Deadline. June 24, 2024 at 4:00 p.m. (prevailing Eastern Time).

C. Qualified Bid Requirements

1. Identification of Bidder. A Qualified Bid must fully disclose the following: (a) the legal identity of each person or entity bidding for the Assets and/or otherwise sponsoring, financing (including through the issuance of debt in connection with such bid), or participating in (including through license or similar arrangement with respect to the Assets to be acquired in connection with such bid) the Auction

	<p>in connection with such bid and the complete terms of any such participation; and (b) any past or present connections or agreements with the Debtors, the Stalking Horse Bidder, any other known Prospective Bidder or Qualified Bidder, the DIP Lender, or any officer or director of any of the foregoing (including any current or former officer or director of the Debtors).</p> <p>2. <u>Purchased Assets.</u> A Qualified Bid must identify the following:</p> <p>a. the Assets to be purchased, including any executory contracts and unexpired leases (collectively, the “<u>Contracts</u>”) that, as of the submission of such bid, the Prospective Bidder proposes to be assumed and assigned by the Debtors in connection with the proposed sale; and</p> <p>b. the liabilities, if any, to be assumed, including any debt to be assumed.</p> <p>3. <u>Form of Consideration.</u></p> <p>a. <u>Credit Bidding.</u> The Stalking Horse Bidder or any Prospective Bidder holding a perfected security interest in any of the Assets may seek to credit bid all or a portion of such party’s claims for the collateral in which such party holds a perfected security interest (each such Bid, a “<u>Credit Bid</u>”) in accordance with section 363(k) of the Bankruptcy Code. A Credit Bid may be applied only with respect to those Assets in which the party submitting such Credit Bid holds a perfected security interest.</p> <p>b. <u>Consideration.</u> Each other bid must include a statement confirming that the bid is based on an all-cash offer, or if a bid includes forms of consideration other than cash, the bidder shall include an analysis or description of the value of such non-cash components, including any supporting documentation, to assist the Debtors and the Consultation Parties in evaluating the bid.</p> <p>4. <u>Minimum Bid for Assets.</u> Each bid that is not the Stalking Horse Bid must have a value to the Debtors, as determined by the Debtors, in consultation with the Consultation Parties, that is greater than or equal to the sum of the value offered under the Stalking Horse APA, <u>plus</u> (b) \$100,000 <u>plus</u> (c) the Expense Reimbursement (collectively, the “<u>Minimum Bid Amount</u>”). For the avoidance of doubt, any bid that is not the Stalking Horse Bid must provide sufficient consideration to allow the Debtors to repay, in full in cash, (x) all of the Obligations under the DIP Facility in accordance with the terms thereof and (y) the amount of the Prepetition Secured Obligations (as defined in the Interim DIP Order) that are credit bid by the Stalking Horse Bidder (the “<u>SH Payment Requirement</u>”).</p> <p>If the value of a bid relative to the Stalking Horse Bid includes additional non-cash components (such as fewer contingencies than are in such Stalking Horse APA), the bidder should include an analysis or description of the value of any such additional non-cash components, including any supporting documentation, to assist the Debtors and the Consultation Parties in better evaluating the competing bid. The Debtors, in consultation with their advisors and the Consultation Parties, reserve the right in their sole discretion to ascribe a value to any non-cash components of competing bids so long as the SH Payment Requirement is met.</p>
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	<p>5. <u>Proposed Asset Purchase Agreement.</u> A Qualified Bid must constitute an irrevocable offer and be in the form of an asset purchase agreement reflecting the terms and conditions of the bid (each, a “<u>Proposed Asset Purchase Agreement</u>”). A Proposed Asset Purchase Agreement shall be (a) duly authorized and executed; (b) based on, and marked against the Stalking Horse APA to reflect the proposed sale transaction and to show any other proposed modifications to the Stalking Horse APA, as applicable; (c) specify the proposed purchase price for the Assets in U.S. dollars; (d) include all exhibits and schedules contemplated thereby (other than exhibits and schedules that, by their nature, must be prepared by the Debtors); and (e) identify any Contracts that, as of the submission of such bid, the Prospective Bidder proposes to be assumed and assigned by the Debtors in connection with the proposed sale transaction.</p> <p>6. <u>Proposed Sale Order.</u> A Qualified Bid must include a proposed sale order (each, a “<u>Proposed Sale Order</u>”), and be marked against the Stalking Horse Sale Order, which the Debtors have filed with the Motion.</p> <p>7. <u>Financial Information.</u> A Qualified Bid must include the following:</p> <ul style="list-style-type: none"> a. a statement that the Prospective Bidder is financially capable of consummating the sale transaction contemplated by the Prospective Bidder’s Proposed Asset Purchase Agreement and Proposed Sale Order; b. sufficient evidence, as determined by the Debtors in their sole discretion, to determine that the Prospective Bidder has, or will obtain, the financial wherewithal to consummate the sale transaction contemplated by the Prospective Bidder’s Proposed Asset Purchase Agreement and Proposed Sale Order; and c. Adequate Assurance Information with respect to any Contracts included or that may be included in the Prospective Bidder’s bid, including the identity of any known proposed assignee of the applicable Contracts (if different from the Prospective Bidder), including contact information for such proposed assignee; <p>8. <u>Good Faith Deposit.</u> Each Qualified Bid (other than the Stalking Horse Bid) must be accompanied by a good faith deposit (each, a “<u>Good Faith Deposit</u>”) in the form of cash in an amount equal to ten percent (10%) of the proposed purchase price for the Assets. The Good Faith Deposits shall be deposited no later than June 24, 2024 at 4:00 pm (prevailing Eastern Time) with an escrow agent selected by the Debtors (the “<u>Escrow Agent</u>”) and held in escrow until 10 business days after the conclusion of the Auction, except for the Good Faith Deposit of any bidder who is selected at the Auction as a Successful Bidder or as a Backup Bidder, and thereafter returned to the respective Qualified Bidders in accordance with Section VII.D of the Bidding Procedures.</p> <p>9. <u>Adequate Assurance.</u> A Qualified Bid must include evidence of the Prospective Bidder’s (or any other relevant assignee’s) ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Prospective Bidder’s (or any other relevant assignee’s) ability to perform future obligations arising under any Contracts included in its bid. The Debtors may require the following information in connection with demonstrating adequate assurance of future performance: (a) information</p>
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	<p>evidencing the Prospective Bidder's (or any other relevant assignee's) financial wherewithal and willingness to perform under any Contracts included in the bid, which information may include (i) a corporate organizational chart or similar disclosure identifying corporate ownership and control, (ii) financial statements, (iii) tax returns, and (iv) annual reports; and (b) the Prospective Bidder's (or any other relevant assignee's) proposed use of any leased premises or other property included in the bid (the information described in clauses (a) and (b) of this Section VI.A.9, the "<u>Adequate Assurance Information</u>").</p> <p>All Adequate Assurance Information must be in a form that will permit its immediate dissemination to Contract counterparties ("<u>Counterparties</u>").</p> <p>10. <u>Representations and Warranties (As-Is, Where-Is)</u>. Each Qualified Bid must include a written acknowledgement and representation that (a) the Prospective Bidder has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its Qualified Bid, (b) the Prospective Bidder has relied solely upon its own or its advisors' independent review, investigation, and/or inspection of any documents and/or the Assets in making its Qualified Bid, (c) the Prospective Bidder did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Prospective Bidder's Proposed Asset Purchase Agreement, and (d) the Assets will be conveyed "as is, where is, with all faults," with limited representations and warranties, and no indemnification or guarantees by the Debtors.</p> <p>11. <u>Authorization</u>. A Qualified Bid must (a) include evidence of authorization and approval from the Prospective Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of any bid for the Assets, participation in the Auction, and closing of the sale transaction contemplated by the Prospective Bidder's Proposed Asset Purchase Agreement and Proposed Sale Order; or, (b) if the Prospective Bidder is an entity formed for the purpose of effecting the proposed sale transaction, a Qualified Bid must provide written evidence acceptable to the Debtors of authorization and the approval by the equity holder(s) of such Prospective Bidder.</p> <p>12. <u>Other Requirements</u>. A Qualified Bid must:</p> <ol style="list-style-type: none"> a. state that the Prospective Bidder agrees to serve as a backup bidder (a "<u>Backup Bidder</u>") if such bidder's Qualified Bid is selected at the Auction as the next highest or next best bid after the Successful Bid (as defined in Section VII.C.1 below) for the Assets (each such bid, a "<u>Backup Bid</u>"); b. state that the bid represents a binding, good-faith, and <i>bona fide</i> offer to purchase the Assets and is not subject to or conditioned on any further due diligence, and is irrevocable (i) until the selection of the Successful Bid in accordance with these Bidding Procedures; or (ii) if the bid is selected as a Successful Bid or as a Backup Bid, until the Backup Bid Expiration Date; c. for any bidder other than the Stalking Horse Bidder, state and acknowledge that the Prospective Bidder shall not be entitled to any
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	<p>bidding protection or payment in connection with the submission of a bid for the Assets or otherwise participating in the Sale Process;</p> <ul style="list-style-type: none"> d. state that the Prospective Bidder is committed to closing the sale transaction contemplated in its bid as soon as practicable; e. expressly waive any claim or right to assert any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code in connection with bidding for any of the Assets and/or otherwise participating in the Auction or the Sale Process; f. not contain any financing contingencies of any kind; g. state whether the Prospective Bidder intends to offer future employment to any of the Debtors’ employees and, if so, to whom; h. certify that the Prospective Bidder did not collude with any other bidders and is not otherwise a partnership, joint venture, or other entity in which more than one bidder (or any affiliates of a bidder) has a direct or indirect interest, unless consented to in writing by the Debtors; i. include a covenant to comply with the terms of the Bidding Procedures and the Bidding Procedures Order; and j. contain such other information as may be reasonably requested by the Debtors.
<p>Provisions Providing Bid Protections to Stalking Horse Bidder</p> <p>Local Rule 6004-1(c)(i)(C)</p>	<p>The Stalking Horse Bidder shall be considered a Qualified Bidder without the need for further action by the Stalking Horse Bidder. <i>See</i> Bidding Procedures Section IV. Other than the Stalking Horse Bidder, who shall be entitled to the Expense Reimbursement, no bidder or any other party shall be entitled to any termination or “break-up” fee, expense reimbursement, or any other bidding protection in connection with the submission of a bid for the Assets or otherwise participating in the Auction or the Sale process. <i>See</i> Bidding Procedures Section VI.D.</p> <p>Each bid that is not the Stalking Horse Bid must have a value to the Debtors, as determined by the Debtors, in consultation with the Consultation Parties, that is greater than or equal to the sum of the value offered under the Stalking Horse APA, <u>plus</u> (b) \$100,000 <u>plus</u> (c) the Expense Reimbursement (collectively, the “<u>Minimum Bid Amount</u>”). For the avoidance of doubt, any bid that is not the Stalking Horse Bid must provide sufficient consideration to allow the Debtors to repay, in full in cash, (x) all of the Obligations under the DIP Facility in accordance with the terms thereof and (y) the amount of the Prepetition Secured Obligations (as defined in the Interim DIP Order) that are credit bid by the Stalking Horse Bidder (the “<u>SH Payment Requirement</u>”). If the value of a bid relative to the Stalking Horse Bid includes additional non-cash components (such as fewer contingencies than are in such Stalking Horse APA), the bidder should include an analysis or description of the value of any such additional non-cash components, including any supporting documentation, to assist the Debtors and the Consultation Parties in better evaluating the competing bid. The Debtors, in consultation with their advisors and the Consultation Parties, reserve the right in their sole discretion to ascribe a value to any non-cash components of competing bids so long as the SH Payment Requirement is met. <i>See</i> Bidding Procedures Section VI.A.4.</p>
<p>Modification of Bidding Procedures</p>	<p>Section IX of the Bidding Procedures sets forth the Debtors’ reservation of rights to, in their reasonable business judgment and after consultation with the Consultation Parties, and in a manner consistent with its fiduciary duties and applicable law, (i) modify the Bidding</p>

Local Rule 6004-1(c)(i)(D)	Procedures, including to, among other things, extend or waive deadlines or other terms and conditions set forth herein, adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are disclosed to all Prospective Bidders and Qualified Bidders, as applicable, or (ii) otherwise modify the Bidding Procedures to further promote competitive bidding for and maximizing the of value of the Assets, in each case, to the extent not materially inconsistent with the Bidding Procedures or the Bidding Procedures Order.
<p>Closing with Alternative Backup Bidders</p> <p>Local Rule 6004-1(c)(i)(E)</p>	<p>Section VII.C.2 of the Bidding Procedures sets forth the primary requirements with respect to Backup Bids.</p> <p>Immediately prior to the conclusion of the Auction, the Debtors will (a) determine, in a manner consistent with the Bidding Procedures and in consultation with the Consultation Parties, which Qualified Bid, other than any Credit Bid, is the Backup Bid; and (b) notify all Qualified Bidders at the Auction of the identity of the Backup Bidder and the amount of the purchase price and other material terms of the Backup Bid.</p> <p>Subject to the terms of Stalking Horse APA as it relates to the Stalking Horse Bid, a Backup Bid will remain binding on the applicable Backup Bidder until the earlier of (a) the first business day after the closing of the sale transaction with the Successful Bidder for the Assets and (b) 30 days after the Sale Hearing (such date, the "<u>Backup Bid Expiration Date</u>"). If the sale transaction with the Successful Bidder is terminated prior to the Backup Bid Expiration Date, the Backup Bidder shall be deemed the new Successful Bidder for the Assets and shall be obligated to consummate the Backup Bid as if it were the Successful Bid at the Auction; <i>provided</i> that the Debtor may, in their reasonable business judgment (after providing notice to the Sale Notice Parties and after consultation with the Consultation Parties), elect not to pursue the sale transaction contemplated by the Backup Bid.</p>
<p>Provisions Governing the Auction</p> <p>Local Rule 6004-1(c)(ii)</p>	<p>Section VII of the Bidding Procedures sets forth the procedures governing the Auction.</p> <p>If the Debtor receive more than one Qualified Bid for the Assets, the Debtor will conduct an Auction for the Assets. If the Stalking Horse Bid is the only Qualified Bid received in respect of the Assets, the Debtor will not conduct an Auction for the Assets and will seek approval of the Stalking Horse Bid at the Sale Hearing. If the Debtors determine not to hold an Auction for some or all of the Assets, the Debtors will file and serve a notice stating that the Auction for such Assets has been canceled and providing all other relevant information to the Sale Notice Parties as required by the Bidding Procedures.</p> <p>The Auction, if required, will be conducted on June 26, 2024, at 10:00 a.m. (prevailing Eastern Time), either (a) at the offices of Potter Anderson & Corroon LLP, 1313 N. Market Street, 6th Floor, Wilmington, Delaware 19801-6108, (b) or some other physical location to be determined by the Debtors, or (c) virtually or at such other date, time or location as designated by the Debtors, after consulting with the Consultation Parties (subject to Section XI.C of the Bidding Procedures). If the Debtors conduct the Auction virtually, the Debtors will provide instructions setting forth how to attend the Auction to the participants and other attendees via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of the Auction to Qualified Bidders and the Consultation Parties (subject to Section XI.C hereof), and will cause publication of such change to occur on the KCC Website.</p> <p>A. <u>Participation</u>. Each participant in the Auction must (i) be a Qualified Bidder, (ii) appear at the Auction, either personally or through a duly authorized representative and (iii) confirm on the record that (x) it has not engaged in any collusion with respect to the Auction or the submission of any bid for any of the Assets and (y) its Qualified Bid that gained the Qualified Bidder admission to participate in the Auction and each Qualified Bid submitted by the</p>

Qualified Bidder at the Auction is a binding, good-faith, and *bona fide* offer to purchase the Assets identified in such bids.

All Prospective and Qualified Bidders are deemed to (i) agree that all Sale proceedings are core proceedings, (ii) have waived their right to a jury trial and (iii) consent to the entry of a final order by the Court.

B. Proceedings. The Auction proceedings will (i) be transcribed and/or video recorded and (ii) include open bidding in the presence of all Qualified Bidders, subject to reasonable limitations imposed by a virtual auction platform to be evaluated and determined by the Debtor.

C. Baseline Bid. Prior to the commencement of the Auction, the Debtors will determine, in their reasonable business judgment (and in consultation with the Consultation Parties (subject to Section XI.C hereof)) the highest or otherwise best Qualified Bid submitted for the Assets (such Qualified Bid, a "Baseline Bid"). Bidding at the Auction shall commence at the amount of the Baseline Bid. **No later than June 25, 2024 at 5:00 p.m. (prevailing Eastern Time)**, the Debtors will provide all Qualified Bidders with (a) a notice identifying which Qualified Bid is the Baseline Bid; and (b) a copy of each Qualified Bid.

D. Minimum Overbids. Bidding shall commence at the Baseline Bid. The first overbid at the Auction shall be in an amount not less than the amount of the Baseline Bid (plus the Expense Reimbursement if the Stalking Horse Bid is the Baseline Bid) plus \$100,000 (the "Minimum Overbid"). At each round of bidding, Qualified Bidders may submit successive bids higher than the Leading Bid (as defined below) from the prior round. During the Auction, the Debtors may, in their reasonable discretion, announce increases or reductions to Minimum Overbids at any time.

Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by any bid subsequent to the Baseline Bid, the Debtors will, at each round of bidding, consider and/or give effect to (a) any additional liabilities to be assumed by a Qualified Bidder under the bid, including whether such liabilities are secured or unsecured; and (b) any additional costs that may be imposed on the Debtors.

E. Leading Bids. After the first round of bidding and between each subsequent round of bidding, the Debtors will announce the bid that they believe to be the highest or otherwise best offer for the Assets (each such bid, a "Leading Bid") and describe the material terms thereof. Each round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a subsequent bid with full knowledge of the material terms of the Leading Bid.

The Auction will include open bidding in the presence of all other Qualified Bidders. Each Qualified Bidder shall have the right to be present for all rounds of bidding and to submit additional bids and make modifications to its Proposed Asset Purchase Agreement at the Auction to improve its bid. The Debtors may, in their reasonable business judgment, negotiate with any and all Qualified Bidders participating in the Auction.

The Debtors shall have the right to determine, in their reasonable business judgment after consultation with the Consultation Parties, which bid is the highest or otherwise best bid with respect to the Assets and, after consultation with the Consultation Parties, reject, at any time, without liability (but only in the absence of gross negligence or willful misconduct), any bid that the Debtors deem to be inadequate or insufficient, not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, these Bidding Procedures, any order of the Court, or the best interests of the Debtors and their estates.

	F. Successful Bids. Immediately prior to the conclusion of the Auction, the Debtors will (a) determine, consistent with these Bidding Procedures and in consultation with the Consultation Parties, which Qualified Bid constitutes the highest or otherwise best bid (such bid, including the Stalking Horse Bid, if no additional Qualified Bids are received and no Auction conducted, a “ <u>Successful Bid</u> ”) and (b) notify all Qualified Bidders at the Auction of the identity of the bidder that submitted the Successful Bid (such bidder, including the Stalking Horse Bidder if no Qualified Bids are received and no Auction conducted, a “ <u>Successful Bidder</u> ”) and the amount of the purchase price and other material terms of the Successful Bid.
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B. Stalking Horse APA

29. Certain material terms of the Stalking Horse APA, and certain provisions of the Stalking Horse APA that are required to be highlighted pursuant to Local Rule 6004-1(b)(iv), are described below.⁶

MATERIAL TERMS OF THE STALKING HORSE APA	
APA Parties <i>See Preamble</i>	Sellers: Supply Source Enterprises, Inc.; Impact Products LLC; and The Safety Zone, LLC Buyer: TZ SSE Buyer LLC
Stalking Horse Bidder	A newly formed entity formed by, for the benefit of, and at the direction of the DIP Lender for the purpose of assisting with the credit bid.
Purchase Price; (APA § 3.1) Local Rule 6004-1(b)(iv)(N))	The aggregate consideration for the Purchased Assets shall be (a) the assumption of the Assumed Liabilities and (b) the Credit Bid; <i>provided, however</i> , that Purchaser reserves the right, in its sole discretion, to increase the Purchase Price (including any component thereof), subject to the Bidding Procedures Order and applicable Law.
Sale to Insider Local Rule 6004-1(b)(iv)(A)	The Stalking Horse Bidder is not an Insider of any of the Debtors. At all times, the Stalking Horse Bidder has been represented by separate counsel, and the negotiations resulting in entry into the Stalking Horse APA has been conducted at arm’s-length. Moreover, the board members that approved the designation of the Stalking Horse Bidder and the sale process were independent and not conflicted.
Purchased Assets (APA § 2.1)	(i) the Seller Bank Accounts; (ii) all cash deposited into any bank accounts of Seller or the Business after the Closing; (iii) all Avoidance Actions and all of the rights, claims or causes of action of the Sellers of any kind, including those available under the Bankruptcy Code, against any officer, director, employee, manager or Affiliate of, or lender to, any Seller or any of their respective Affiliates (and the proceeds of any insurance policies related to any such rights, claims, or causes of action) arising at any time prior to the Closing, which such

⁶ Any summary of the Stalking Horse APA contained herein is qualified in its entirety by the actual terms and conditions of the Stalking Horse APA.

To the extent that there is any conflict between any summary contained herein and the actual terms and conditions of the Stalking Horse APA, the actual terms and conditions of the Stalking Horse APA shall control. Capitalized terms used in this table and not otherwise defined herein shall have the meaning ascribed to such terms in the Stalking Horse APA.

	<p>Avoidance Actions, rights, claims, and causes of action, shall be, and effective immediately upon Closing hereby are, waived and released in full immediately upon Closing (iv) all payments, deposits (including customer deposits and security deposits for rent, electricity, telephone or otherwise), Accounts Receivable, royalties, credits, and prepaid charges and expenses of Sellers or the Business from whatever source paid, other than any deposits or prepaid charges and expenses paid in connection with or relating to any Excluded Assets or Excluded Liabilities; (v) all Product Inventory, but excluding those items described in Section 2.2(i); (vi) all Assumed Leases, including all rights of Sellers under each Assumed Lease, together with all improvements, fixtures and other appurtenances thereto and rights in respect thereof; (vii) all items of tangible personal property (except as sold or disposed of subsequent to the date thereof in the Ordinary Course of Business) of Seller or the Business, including, for the avoidance of doubt, all machinery, furniture, equipment, fixtures, furnishings, tools and vehicles; (viii) the Purchased Intellectual Property; (ix) all Purchased Contracts, including all rights of Sellers or the Business under the Purchased Contracts; (x) all Documents that are used in, held for use in or intended to be used in, or that arise out of, the Business, including Documents relating to products, services, marketing, advertising, promotional materials, Owned Intellectual Property, personnel files for Transferred Employees and all files, customer files and documents (including credit information), supplier lists, records, literature and correspondence, but excluding personnel files for employees of Sellers who are not Transferred Employees (each to the extent permitted under applicable Law, including the Privacy Requirements); (xi) all Permits used by Sellers in the operation of the Business, to the extent assignable; (xii) all insurance proceeds in respect of an Purchased Assets (including, for the avoidance of doubt, any third party and casualty proceeds); (xiii) all rights of Sellers or the Business under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with employees and agents of Sellers or with third parties to the extent relating to the Business or the Purchased Assets (or any portion thereof); (xiv) all rights of Sellers or the Business under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors to the extent relating to products or services provided to Sellers or the Business or to the extent relating to the Purchased Assets; (xv) all express consents obtained by Sellers under applicable Privacy Law from any person to (a) send or cause to be sent an electronic message to such person or (b) alter or cause to be altered the transmission data in an electronic message so that the message is delivered to a destination other than or in addition to that specified by such person, in each case, except to the extent related to the Excluded Assets; (xvi) all rights, claims, or causes of action which Sellers or the Business may have against any Person with respect to the Purchased Assets; (xvii) all rights to any Tax refunds or credits arising as a result of the operation of the Business, other than the employee retention tax credits described in <u>Section Q</u>; (xviii) all goodwill and other intangible assets associated with Sellers or the Business to the extent not related to the Excluded Assets, including customer and supplier lists and the goodwill associated with the Owned Intellectual Property; (xix) all IT Systems not related to the Excluded Assets, to the extent assignable; (xx) all Excess Cash; and (xxi) those items set forth on <u>Schedule O</u>.</p>
<p>Excluded Assets (APA § 2.2)</p>	<p>Excluded Assets means (i) Agreement or any other Ancillary Document; (ii) the Excluded Contracts; (iii) all Leases which are not Assumed Leases; (iv) all rights to any employee retention tax credits arising as a result of the operation of the Business prior to Closing; (v) any Seller Plan; (vi) the Sellers' directors and officers liability insurance policies, if any; (vii) any Purchased Contract (including any Assumed Lease) that cannot be assumed and assigned to Purchaser, as determined by the Bankruptcy Court pursuant to a Final Order; (viii) all Equity Interests of Seller, including any options, warrants or other securities exchangeable or convertible into Equity Interests of Seller, and all related governance documents; (ix) all Product Inventory that is classified as pesticides under applicable Law, including, but not limited to, all Bloodborne Pathogen Kits, Bodily Fluid Cleanup Kits, Antimicrobial Microfiber Pads, Antimicrobial Microfiber Towels, and all similar Products manufactured or distributed by or on behalf of the Sellers, including those items set forth on <u>Schedule O</u>; (x) all bank account of the Sellers other than the Seller Bank Accounts; (xi) all assets expressly</p>

	excluded from the Purchased Assets; and (xii) those items set forth on <u>Schedule Error! Reference source not found.</u>
Assumed Liabilities (APA § 2.4)	Assumed Liabilities means (i) all Liabilities of Sellers under the Purchased Contracts to the extent that any such Liabilities: (a) arise from facts, circumstances, events or obligations to be performed after the Closing; (b) do not arise from a breach, violation or default of such Purchased Contract by Sellers or the Business prior to the Closing; (c) are not required to be performed prior to the Closing; or (d) relate to any amounts included in <u>Section Error! Reference source not found.</u> ; (ii) all Liabilities under the Assumed Leases, solely to the extent such Liabilities are related to the post-Closing period; (iii) Liabilities expressly assumed by Purchaser under this Agreement; (iv) any Cure Amount in excess of \$100,000; (v) all Liabilities to the extent resulting from the conduct of the Business by Purchaser or its Affiliates after the Closing; (vi) those items set forth on <u>Schedule Error! Reference source not found.</u> ; and (vii) Liabilities that are set forth on <u>Schedule Error! Reference source not found.</u> , which such schedule shall be delivered by Purchaser to the Sellers no later than twenty-four (24) hours before the Closing.
Excluded Liabilities (APA § 2.5)	Excluded Liabilities means any Liabilities relating to the Business or Sellers or any Affiliate of Sellers except as expressly provided in <u>Section Error! Reference source not found.</u> , and Sellers and their Affiliates shall be solely and exclusively liable with respect to all such Liabilities, other than the Assumed Liabilities, including (a) all Liabilities incurred prior to the Closing Date or that relate to or arise in connection with the operation of the Business or Sellers prior to the Closing Date, other than as set forth in <u>Section Error! Reference source not found.</u> ; (b) all Liabilities relating to the Excluded Assets (including the Excluded Contracts) to the extent designated as such as of the date of this Agreement ; (c) all Liabilities arising out of, relating to or with respect to (i) the employment or performance of services, or termination of employment or services by Sellers or any of their Affiliates of any individual on or before the Closing Date, (ii) workers' compensation claims against Sellers related to the Business that relate to the period on or before the Closing Date, irrespective of whether such claims are made prior to or after the Closing, (iii) WARN, irrespective of whether such Liabilities arise prior to or after the Closing and insofar as such Liabilities under WARN relate to employees of any Seller which are not employed by Purchaser on or after the Closing; or (iv) any Seller Plan; (d) all Liabilities arising out of, under or in connection with Contracts that are not Purchased Contracts and, with respect to Purchased Contracts, Liabilities in respect of a breach by or default of Sellers or the Business accruing under such Contracts with respect to any period prior to Closing; (e) all Cure Amounts up to \$100,000; (f) all Liabilities arising out of, under or in connection with any indebtedness of Sellers or the Business; (g) all Liabilities for (i) Transfer Taxes, (ii) Taxes of Sellers, (iii) Taxes that relate to the Purchased Assets or the Assumed Liabilities for taxable periods (or portions thereof) ending on or before the Closing Date, including Taxes allocable to Sellers or the Business pursuant to <u>Sections Error! Reference source not found.</u> and <u>Error! Reference source not found.</u> , and (iv) payments under any Tax allocation, sharing or similar agreement (whether oral or written); (h) all Liabilities in respect of any pending or threatened Action, or any claim arising out of, relating to or otherwise in respect of (i) the operation of the Business to the extent such Action or claim relates to such operation on or prior to the Closing Date, (ii) any Excluded Asset or (iii) any Product Inventory or Product distributed or sold by or on behalf of the Business prior to the Closing Date; (i) all Liabilities relating to or arising under any hedging or swap agreements of Sellers or the Business ;(j) any Liability with respect to Seller Expenses; (k) Environmental Costs and Liabilities, to the extent arising out of or otherwise related to (A) the ownership or operation by Sellers of the Leases (or any condition thereon) on or prior to the Closing Date (including (x) the release or continuing release (if existing as of the Closing) of any Hazardous Substance, regardless of by whom or (y) any noncompliance with Environmental Laws), (B) the operation of the Business on or prior to the Closing Date, (C) the Excluded Assets or any other real property formerly owned, operated, leased or otherwise used by Sellers or (D) from offsite

	<p>transportation, storage disposal, treatment or recycling of Hazardous Substances generated by and taken offsite by or on behalf of Sellers prior to and through the Closing Date; (l) all Liabilities relating to amounts required to be paid by Sellers hereunder; (m) all accrued management fees; (n) all Liabilities to the extent arising out of or otherwise related to any failure of the Business or any Product or any Product Inventory, to comply with the Federal Insecticide, Fungicide and Rodenticide Act or similar state or foreign Law on or prior to the Closing Date regardless of when such non-compliance becomes the subject of an enforcement Action, product recall, or third-party claim; (o) all Liabilities relating to the balance deferred or unpaid of the purchase price of any property, assets, securities or services (including all Tax-related payments, seller notes, any earnout or similar contingent obligation and purchase price holdbacks (including purchase price settlement), in each case, calculated as the maximum amount payable under or pursuant to such obligation) of Sellers or the Business; (p) all Liabilities by which a Seller or any of its Affiliates assures a creditor or other party against loss (including obligations in respect of letters of credit, performance bonds, bankers acceptances, indemnities or similar obligations); (q) all Liabilities in respect of all obligations under leases of Sellers or the Business which have been or must be recorded as capital or finance leases in the Financial Statements or in accordance with GAAP; (r) all Liabilities in respect of payables to, and other Liabilities of, any director, officer, manager, equityholder, employee or Affiliate of Sellers or the Business, or any immediate family member of such Person, in each case, unrelated to the operation of the Business, including any personal credit card expenses (non-business related) of employees; and (s) those items set forth on <u>Schedule 0</u>.</p>
<p>Sale Free and Clear (APA § 2.1)</p>	<p>At the Closing, and on the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall purchase, acquire and accept from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Purchaser or the Designee, all of Sellers' right, title and interest in, to and under the Purchased Assets, free and clear of any and all Liens and Liens, Claims, and Interests to the extent permissible under Section 363(f) of the Bankruptcy Code other than Permitted Liens.</p>
<p>Requested Finding as to no Successor Liability (APA § 7.3(f))</p> <p>Local Rule 6004-1(b)(iv)(L))</p>	<p>The Sale Order will provide that Purchaser will not have any derivative, successor, transferee or vicarious liability for Liabilities of Seller or any Subsidiary of Seller (whether under federal or state law or otherwise) as a result of the sale of the Purchased Assets, including Liabilities on account of any Taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the Business or the Purchased Assets.</p>
<p>Conditions to Closing (APA Article X)</p>	<p>The Closing shall not occur unless and until the conditions to closing set forth in Article X of the Stalking Horse APA have been satisfied.</p>
<p>Agreements with Management</p> <p>Local Rule 6004-1(b)(iv)(B)</p>	<p>The Stalking Horse Bidder has not entered into any agreements with management.</p>
<p>Releases (APA § 12.10)</p>	<p>(a) Effective as of the Closing and subject to entry of the Sale Order (with any discrepancy between the release provided in the Sale Order, if any, and this Agreement being controlled by the Sale Order), each of the Sellers on their own behalf and on behalf of their past, present, and future predecessors, successors and assigns hereby unconditionally, irrevocably, and fully forever release, remise, acquit, relinquish, irrevocably waive, and discharge, in their</p>

Local Rule 6004-1(b)(iv)(C)	<p>capacity as purchaser of the Purchased Assets, the Purchaser, and each of its predecessors, successors, assigns, Subsidiaries and Affiliates, and each of their respective former, current or future, direct or indirect, equity holders, officers, employees, directors, agents, advisory board members, representatives, owners, members, partners, employees, management companies, direct and indirect parent entities, “controlling persons” (within the meaning of federal securities law), heirs, administrators and executors, financial advisors, legal advisors, shareholders, managers, principals, consultants, accountants, attorneys, actuaries, investment bankers and other professionals in each case acting in such capacity whether current or former, including in their capacity as directors of the Company, as applicable (collectively, the “<u>Purchaser Released Persons</u>”), of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, accounts, defenses, offsets, powers, privileges, licenses, Liens, indemnities, guaranties, franchises, rights, assertions, allegations, Actions, suits, controversies, proceedings, losses, damages, injuries, attorneys’ fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, foreseen or unforeseen, accrued, unaccrued, fixed, contingent, liquidated or unliquidated, secured or unsecured, direct or derivative, matured or unmatured, pending, or threatened, including all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract or otherwise, including any derivative claims asserted or assertable on behalf of any of the Sellers, each Sellers Released Persons and Purchaser Released Persons, of every nature and description that exist on the date hereof or that such Person would have been legally entitled to assert (whether individually or collectively) with respect to, based on or relating to, or in any manner arising from, in whole or in part, the Sellers, Purchased Assets or the Business (including the capital structure, management, ownership or operation thereof), the business operations of the Sellers, actions taken by the Sellers’ boards of directors, the purchase, sale or rescission of any security of the Sellers, the subject matter of the business or contractual arrangements between or among any of the Sellers Released Persons or Purchaser Released Persons, the Sellers’ restructuring efforts, the ownership or operation of the Sellers by any Sellers Released Persons, the distribution of any cash or other property of the Sellers to any Sellers Released Persons or Purchaser Released Persons, the assertion of enforcement of rights or remedies against the Sellers, the Sellers’ in- or out-of-court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to claims asserted against the Sellers), intercompany transactions, the restructuring transactions and the Transactions, entry into the Bankruptcy Cases, the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable, any term sheets, any restructuring support agreement, the DIP Documents, this Agreement, or any other documents relating to any of the foregoing created or entered into in connection with the Transaction, this Agreement or the DIP Documents, or any other act or omission, transaction, agreement, conduct, circumstance, event or other occurrence with respect to the foregoing occurring or taking place on or prior to the Closing; <i>provided</i> that nothing herein shall release the Purchaser of its obligations under this Agreement, the Sale Order and the other Transaction Documents, or otherwise constitute a release by Sellers or any of its Affiliates of any claims that Sellers or any of its Affiliates have in the Bankruptcy Cases. Nothing in this Section Error! Reference source not found. shall limit Sellers’ or their respective Affiliates’ rights in the case of actual Fraud (but not, for the avoidance of doubt, fraudulent conveyance claims). Effective as of the Closing and subject to entry of the Sale Order (with any discrepancy between the release provided in the Sale Order, if any, and this Agreement being controlled by the Sale Order), each of the Sellers on their own behalf and on behalf of their past, present, and future predecessors, successors and assigns, covenants not to sue Purchaser or any Purchaser Released Person, or to instigate, initiate, or pursue against any of them, in any manner of judicial or administrative proceeding on such Seller’s own behalf or on behalf of any of the Sellers Released Persons, or any other Person, regarding or in connection with any of the claims released pursuant to this Section Error! Reference source not found.</p> <p>(b) Effective as of the Closing, the Purchaser, on its own behalf and on behalf of its past, present, and future Affiliates, predecessors, successors and assigns hereby unconditionally,</p>
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irrevocably, and fully forever release, remise, acquit, relinquish, irrevocably waive, and discharge, the Sellers and each of their predecessors, successors, assigns, Subsidiaries and Affiliates, and each of their respective former, current or future, direct or indirect, equity holders, officers, employees, directors, agents, advisory board members, representatives, owners, members, partners, employees, management companies, direct and indirect parent entities, “controlling persons” (within the meaning of federal securities law), heirs, administrators and executors, financial advisors, legal advisors, shareholders, managers, principals, consultants, accountants, attorneys, actuaries, investment bankers and other professionals in each case acting in such capacity whether current or former, including in their capacity as directors of the Company, as applicable (collectively, the “Sellers Released Persons”), of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, accounts, defenses, offsets, powers, privileges, licenses, Liens, indemnities, guaranties, franchises, rights, assertions, allegations, Actions, suits, controversies, proceedings, losses, damages, injuries, attorneys’ fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, foreseen or unforeseen, accrued, unaccrued, fixed, contingent, liquidated or unliquidated, secured or unsecured, direct or derivative, matured or unmatured, pending, or threatened, including all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract or otherwise, including any derivative claims asserted or assertable on behalf of any of the Sellers, each Sellers Released Persons and Purchaser Released Persons, of every nature and description that exist on the date hereof or that such Person would have been legally entitled to assert (whether individually or collectively) with respect to, based on or relating to, or in any manner arising from, in whole or in part, the Sellers, Purchased Assets or the Business (including the capital structure, management, ownership or operation thereof), the business operations of the Sellers, actions taken by the Sellers’ boards of directors, the purchase, sale or rescission of any security of the Sellers, the subject matter of, the business or contractual arrangements between or among any Sellers Released Persons or Purchaser Released Persons, the Sellers’ restructuring efforts, the ownership or operation of the Sellers by any Sellers Released Persons, the distribution of any cash or other property of the Sellers to any Sellers Released Persons or Purchaser Released Persons, the assertion of enforcement of rights or remedies against the Sellers, the Sellers’ in- or out-of-court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to claims asserted against the Sellers), intercompany transactions, the restructuring transactions and the Transactions, entry into the Bankruptcy Cases, the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable, any term sheets, any restructuring support agreement, the DIP Documents, this Agreement, or any other documents relating to any of the foregoing created or entered into in connection with the Transaction, this Agreement or the DIP Documents, or any other act or omission, transaction, agreement, conduct, circumstance, event or other occurrence with respect to the foregoing occurring or taking place on or prior to the Closing; *provided* that nothing herein shall release the Sellers of their obligations under this Agreement, the Sale Order, and the other Transaction Documents. Nothing in this Section Error! Reference source not found. shall limit Purchaser’s rights in the case of actual Fraud (but not, for the avoidance of doubt, fraudulent conveyance claims). Effective as of the Closing, the Purchaser, on its own behalf and on behalf of its past, present, and future Affiliates, predecessors, successors and assigns, covenants not to sue any Seller or any Sellers Released Person, or to instigate, initiate, or pursue against any of them, in any manner of judicial or administrative proceeding on such Purchaser’s own behalf or on behalf of any of the Purchaser Released Persons, or any other Person, regarding or in connection with any of the claims released pursuant to this Section Error! Reference source not found.

<p>Private Sale/No Competitive Bidding</p> <p>Local Rule 6004-1(b)(iv)(D)</p>	<p>An Auction is contemplated with respect to the Assets if sufficient Qualified Bids are received.</p>
<p>Closing and Other Deadlines (APA § 4.1)</p> <p>Local Rule 6004-1(b)(iv)(E)</p>	<p>The closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in <u>Article Error! Reference source not found.</u> shall take place remotely via the exchange of electronic documents and signatures by electronic mail on a date to be specified by the Parties, which date shall be no later than the second Business Day after satisfaction or waiver of the conditions set forth in <u>Article Error! Reference source not found.</u> (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), unless another time or date, or both, are agreed to in writing by the Parties hereto. The date on which the Closing shall be held is referred to in this Agreement as the "<u>Closing Date.</u>" For purposes of the Stalking Horse APA, from and after the Closing, the Closing shall be deemed to have occurred at 12:01 am (prevailing Eastern Time) on the Closing Date.</p>
<p>Good Faith Deposit</p> <p>Local Rule 6004-1(b)(iv)(F)</p>	<p>None.</p>
<p>Interim Arrangements with Stalking Horse Bidder (Local Rule 6004-1(b)(iv)(G))</p>	<p>None.</p>
<p>Use of Proceeds</p> <p>Local Rule 6004-1(b)(iv)(H)</p>	<p>Not Applicable.</p>
<p>Tax Exemption</p> <p>Local Rule 6004-1(b)(iv)(I)</p>	<p>None.</p>
<p>Record Retention (APA § 11.4(b));</p> <p>Local Rule 6004-1(b)(iv)(J)</p>	<p>Purchaser shall retain possession of all accounting, business, financial and Tax records and information relating to the Purchased Assets or the Assumed Liabilities that are in existence on the Closing Date and transferred to Purchaser hereunder for a period of at least three (3) years from the Closing Date. Purchaser shall give Sellers notice and an opportunity to retain any such records in the event that Purchaser determines to destroy or dispose of them after such period. In addition, from and after the Closing Date, Purchaser shall provide access to Sellers (after reasonably detailed prior notice and during normal business hours), to the books, records, documents and other information relating to the Purchased Assets or the Assumed Liabilities as is reasonably necessary for Sellers to properly prepare for, file, prove, answer, prosecute and/or defend any Tax Return, claim, filing, tax audit, tax protest, suit, proceeding or answer.</p>
<p>Sale of Avoidance Actions (APA § 2.1)</p> <p>Local Rule 6004-1(b)(iv)(K)</p>	<p>Avoidance Actions are among the Purchased Assets.</p>

Credit Bid (APA § 3.1); Local Rule 6004-1(b)(iv)(N))	Buyer has proposed a credit bid of \$63 million, comprised of (i) all outstanding obligations under the DIP Facility at closing, plus (ii) any outstanding obligations under the Prepetition ABL Facility at closing necessary to equal \$63 million.
Relief from Bankruptcy Rule 6004(h) Local Rule 6004-1(b)(iv)(O))	The Debtors seek relief from the fourteen-day stay imposed by Bankruptcy Rule 6004(h) in the Sale Order.
Sale Free and Clear of Unexpired Leases (APA § 7.4(a)); Local Rule 6004-1(b)(iv)(M))	The Debtor requests that the Court authorize the sale of the Assets free and clear of any liens, claims, interests and encumbrances, to the fullest extent permitted by section 363(f) of the Bankruptcy Code.

C. Key Dates and Deadlines

30. The Debtors propose the following key dates and deadlines for the sale process, certain of which dates and deadlines may be subject to extension in accordance with the Bidding Procedures:⁷

Three business days after the entry of the Bidding Procedures Order	Deadline for Debtors to file and serve Sale Notice
Three business days after the entry of the Bidding Procedures Order	Deadline for Debtors to file and serve Assumption and Assignment Notice
June 18, 2024, at 4:00 p.m. (prevailing Eastern Time)	Sale Objection Deadline, Cure Objection Deadline, and Contract Objection Deadline
June 24, 2024, at 4:00 p.m. (prevailing Eastern Time)	Bid Deadline

⁷ The Debtors reserve the right to change the proposed sale-related deadlines at any time prior to the Bidding Procedures Hearing; *provided, however*, that any modified dates shall not provide parties with any lesser notice or time than the dates set forth in the entered Bidding Procedures Order.

June 26, 2024, at 10:00 a.m. (prevailing Eastern Time)	Auction (if necessary)
One business day after the conclusion of the Auction	Deadline for Debtors to file and serve Notice of Auction Results
June 28, 2024 at 4:00 p.m. (prevailing Eastern Time)	Supplemental Sale Objection Deadline and Adequate Assurance Objection Deadline (if necessary)
June 30, 2024, at 12:00 p.m. (prevailing Eastern Time)	Deadline to Reply to any Sale Objections or Supplemental Sale Objections
July 1, 2024 at [●:● a/p.m.] (prevailing Eastern Time)	<i>Proposed</i> Sale Hearing (if Auction is held)

D. Sale Noticing and Objection Procedures

31. The Bidding Procedures provide the following “Noticing Procedures”:

- a. **Sale Notice.** Within three (3) business days after entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter, the Debtors shall serve on the Sale Notice Parties and cause to be published on the KCC Website the Sale Notice.
- b. **Publication.** As soon as practicable but no later than five (5) business days after the entry of the Bidding Procedures Order, the Debtors will cause the information contained in the Sale Notice to be published once in the national edition of the *USA Today National Edition* or *New York Times National Edition* (the “Publication Notice”).
- c. **Sale Objection.** Except objections to the conduct of the Auction, the Successful Bidder or the Backup Bidder, objections to the sale of the Assets, including (i) any objection to a sale of Assets free and clear of all liens, claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code and (ii) the entry of any Sale Order must be (A) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (B) filed with the Court by **no later than June 18, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”); and (C) served on the Objection Notice Parties (as defined in the Bidding Procedures).
- d. **Notice of Determination of Qualified Bids.** The Debtors, in consultation with the Consultation Parties, will make a determination regarding which bids qualify as Qualified Bids and will notify Potential Bidders whether they have been selected as Qualified Bidders by **no later than June 25, 2024 at 5:00 p.m. (prevailing Eastern Time)**.
 - i. **No later than June 25, 2024 at 5:00 p.m. (prevailing Eastern Time)**, the Debtor will provide all Qualified Bidders (including the Stalking Horse Bidder) copies of the Qualified Bid that the Debtors,

after consultation with the Consultation Parties, determines is the highest or otherwise best offer for the Assets (the “Baseline Bid”).

- e. **Auction Results.** One business day after the conclusion of the Auction, the Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the KCC Website, a notice of the results of the Auction (the “Notice of Auction Results”), which will (A) identify the Successful Bidder and the Backup Bidder; (B) either include a copy of each Successful Bid and the Backup Bid or a summary of the material terms of such bids, or provide instructions for accessing each Successful Bid and the Backup Bid free of charge from the KCC Website; and (C) set forth the Supplemental Sale Objection Deadline and the date, time and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.
- f. **Supplemental Sale Objections.** Following service of the Notice of Auction Results, Sale Notice Parties will have an opportunity to object solely with respect to the conduct of the Auction, the Successful Bidder, the Backup Bidder, or the Sale to the Successful Bidder or the Backup Bidder (each such objection, a “Supplemental Sale Objection”). Any Supplemental Objection must be (i) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (ii) filed with the Court by **no later than June 28, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the “Supplemental Sale Objection Deadline”); and (iii) served on the Objection Notice Parties.

32. The Debtors believe that the Noticing Procedures constitute adequate and reasonable notice of the key dates and deadlines for the sale process, including, the dates and deadlines identified in paragraph 31 above. Accordingly, the Debtors request that the Court find that the Noticing Procedures are adequate and appropriate under the circumstances and comply with the requirements of Bankruptcy Rule 2002 and Local Rule 2002-1.

E. Assumption and Assignment Procedures

33. In connection with the Sale, the Debtors likely will seek to assume and assign to the Successful Bidder (or its designated assignee(s)) one or more Contracts. The Assumption and Assignment Procedures are designed to, among other things, govern the Debtors’ provision of Adequate Assurance Information and notice of Cure Costs to applicable Counterparties.

34. Accordingly, the Debtors hereby seek approval of the proposed Assumption and Assignment Procedures set forth below, which are designed to, among other things, (i) outline the process by which the Debtors will serve notice to all Counterparties regarding the proposed assumption and assignment, related Cure Costs, if any, and information regarding the Successful Bidder's adequate assurance of future performance, and (ii) establish objection and other relevant deadlines and the manner for resolving disputes relating to assumption and assignment of executory contacts and unexpired leases. Specifically, the Assumption and Assignment Procedures are as follows:

- a. **Potential Assumption and Assignment Notice.** Three business days after the entry of the Bidding Procedures Order, the Debtors will file with the Court and serve on each Counterparty to a Contract that may be assumed in connection with any Sale an Assumption and Assignment Notice, which will (i) identify the applicable Contracts; (ii) list the Debtors' good-faith calculation of Cure Costs with respect to each such Contract; (iii) expressly state that assumption or assignment of a Contract is not guaranteed and is subject to Court approval; and (iv) prominently display the deadlines to file Cure Objections and Adequate Assurance Objections (each as defined below). The Assumption and Assignment Notice shall also be served on each Counterparty listed therein via first class mail.

To the extent the Debtors, at any time after the deadline to file and serve the Assumption and Assignment Notice (i) identify additional Contracts to be assumed and assigned to the Stalking Horse Bidder or other Successful Bidder (the "Additional Contracts"), (ii) remove Contracts from the list of executory contracts and leases proposed to be assumed and assigned in connection with the sale of the Assets, (iii) and/or modify the previously stated Cure Cost associated with any Contracts, the Debtors will promptly file with this Court and serve by first-class mail or email a supplemental notice of contract assumption (a "Supplemental Assumption and Assignment Notice") on each of the counterparties to such Contracts and their counsel of record, if any. Each Supplemental Assumption and Assignment Notice will include the same information with respect to listed Additional Contracts as was included in the initial Assumption and Assignment Notice. The Stalking Horse Bidder may designate Additional Contracts to be assumed and assigned at any time until two (2) Business Days prior to the Closing Date (as defined in the Stalking Horse APA), and may remove Contracts from the list of Contracts at any time until two (2) Business Days prior to the Closing Date. Counterparties to Additional

Contracts or that otherwise receive a Supplemental Assumption and Assignment Notice shall have until 4:00 p.m. (prevailing Eastern Time) on the date that is seven (7) days after the filing and service of the Supplemental Assumption and Assignment Notice by the Debtors to the Counterparty to file a Cure Objection (as defined herein).

b. **Assumption and Assignment Objections.**

- i. **Contract Objection Deadline.** Any Counterparty to a Contract that wishes to object to the Debtors' proposed Cure Costs (each such objection, a "Cure Objection") or the assumption and assignment on any basis (except objections solely related to adequate assurance of future performance provided by a Successful Bidder other than the Stalking Horse Bidder) (each such objection, an "Assumption/Assignment Objection" and, together with a Cure Objection, a "Contract Objection") shall file with the Court and serve on the Objection Notice Parties its Cure Objection, which must state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, by **no later than June 18, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the "Cure Objection Deadline").
- ii. **Resolution of Cure Objections.** The Debtors, the Successful Bidder, and the objecting Counterparty shall first confer in good faith to attempt to resolve the Cure Objection without Court intervention. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the Sale Hearing, the Court shall make all necessary determinations relating to the applicable Cure Costs and Cure Objection at a hearing scheduled pursuant to the following paragraph. If a Cure Objection is resolved in a manner that is not in the best interests of the Debtors and their estates, whether or not such resolution occurs prior to or after the closing of the Sale, the Successful Bidder may determine that any Contract subject to such resolved Cure Objection will no longer be assumed and assigned pursuant to the Sale (subject to the terms of the Sale). All other objections to the proposed assumption and assignment of the Debtors' right, title and interest in, to and under a Contract will be heard at the Sale Hearing.
- iii. **Adjournment.** If a timely filed Cure Objection cannot otherwise be resolved by the parties, the Cure Objection may be heard at the Sale Hearing, or, with the agreement of the Debtors and the Successful Bidder, be adjourned to a subsequent hearing, with notice to the party having filed the Cure Objection (each such Cure Objection, an "Adjourned Cure Objection"). An Adjourned Cure Objection may be resolved after the closing date of the Sale. Any Contract that is the subject of an Adjourned Cure Objection may be assumed and

assigned prior to the resolution of such objection, so long as the Debtors or Successful Bidder, as applicable, (i) pay any undisputed Cure Costs on or before (x) the Closing Date (as defined in the Stalking Horse APA) or (y) in the event the Successful Bidder is a party other than the Stalking Horse Bidder, the date designated for consummating the sale under such Successful Bidder's purchase agreement and (ii) appropriately reserve funding for the disputed portion of the Cure Costs pending resolution of the dispute.

- iv. Failure to Timely Object. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Contract Objection, (i) the Counterparty shall be deemed to have consented to the assumption by the Debtors and assignment to the Stalking Horse Bidder or Successful Bidder of the Contract (other than as it relates to adequate assurance of future performance of a Successful Bidder that is not the Stalking Horse Bidder), (ii) the Stalking Horse Bidder shall be deemed to have provided adequate assurance of future performance with respect to a Contract in accordance with Bankruptcy Code sections 365(b)(1)(C), 365(f)(2)(B), and, if applicable, Bankruptcy Code section 365(b)(3), notwithstanding anything to the contrary in the Contract or any other document, (iii) the Counterparty shall be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the Stalking Horse Bidder), (iv) any and all defaults under the Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to Bankruptcy Code section 365(b)(1)(A) and upon payment of the Cure Costs set forth in the Assumption and Assignment Notice for such Contract, and the Counterparty shall be forever barred from asserting any objection with regard to the cost to cure any defaults under the applicable Contract, and (v) the Counterparty shall be forever barred from asserting any other claims related to such Contract against the Debtors and their estates or the Stalking Horse Bidder or Successful Bidder, or the property of any of them, that existed prior to the entry of the order resolving such Contract Objection and any Sale Order.
- v. Adequate Assurance Objection Deadline. Any Counterparty to a Contract that wishes to object to the proposed assumption and assignment of the Contract, the subject of which objection is a Successful Bidder's (or any other relevant assignee's), other than the Stalking Horse Bidder's proposed form of adequate assurance of future performance (each such objection, an "Adequate Assurance Objection"), shall file with the Court and serve on the Objection Notice Parties an Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof and include any

appropriate documentation in support thereof, **by June 28, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the “Adequate Assurance Objection Deadline” and, together with the Cure Objection Deadline, the Sale Objection Deadline and the Supplemental Sale Objection Deadline, the “Objection Deadlines”).

- vi. Resolution of Adequate Assurance Objections. The Debtors, the Successful Bidder, and the objecting Counterparty shall first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, the Adequate Assurance Objection and all issues of adequate assurance of future performance of the Successful Bidder (or any other relevant assignee), other than the Stalking Horse Bidder, shall be determined by the Court at the Sale Hearing or, with the agreement of the Debtors and the Successful Bidder, be adjourned to a subsequent hearing, with notice to the party having filed the Adequate Assurance Objection.
- vii. Failure to Timely Object. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Adequate Assurance Objection, the Counterparty shall be forever barred from asserting any objection to the assumption and/or assignment of the applicable Contract with regard to adequate assurance of future performance. The Successful Bidder (or any other relevant assignee) shall be deemed to have provided adequate assurance of future performance with respect to the Contract in accordance with Bankruptcy Code section 365(f)(2)(B) and, if applicable, Bankruptcy Code section 365(b)(3), notwithstanding anything to the contrary in the Contract or any other document.
- c. Notice of Assumed Contracts. As soon as reasonably practicable after the closing of the Sale, the Debtors will file with the Court, serve on the applicable Counterparties and cause to be published on the KCC Website, a notice containing the list of Contracts that the Debtors assumed and assigned pursuant to the asset purchase agreement with the Successful Bidder on the closing date of the sale of the Assets.
- d. Reservation of Rights. The inclusion of a Contract or specification of any Cure Costs with respect to any Contract on any Assumption and Assignment Notice or any Notice of Auction Results, shall not constitute or be deemed a determination or admission by the Debtors, the Successful Bidder or any other party that such Contract is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code, and shall not be a guarantee that such Contract ultimately will be assumed or assigned.

The Debtors reserve all of its rights, claims and causes of action with respect to each Contract listed on the aforementioned notices.

RELIEF REQUESTED

35. By this Motion, pursuant to sections 105(a), 363, 365, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and Local Rule 6004-1, the Debtors request entry of the following:

- a. the Bidding Procedures Order, substantially in the form attached hereto as **Exhibit A**, granting the following relief:
 - (i) approving the Bidding Procedures, substantially in the form attached to the Bidding Procedures Order as **Exhibit 1**, to be used in connection with one or more Sale of all, substantially all, or portion of the Debtors' Assets;
 - (ii) authorizing the Debtors to designate a newly formed entity by the DIP Lender as the Staking Horse Bidder;
 - (iii) scheduling (A) the Auction of the Assets **no later than June 26, 2024, at 10:00 a.m. (prevailing Eastern Time)** and (B) the Sale Hearing to consider approval of the proposed Sale **no later than July 1, 2024**, subject to the availability of the Court;
 - (iv) approving the Sale Notice, substantially in the form attached to the Bidding Procedures Order as **Exhibit 2**;
 - (v) approving the Assumption and Assignment Procedures;
 - (vi) approving the Assumption and Assignment Notice, substantially in the form attached to the Bidding Procedures Order as **Exhibit 3**; and
 - (vii) granting related relief; and
- b. a Sale Order, granting the following relief:
 - (i) authorizing the sale of the Assets free and clear of all liens, claims, interests and encumbrances, except certain permitted encumbrances and assumed liabilities as determined by the Debtor and the Successful Bidder, with liens to attach to the proceeds of the Sale;
 - (ii) authorizing the assumption and assignment of certain Contracts in connection with an Sale; and
 - (iii) granting related relief.

BASIS FOR RELIEF

A. The Proposed Bidding Procedures Are Fair, Appropriate and Should Be Approved.

36. The Bidding Procedures are specifically designed to promote what courts have deemed to be the paramount goal of any proposed sale of property of a debtor's estate: maximizing the value of sale proceeds received by the estate. *See Burtch v. Ganz (In re Mushroom Transp. Co.)*, 382 F.3d 325, 339 (3d Cir. 2004) (finding that a debtor had a fiduciary duty to maximize and protect the value of the estate's assets); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (recognizing that a main goal of any proposed sale of property of a debtor's estate is to maximize value). Courts uniformly recognize that procedures established for the purpose of enhancing competitive bidding are consistent with the fundamental goal of maximizing the value of a debtor's estate. *See Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 536-37 (3d Cir. 1999) (noting that bidding procedures that promote competitive bidding provide a benefit to a debtor's estate); *Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (observing the benefit of sale procedures that "encourage bidding and . . . maximize the value of the debtor's assets").

37. Here, the Bidding Procedures meet this standard because the proposed timeframe is necessary to allow the Debtors to emerge as a going concern, likely bidders have already been contacted, and the Debtors believe that the auction process and time periods set forth in the Bidding Procedures are reasonable and will provide interested parties with sufficient time and information necessary to formulate a bid to purchase all or substantially all of the Assets. The proposed timeline will facilitate a fair and open sale process and will position the Debtors to maximize the value received for the Assets. Sale Decl. ¶ 24.

38. Moreover, the facts and circumstances of these Chapter 11 Cases, justify the timeline proposed by the Debtors herein. First, the Debtors have negotiated the consensual use of a DIP Facility on a limited budget conditioned upon adherence to strict sale milestones. Without access to the DIP Facility and cash collateral, the Debtors will be unable to support the ongoing sale process. *Id.* ¶ 27. In addition, the Debtors believe that any extension of the sale timeline could imperil their ability to emerge from the process as a going concern, as the Debtors would risk harming key vendor relationships and losing a substantial number of employees who are necessary to preserve the value of the Assets. *Id.* ¶ 24.

39. Importantly, the most likely competing bidders are among those who the Debtors or Portage Point have already contacted and are therefore already part of the prepetition sales process. *Id.* ¶ 11, 31. Specifically, the proposed Bidding Procedures provide interested parties with more than five (5) additional weeks to continue diligence and submit a qualified bid. The timeline set forth in the Bidding Procedures is sufficient to provide these potential purchasers with an adequate amount of time to diligence the assets and submit bids. *Id.* ¶ 30.

40. Additionally, the Bidding Procedures will allow the Debtors to conduct the Auction in a transparent manner that will encourage participation by financially capable bidders with demonstrated ability to consummate a timely Sale. Specifically, the Bidding Procedures contemplate an open auction process with minimum barriers to entry and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid. *Id.* ¶ 31. Accordingly, the Bidding Procedures should be approved because, under the circumstances, they are reasonable, appropriate and in the best interests of the Debtors, its estates and all parties-in-interest.

41. Entering into the Stalking Horse APA with the Stalking Horse Bidder ensures that the Debtors obtain the highest or otherwise best offer by setting a minimum purchase price for the Debtors' assets that will be tested in the marketplace. *Id.* ¶ 24. The Stalking Horse APA represents the current highest or otherwise best offer for the assets. *Id.* ¶¶ 16-22. The Stalking Horse APA will enhance the bidding process by providing a floor that prospective bidders must clear and ensuring that only serious, financially capable bidders participate in the Auction. *Id.* ¶ 31.

42. Courts in this District routinely approve procedures substantially similar to the proposed Bidding Procedures. *See, e.g., In re Humanigen, Inc.*, No. 24-10003 (BLS) (Bankr. D. Del. Jan. 25, 2024) (sale hearing held 42 days after petition date); *In re The Rockport Company, LLC*, et al. Case No. 23-10774 (BLS) (Bankr. D. Del. July 25, 2023) (sale hearing held 41 days after the petition date); *In re Tricida, Inc.*, No. 23-10024 (JTD) (Bankr. D. Del. Jan. 26, 2023) (sale hearing held 40 days after the petition date); *In re Enjoy Tech., Inc.*, Case No. 22-10580 (JKS) (Bankr. D. Del. Jul. 26, 2022) (sale hearing held 43 days after the petition date); *In re Gold Standard Baking, LLC*, Case No. 22-10559 (JKS) (Bankr. D. Del. Jul. 8, 2022) (sale hearing held 42 days after the petition date); *In re Fast Radius, Inc.*, No. 22-11051 (JKS) (Bankr. D. Del. Nov. 14, 2022) (sale hearing held 35 days after the petition date).⁸

B. The DIP Lender Should Be Authorized to Credit Bid on the Assets Under Section 363(k) of the Bankruptcy Code.

43. Section 363(k) of the Bankruptcy Code provides that, unless the Court for cause orders otherwise, the holder of a claim secured by property that is the subject of a sale “may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.” 11 U.S.C. § 363(k). Even if a secured creditor

⁸ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

is undersecured as determined in accordance with section 506(a) of the Bankruptcy Code, section 363(k) allows such secured creditor to bid the full-face value of its claim and does not limit the credit bid to the claim's economic value. *See Cohen v. KB Mezzanine Fund II, LP (In re Submicron Sys. Corp.)*, 432 F.3d 448, 459-60 (3d Cir. 2006).

44. In this district, absent cause for restricting credit bidding, courts have consistently ruled in favor of reserving a secured creditor's right to credit bid its claim. *See In re MD Helicopters, Inc.*, No. 22-10263 (KBO) (Bankr. D. Del. April 26, 2022) (order authorizing secured creditors to credit bid); *In re Alpha Latam Mgmt., LLC, et al.*, No. 21-11109 (JKS) (Bankr. D. Del. Sept. 15, 2021) (order approved bidding procedures authorizing secured creditors to exercise right under section 363(k) of the Bankruptcy Code to credit bid); *In re Avadim Health, Inc., et al.*, No. 21-10883 (CTG) (Bankr. D. Del. June 23, 2021) (order authorizing secured creditors to credit bid); *In re RTI Holding Company, LLC*, No. 20-12456 (JTD) (Bankr. D. Del. Nov. 20, 2020) (order authorizing secured creditors to exercise right under section 363(k) of the Bankruptcy Code to credit bid); *In re GST Autoleather, Inc.*, No 17-12100 (LSS) (Bankr. D. Del. November 15, 2017) (order authorizing secured creditors to exercise right under section 363(k) of the Bankruptcy Code to credit bid).

45. The Debtors propose that the DIP Lender, which hold claims that are secured by valid, binding, enforceable, non-avoidable and perfected liens on and security interests in substantially all of the Assets as provided for in the DIP Orders, be entitled to credit bid all or a portion of the amounts then outstanding under the DIP Term Facility and the Prepetition Secured Notes, or any part thereof, under section 363(k) of the Bankruptcy Code and as provided for in the DIP Orders and the Bidding Procedures.

C. The Court Should Approve the Expense Reimbursement.

46. As indicated above, the Debtors have agreed to the terms of the Stalking Horse APA, which contemplates the potential sale of substantially all of the Debtors' business to the Stalking Horse Bidder. To compensate the Stalking Horse Bidder whose bid will be subject to higher or better offers, the Debtors seek approval of the Expense Reimbursement in accordance with the terms of the Stalking Horse APA.

47. The Stalking Horse APA does not include a break-up fee. Instead, it contains an expense reimbursement of the out-of-pocket costs and expenses incurred by Stalking Horse Bidder prior to termination of the Stalking Horse APA in connection with the transactions contemplated thereby, including the reasonable and documented fees and expenses of outside legal counsel, financial advisors, and any other advisors that the Stalking Horse Bidder engages in its discretion. The expense reimbursement is capped at a maximum amount of \$750,000 and is payable solely upon the occurrence of any of the events listed in APA § 7.1(i)-(v).⁹

48. The Debtors and the Stalking Horse Bidder believe that the amount of the Stalking Horse Bid Protections are reasonable, given the benefits to the Debtors' estates of having a "stalking horse" bidder by virtue of the definitive asset purchase agreement with the Stalking Horse Bidder, the risk to the Stalking Horse Bidder that a third-party offer may ultimately be accepted, and that approval of the Stalking Horse Bid Protections as described in the Bidding Procedures is necessary to preserve and enhance the value of the Debtors' estates. In fact, the DIP Lender only agreed to provide the financing necessary to run the Bidding Process contemplated under this Motion conditioned on the Debtors' acceptance of the Stalking Horse APA, which provides for the Expense Reimbursement. The Debtors believe that the agreement to pay the Expense Reimbursement is necessary to induce the Stalking Horse Bidder to enter into the

⁹ See Stalking Horse APA at § 7.1.

transactions encompassed by the Stalking Horse APA and thus to enable the Debtors to obtain the highest and best possible price for the Assets. Furthermore, the Debtors believe that the Expense Reimbursement is fair and reasonable provision under all the circumstances.

49. The Expense Reimbursement is reasonably calculated to encourage a buyer to submit a final bid within the range of reasonably anticipated values. The Expense Reimbursement will encourage competitive bidding and will potentially lead to further competition and the establishment of a baseline against which higher or otherwise better offers can be measured.

50. The Third Circuit has established standards for determining the appropriateness of bidding incentives in the bankruptcy context. In *O'Brien*, 181 F.3d 527 (3d Cir. 1999), the court held that even though bidding incentives are measured against a business judgment standard in non-bankruptcy transactions, the administrative expense provisions of Bankruptcy Code section 503(b) govern in the bankruptcy context. Accordingly, to be approved, bidding incentives must provide some benefit to the Debtors' estates. *See id.* at 533.

51. The *O'Brien* court identified at least two instances in which bidding incentives may provide benefit to an estate. *First*, benefit may be found if “assurance of a breakup fee promoted more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited.” *Id.* at 537. *Second*, where the availability of bidding incentives induces a bidder to research the value a debtor's assets and submit a bid that serves as a minimum or floor bid on which other bidders can rely, “the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth.” *Id.*

52. Whether evaluated under the “business judgment rule” or the Third Circuit's “administrative expense” standard, the Expense Reimbursement is appropriate. The Debtors'

agreement to pay the Expense Reimbursement pursuant to the Bidding Procedures and upon entry into a Stalking Horse APA is the product of good faith, arm's-length negotiations between the Debtors and Stalking Horse Bidder. The Stalking Horse Bid Protections are fair and reasonable in amount and are reasonably intended to compensate for the risk to the Stalking Horse Bidder of being used as a stalking-horse bidder. Similarly, the Stalking Horse APA provides a minimum bid on which other bidders can rely, thereby "increasing the likelihood that the price at which the [Assets will be] sold will reflect [its] true worth." *Id.* And in the absence of the Debtors' agreement to provide the Expense Reimbursement, the Debtors likely would not have had the funds necessary to conduct the Bidding Process contemplated herein.

53. Finally, the Bidding Procedures are fair and reasonable procedures reasonably intended to encourage competitive bidding, and the Expense Reimbursement will permit the Debtors to insist that competing bids for the Assets, made in accordance with the Stalking Horse Bid Procedures, be materially higher or otherwise better than the Stalking Horse APA (or competing agreement), which is a clear benefit to the Debtors' estates.

54. The Expense Reimbursement is well within the spectrum of expense reimbursements approved by bankruptcy courts in other chapter 11 cases in this district. *See, e.g., In re Humanigen, Inc.*, No. 24-10003 (BLS) (Bankr. D. Del. Feb. 17, 2024) (approving expense reimbursement of approximately equal to a maximum of 5% of the cash consideration and credit bid of the stalking horse bid); *In re File Storage Partners, LLC*, No. 23-10877 (CTG) (Bankr. D. Del. Aug. 22, 2023) (approving expense reimbursements of approximately 5% of credit bid of the DIP lender with no additional cash considerations provided); *In re PLX Pharma Inc.*, No. 23-10456 (MFW) (Bankr. D. Del. May 25, 2023) (approving expense reimbursements equal to a maximum of approximately 12.5% of the cash consideration and credit bid of the stalking horse

purchaser); *In re Proteus Digital Health, Inc.*, No. 20-11580 (JKS) (Bankr. D. Del. Aug. 20, 2020) (approving expense reimbursements equal to a maximum of up to approximately 4% of the purchase price of the stalking horse purchaser).

D. Approval of a Sale of the Assets Is Warranted Under Section 363 of the Bankruptcy Code.

55. Ample authority exists for approval of the Sale contemplated by this Motion. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of a debtors’ estate, courts have approved the authorization of a sale of a debtors’ assets if such sale is based upon the sound business judgment of the debtor. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513 (7th Cir. 1991)); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *Stephen Indus., Inc. v. McClung*, 789 F.2d 386, 389-90 (6th Cir. 1986); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983).

56. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (i) whether a sound business justification exists for the sale; (ii) whether adequate and reasonable notice of the sale was provided to interested parties; (iii) whether the sale will produce a fair and reasonable price for the property; and (iv) whether the parties have acted in good faith. *See In re Decora Indus., Inc.*, No. 00-4459 (JJF), 2002 WL 32332749, at *2 (D. Del. May 20, 2002) (citing *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)). Where a debtor demonstrates a valid business justification for a decision, it is presumed that “in making a business decision the directors of a corporation acted on an informed

basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. at 656.

1. The Debtors Have Demonstrated a Sound Business Justification for the Sale of the Assets.

57. A sound business purpose for the sale of a debtors’ assets outside the ordinary course of business exists where such sale is necessary to preserve the value of the estate for the benefit of creditors and interest holders. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 148 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d at 1070-71; *In re Food Barn Stores, Inc.*, 107 F.3d at 564-65 (recognizing the paramount goal of any proposed sale of property of estate is to maximize value).

58. As set forth above, a strong business justification exists for the sale of all, substantially all, or portion of the Assets as described herein. An orderly and expeditious sale of the Assets is critical to maximizing the value of the Debtors’ estates and recoveries for the Debtors’ economic stakeholders. *Id.* ¶ 24. Absent a sale, the Debtors lack liquidity to reorganize and will be forced to shut down and liquidate. *Id.* ¶ 21.

2. The Noticing Procedures Are Reasonable and Appropriate.

59. Bankruptcy Rules 2002 and 6004 require the Debtors to notify creditors of the proposed sale, provide a description of the Assets and disclose the time and place of the Auction, the terms and conditions of any proposed Sale, and the Objection Deadlines. *See* Fed. R. Bankr. P. 2002(a), 2002(c), 6004(a). The Noticing Procedures described herein are reasonably calculated to provide all of the Debtors’ known creditors and all other parties-in-interest with adequate and timely notice of, among other things, the proposed Sale, the Bidding Procedures, Stalking Horse Bidder, the Auction, and the Sale Hearing. Further, publishing notice as described in paragraph D.31 above is designed to capture any creditors and parties-in-interest not currently known to the

Debtors. Accordingly, the Debtors request that the Court approve the Noticing Procedures described herein and in the Bidding Procedures Order.

3. The Proposed Sale Will Yield a Fair and Reasonable Purchase Price for the Assets.

60. As set forth above, the Debtors believe that any Sale governed by the Bidding Procedures will yield a fair and reasonable price for the Assets in the circumstances. The Bidding Procedures were designed to facilitate a competitive bidding process.

61. The Debtors also constructed the Bidding Procedures to promote transparency, good faith and fairness throughout the entire sale process. The Bidding Procedures provide an appropriate framework for the Debtors to review, analyze and compare bids for the Assets and to engage with bidders on an arm's-length basis to work to improve the quality of their bids for the benefit of all parties-in-interest.

62. A Sale governed by the Bidding Procedures undoubtedly will serve the important objectives of obtaining not only a fair and reasonable purchase price for the Assets, but also the highest or otherwise best value for the Assets. This is a critical feature of the Bidding Procedures, which will inure to the benefit of all parties-in-interest in these Chapter 11 Cases.

4. The Bidding Procedures Ensure that the Sale Process Is Conducted in Good Faith and that the Ultimate Purchaser of the Applicable Assets Is Entitled to the Protections Afforded by Section 363(m) of the Bankruptcy Code.

63. Section 363(m) of the Bankruptcy Code is designed to protect the sale of a debtors' assets to a good-faith purchaser. Specifically, section 363(m) provides the following:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale . . . were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) of the Bankruptcy Code fosters the “policy of not only affording finality to the judgment of the [B]ankruptcy [C]ourt, but particularly to give finality to those orders and judgments upon which third parties rely.” *In re Abbotts Dairies*, 788 F.2d at 147; *see also Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994) (“Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal.”).

64. While the Bankruptcy Code does not define “good faith,” the Third Circuit has held that indicia of bad faith typically include “fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.” *Abbotts Dairies*, 788 F.2d at 147 (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)) (other citations omitted); *see also Kabro Assoc. of West Islip, L.L.C. v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997).

65. In other words, a party would have to show fraud or collusion between the buyer and the debtors in possession, the trustee or other bidders to demonstrate a lack of good faith. *See Kabro Assocs. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997) (“[t]ypically, the misconduct that would destroy a [buyer]’s good faith status at a judicial sale involves fraud, collusion between the [buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders”) (quoting *In re Rock Indus. Mach Corp.*, 572 F. 2d 1195, 1998 (7th Cir. 1978)). Due to the absence of a bright-line test for good faith, the determination is based on the facts of each case, with a focus on the “integrity of [a bidder]’s] conduct in the course of the sale proceedings.” *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d at 1998).

66. The Debtors submit that any Successful Bidder will be a “good faith purchaser” within the meaning of section 363(m) of the Bankruptcy Code. As set forth above, the Bidding Procedures are designed to produce a fair and transparent competitive bidding process. In addition, Portage Point is an independent professional retained by the Debtors for the purpose of exploring strategic alternatives, marketing the Debtors’ business, soliciting bids, and negotiating the terms of a potential Sale. Each Qualified Bidder participating in the Auction must confirm that it has not engaged in any collusion with respect to the bidding or the sale of the Assets. Any purchase agreement with a Successful Bidder executed by the Debtors will be negotiated at arm’s length and in good faith by sophisticated parties represented by competent counsel. Accordingly, the Debtors seek a finding that any Successful Bidder (including the Stalking Horse Bidder) is a good faith purchaser and is entitled to the full protections afforded by section 363(m) of the Bankruptcy Code.

67. Based on the foregoing, the Debtors submit that they have demonstrated that the proposed Sale is a sound exercise of their business judgment and should be approved as a good faith transaction.

D. A Sale of the Assets Free and Clear of Liens, Claims, Interests and Encumbrances Is Appropriate under Section 363(f) of the Bankruptcy Code.

68. A free and clear sale is a pre-requisite to ensuring that the Debtors are able to attract the best or otherwise highest offers and achieve a value-maximizing transaction in these Chapter 11 Cases for the benefit of the Debtors and their stakeholders.

69. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of all liens, claims, interests and encumbrances of an entity other than the estate if any one of the following conditions is met:

- a. applicable non-bankruptcy law permits sale of such property free and clear of such interest;

- b. such entity consents;
- c. such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- d. such interest is in *bona fide* dispute; or
- e. such entity could be compelled, in legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)-(5); *see also In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.”); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same).

70. The Debtors anticipate that any Sale they elect to pursue will satisfy one or more of the requirements under section 363(f) of the Bankruptcy Code to permit a “free and clear” sale of the applicable Assets. As an initial matter, the DIP Lender, who is secured by liens on substantially all of the Assets, have already consented to the terms of the Bidding Procedures, and subject to the Bidding Procedures, will be an active participant in the sale process.

71. Accordingly, the Debtors request that the Court authorize the sale of the Assets free and clear of any liens, claims, interests and encumbrances, to the fullest extent permitted by section 363(f) of the Bankruptcy Code.

E. The Debtors’ Assumption and Assignment of Executory Contracts and Unexpired Leases Are Appropriate under Section 365 of the Bankruptcy Code.

72. Section 365(a) of the Bankruptcy Code provides that a debtor “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Courts employ the business judgment standard in determining whether to approve a debtor’s decision to assume or reject an executory contract or an unexpired lease. *See, e.g., In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (finding that assumption or rejection of

a lease “will be a matter of business judgment”); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding debtor’s decision to assume or reject executory contract is governed by business judgment standard and can only be overturned if decision was product of bad faith, whim or caprice). In this context, the business judgment test only requires that a debtor demonstrate that assumption or rejection of an executory contract or unexpired lease benefits the estate. *See Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989); *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co.*, (*In re Wheeling-Pittsburgh Steel Corp.*), 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987).

73. Any proposed Sale will provide a Successful Bidder with the opportunity to designate certain Contracts for assumption and assignment. Assumption of any Contracts is an exercise of the Debtors’ sound business judgment because the transfer of Contracts in connection with a Sale is an essential element in the Debtors’ ability to maximize the value of the Assets—and particularly so when a Contract is integral to the ownership or operation of the Assets to be acquired. Further, the ability to assume and assign Contracts will increase the likelihood that the Debtors will be able to sell the Assets as a going concern, thereby avoiding needless value-destruction through a liquidation.

74. The consummation of any Sale involving the assignment of a Contract will be contingent upon the Debtors’ compliance with the applicable requirements of section 365 of the Bankruptcy Code. Section 365(b)(1) requires that the Debtors either cure, or provide adequate assurance that they will promptly cure, any outstanding defaults under the Contracts to be assumed. *See* 11 U.S.C. § 365(b)(1). The Debtors’ assumption and assignment of any Contracts will be dependent upon payment of Cure Costs and effective only upon the closing of a Sale. As described with specificity herein, subject to the Court’s approval, the Debtors will file with the Court and

serve on each Counterparty an Assumption and Assignment Notice setting forth the Debtors' good-faith calculation of the Cure Costs for each Contract that could be assumed in connection with a Sale. Counterparties will have an opportunity to raise any Cure Objections in advance of the Sale Hearing.

75. Section 365(f) of the Bankruptcy Code requires, in part, that the assignee of any executory contract provide "adequate assurance of future performance . . . whether or not there has been a default in such contract." 11 U.S.C. § 365(f)(2). While the Bankruptcy Code does not define "adequate assurance," courts have held that what constitutes "adequate assurance" should be determined by "a practical, pragmatic construction based upon the facts and circumstances of each case." *See Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (quoting *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985)); *see also In re Alipat, Inc.*, 36 B.R. 274, 276-77 (Bankr. E.D. Mo. 1984) (recognizing that the term adequate assurance "borrowed its critical language . . . from Section 2-609 of the Uniform Commercial Code" which "suggest[s] that adequate assurance is to be defined by commercial rather than legal standards . . . [and] factual considerations"). While no single standard governs every case, adequate assurance "will fall considerably short of an absolute guarantee of performance." *In re Carlisle Homes, Inc.*, 103 B.R. at 538 (citations omitted); *In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent).

76. Adequate assurance may be provided by demonstrating, among other things, the assignee's financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding that industrial

expertise, past success in running a similar business and financial wherewithal satisfied the adequate assurance requirement of section 365 of the Bankruptcy Code).

77. The Bidding Procedures expressly specify that for a bid to qualify as a “Qualified Bid,” a Prospective Bidder must include with its bid Adequate Assurance Information regarding the Prospective Bidder’s (or any other relevant assignee’s) ability to perform the applicable obligations under any Contracts that may be included in the bid. The Debtors will furnish all available Adequate Assurance Information to the relevant Counterparties as soon as reasonably possible following its receipt of such information, upon such Counterparty’s request. Finally, any Counterparty that is dissatisfied with the content or quality of any relevant Adequate Assurance Information will have an opportunity to request additional information from the Debtors and, if necessary, lodge an Adequate Assurance Objection in advance of the Sale Hearing. In light of the foregoing, the Debtors’ assumption and assignment of any Contracts in accordance with the Assumption and Assignment Procedures would satisfy the requirements of section 365 of the Bankruptcy Code and should be approved.

78. Finally, to facilitate the assumption and assignment of Contracts in furtherance of maximizing the value of the Assets, the Debtors also request that the Court find that any anti-assignment provision included in any Contract, whether such provision expressly prohibits, or has the effect of restricting or limiting assignment of a Contract, is unenforceable and prohibited pursuant to section 365(f) of the Bankruptcy Code.¹⁰

¹⁰ Section 365(f)(1) provides in pertinent part that, “notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease. . . .” 11 U.S.C. § 365(f)(1). Further, section 365(f)(3) provides that “[n]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee.” 11 U.S.C. § 365(f)(3).

F. Requests for Immediate Relief & Waiver of Stay.

79. Pursuant to Bankruptcy Rules 6004(h) and 6006(d), the Debtors seek a waiver of any stay of the effectiveness of the Bidding Procedures Order, any Sale Order, any order authorizing the assumption or assumption and assignment of a Contract in connection with a Sale, and any other order entered by this Court in connection with the Sale. Bankruptcy Rule 6004(h) provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Bankruptcy Rule 6006(d) provides that “[a]n order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after entry of the order unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d).

80. The relief requested herein is necessary and appropriate to maximize the value of the Debtors’ Assets for the benefit of the Debtors’ economic stakeholders. Given the Debtors’ precarious financial condition and limited cash runway, the relief requested herein should be granted and effective as soon as practicable. Any delay in the sale process could jeopardize the Debtors’ chapter 11 strategy and the ability of the Debtors to consummate a value-maximizing transaction. Accordingly, the Debtors submit that ample cause exists to justify waiving the fourteen-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d), in each case, to the extent that such stay applies to the relief requested herein.

NOTICE

81. The Debtors have provided notice of this Motion to: (i) the Office of the United States Trustee; (ii) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (ii) the DIP Lender; (iii) the Prepetition Secured Parties; (iv) the Internal Revenue Service); (v) the Internal Revenue Service; (vi) the United States Attorney’s Office for

the District of Delaware; (vii) the Securities and Exchange Commission; (viii) the Delaware Secretary of State; (ix) the Delaware State Treasury; and (x) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

82. The Debtors have not previously sought the relief requested herein from the Court or any other court.

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CONCLUSION

WHEREFORE, the Debtors respectfully requests that the Court (i) enter the Bidding Procedures Order, substantially in the form attached hereto as **Exhibit A**; (ii) and, after the Sale Hearing, the Sale Order, respectively, granting the relief requested in the Motion; and (iii) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: May 22, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ R. Stephen McNeill

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Bidding Procedures Order

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

In re:

Supply Source Enterprises, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 24- 11054 (___)

(Jointly Administered)

Re: Docket No. ___

**ORDER (A) APPROVING BIDDING PROCEDURES
FOR THE SALE OF SUBSTANTIALLY ALL OF THE
DEBTORS' ASSETS, (B) DESIGNATING THE STALKING HORSE BIDDER,
(C) SCHEDULING AN AUCTION AND APPROVING THE FORM AND MANNER
OF NOTICE THEREOF, (D) APPROVING ASSUMPTION AND ASSIGNMENT
PROCEDURES, (E) SCHEDULING A SALE HEARING AND APPROVING THE FORM
AND MANNER OF NOTICE THEREOF AND (F) GRANTING RELATED RELIEF**

Upon consideration of the *Debtors' Motion for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets, (B) Designating the Stalking Horse Bidder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* (the "Motion")² filed by the debtors and debtors in possession (the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11

¹ The Debtors in these chapter 11 proceedings, together with the last four digits of each Debtor's federal tax identification number, are: Supply Source Enterprises, Inc. (0842); SSE Intermediate, Inc. (1772); SSE Buyer, Inc. (5901); Impact Products, LLC (7450); and The Safety Zone, LLC (4597). The Debtors' headquarters are located at 385 Long Hill Road, Guilford, Connecticut 06437.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion or in the Bidding Procedures, as applicable.

Cases”); and the Court having reviewed the Motion, the First Day Declaration, and the Sale Declaration; and the Court having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (if any) to consider certain of the relief requested in the Motion (the “Bidding Procedures Hearing”); and after due deliberation, this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors, and the Debtors having demonstrated good, sufficient, and sound business justifications for the relief granted herein;

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The Court has jurisdiction over this matter 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 February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The predicates for the relief granted herein are sections 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006.

B. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice of the Motion, the Bidding Procedures Hearing, and the proposed entry of this Order was sufficient under the circumstances of the Chapter 11 Cases, and such notice complied with all applicable requirements of the Bankruptcy Code, Bankruptcy Rules, and the Local Rules. Accordingly, no other or further notice of the Motion, the Bidding Procedures Hearing, or this Order need be provided.

D. The bidding procedures, substantially in the form attached hereto as **Exhibit 1** (the “Bidding Procedures”) and incorporated herein by reference as if fully set forth in this Order, are

fair, reasonable, and appropriate and are designed to maximize the value of the proceeds of the sale of all, substantially all, or a portion of the Debtors' assets (the "Assets").

E. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c).

F. The procedures set forth herein regarding the Debtors' assumption and assignment of executory contracts and unexpired leases (collectively, the "Contracts") in connection with a sale of the Assets (the "Assumption and Assignment Procedures") are fair, reasonable, and appropriate and comply with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

G. The Debtors have articulated good and sufficient business reasons for the Court to approve the relief requested in the Motion, including, without limitation, (i) the Bidding Procedures; (ii) the form and manner of notice of the Bidding Procedures, the auction of the Assets (the "Auction"), and the final hearing to consider approval of a sale of the Assets (the "Sale Hearing"), substantially in the form attached hereto as **Exhibit 2** (the "Sale Notice"); (iii) the form and manner of notice to each relevant non-debtor counterparty to a Contract (each, a "Counterparty") of (a) the Debtors' calculation of the amount necessary to cure any defaults under an applicable Contract (the "Cure Costs") and (b) certain other information regarding the potential assumption and assignment of Contracts in connection with the sale of the Assets, substantially in the form attached hereto as **Exhibit 3** (the "Assumption and Assignment Notice"); and (iv) the Assumption and Assignment Procedures. Such good and sufficient business reasons, which were set forth in the Motion and on the record at the Bidding Procedures Hearing, including the First Day Declaration and the Sale Declaration are incorporated herein by reference and, among other things, form the basis for the findings of fact and conclusions of law set forth herein.

H. The Bidding Procedures are reasonably designed to promote active bidding at and participation in the Auction to ensure that the highest or otherwise best value is generated for the Assets.

I. The Stalking Horse APA, substantially in the form attached as **Exhibit A** to the Bidding Procedures, was negotiated in good faith and at arm's-length among the Debtors and the Stalking Horse Bidder, provides the Debtors with the opportunity to sell such Assets in a manner designed to preserve and maximize its value, and provides a floor for a further marketing and auction process, and the bid reflected therein represents the highest or best offer the Debtors have received as of the date hereof to purchase the Assets included in the Stalking Horse APA. Without the Stalking Horse APA, the Debtors are at significant risk of realizing a lower price for their Assets. The Stalking Horse Bidder shall act as a "stalking horse bidder" pursuant to the Stalking Horse APA and shall be subject to higher or otherwise better offers in accordance with the Stalking Horse APA and the Bidding Procedures. Pursuit of the Stalking Horse APA Purchaser as a "stalking horse bidder" and the Stalking Horse APA as a "stalking horse purchase agreement" is in the best interests of the Debtors and their estates and their creditors, and it reflects a sound exercise of the Debtors' business judgment. The Stalking Horse Bidder is not an "insider" or "affiliate" of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stakeholders exist between the Stalking Horse Bidder and the Debtors. The Stalking Horse Bidder and its counsel and advisors have acted in "good faith" within the meaning of section 363(m) of the Bankruptcy Code in connection with the Stalking Horse Bidder's negotiation of the Bidding Procedures and the Stalking Horse APA, subject compliance with the Bidding Procedures as approved herein.

J. Good and sufficient notice of the relief sought in the Motion has been provided under the circumstances, and no other or further notice is required except as set forth in the Bidding Procedures and the Assumption and Assignment Procedures. A reasonable opportunity to object and be heard regarding the relief granted herein has been afforded to all parties-in-interest.

L. The Sale Notice, the Publication Notice (as defined below), and the Assumption and Assignment Notice are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale Hearing, the Bidding Procedures, the Assumption and Assignment Procedures, the Debtors' proposed Cure Costs, any proposed assumption of a Contract in connection with a sale of the Assets, and all relevant and important dates and deadlines with respect to the foregoing, and no other or further notice of the Auction, the sale of the Assets, or the assumption and assignment of Contracts in connection therewith shall be required.

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

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED to the extent set forth herein.
2. All objections to the relief granted in this Order that have not been withdrawn with prejudice, waived, or settled, and all reservations of rights included therein, are hereby overruled, and denied on the merits with prejudice.

A. The Timeline for the Sale

3. The Debtors are authorized to proceed with the sale transaction in accordance with the Bidding Procedures and are authorized to take any and all actions reasonably necessary or appropriate to implement the Bidding Procedures in accordance with the following timeline:

Three business days after the entry of the Bidding Procedures Order	Deadline for Debtors to file and serve Sale Notice
Three business days after the entry of the Bidding Procedures Order	Deadline for Debtors to file and serve Assumption and Assignment Notice
June 18, 2024, at 4:00 p.m. (prevailing Eastern Time)	Sale Objection Deadline, Cure Objection Deadline, and Contract Objection Deadline
June 24, 2024, at 4:00 p.m. (prevailing Eastern Time)	Bid Deadline
June 26, 2024, at 10:00 a.m. (prevailing Eastern Time)	Auction (if necessary)
One business day after the conclusion of the Auction	Deadline for Debtors to file and serve Notice of Auction Results
June 28, 2024 at 4:00 p.m. (prevailing Eastern Time)	Supplemental Sale Objection Deadline and Adequate Assurance Objection Deadline (if necessary)
June 30, 2024, at 12:00 p.m. (prevailing Eastern Time)	Deadline to Reply to any Sale Objections or Supplemental Sale Objections
July 1, 2024 at [●:● a/p.m.] (prevailing Eastern Time)	<i>Proposed</i> Sale Hearing (if Auction is held)

B. The Bidding Procedures

4. The Bidding Procedures attached hereto as **Exhibit 1** are hereby approved in their entirety and are incorporated by reference as if fully set forth herein. The Bidding Procedures shall govern the bids and proceedings related to the Auction and the sale of the Assets. The failure to

specifically include or reference a particular provision of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such provision.

5. Subject to this Order and the Bidding Procedures, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, shall have the right to, following consultation with any Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases on [●] (the “Committee”) and, solely to the extent it is no longer the Stalking Horse Bidder or otherwise participating in the Auction as a bidder, the DIP Lender³ (collectively, in such capacities if applicable, the “Consultation Parties”):⁴

- (i) determine which bidders qualify as “Qualified Bidders,” and which bids qualify as “Qualified Bids;”
- (ii) make final determinations as to whether the Debtors will conduct an Auction;
- (iii) select the Baseline Bid for the Assets;
- (iv) determine the amount of each Minimum Overbid;
- (v) determine the highest or otherwise best offer for the Assets (such bid, a “Leading Bid”);
- (vi) determine which Qualified Bid is the highest or otherwise best bid for the Assets (such Qualified Bid, including the Stalking Horse Bid if no other Qualified Bids are received and no Auction conducted, a “Successful Bid”) and which Qualified Bid is the next highest and otherwise best bid after the Successful Bid for the Assets (such Qualified Bid, a “Backup Bid”);
- (vii) reject any bid that is (a) inadequate or insufficient; (b) not in conformity with the requirements of this Order or any other applicable order of the Court, the Bidding Procedures, the Bankruptcy Code, or other applicable law; or (c) contrary to the best interests of the Debtors and their estates;

³ For the avoidance of doubt, nothing herein modifies the general information rights available to the DIP Lender under the DIP Credit Agreement.

⁴ Any reference to a consent right of the DIP Lender hereunder shall be a reference to the consent of the DIP Lender under the DIP Documents, as applicable.

(viii) adjourn or cancel the Auction in accordance with the Bidding Procedures; and (ix) adjourn the Sale Hearing in accordance with the Bidding Procedures.

6. In accordance with and subject to the Bidding Procedures, and subject to the terms of the Interim DIP Order, the Final DIP Order, and the Stalking Horse APA, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, shall have the right, in consultation with the Consultation Parties, to modify the Bidding Procedures, including to (a) extend or waive deadlines or other terms and conditions set forth herein or therein; (b) adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are disclosed to all Prospective Bidders and Qualified Bidders; and (c) otherwise modify the Bidding Procedures to further promote competitive bidding for and maximizing the value of the Assets.

7. At the Auction, if any, any Qualified Bidder who has a valid and perfected lien on any assets of the Debtors' estates (a "Secured Creditor"), whether or not such liens remain subject to any challenge period as set forth in any DIP Financing Order, shall be permitted to submit a credit bid for all or a portion of the assets subject to such lien, up to the amount of such Secured Creditor's claims (a "Credit Bid"). The Stalking Horse Bidder shall be permitted to increase its Credit Bid up to the full amount of its applicable outstanding secured obligations. For purposes of valuing competing Qualified Bids and determining the Successful Bid, the full face amount of a Credit Bid satisfying the requirements set forth in the Bidding Procedures and this Order shall be deemed to have the same value as the equivalent amount of cash. Subject to each Bid and Qualified Bid satisfying the requirements of these Bidding Procedures, the Debtors shall treat comparable Credit Bids and cash bids as equivalent and no Credit Bid shall be considered inferior to a cash bid merely because it is a Credit Bid. Notwithstanding anything to the contrary contained herein,

but subject in all respects to the challenge period as set forth in the Interim DIP Order or, if and once entered, the Final Order (as defined in the Interim DIP Order), the Stalking Horse Bidder shall have the right to Credit Bid all or any portion of the aggregate amount of its applicable outstanding secured obligations, including, without limitation, on account of its secured claims under the DIP Facility, Prepetition Term Loan Facility, and Prepetition ABL Facility, notwithstanding any earlier or lower Credit Bid of any portion of its applicable outstanding secured obligations.

8. Nothing contained in this Order or in the Bidding Procedures is intended to or shall be construed to alter, amend or modify the DIP Financing Order, nor constrain, limit, or impair any right granted to the DIP Lender thereunder. To the extent this Order (or the Bidding Procedures) is or are determined to be inconsistent with the DIP Financing Order in any respect, the terms of the DIP Financing Order shall govern.

B. Stalking Horse APA

9. The Stalking Horse APA between the Debtors and the Stalking Horse Bidder attached hereto as Exhibit A to the Bidding Procedures is hereby approved as the form of asset purchase agreement for purposes of the Auction, and is appropriate and reasonably calculated to enable the Debtors and other parties in interest to easily compare and contrast the differing terms of the Bids presented at the Auction.

10. The Debtors are authorized to enter into the Stalking Horse APA, subject to higher or otherwise better offers at the Auction, if any, and subject to the rights of the Committee (if any) and any other party in interest to assert any objections to the Sale on or prior to the Sale Objection Deadline.

11. The Stalking Horse Bidder shall be deemed a Qualified Bidder, and the Stalking Horse Bid shall be deemed a Qualified Bid, which status cannot be abrogated by subsequent amendment or modification to the Bidding Procedures absent further order of the Court. In the event that no other Qualified Bids are submitted, the Stalking Horse Bidder shall be deemed the Successful Bidder.

12. The Expense Reimbursement (as defined in the Stalking Horse APA) is hereby approved and shall survive termination of the Stalking Horse APA. The Debtors are authorized and directed to pay any and all reasonable and documented amounts owing the Stalking Horse Bidder on account of the Expense Reimbursement in accordance with the terms of the Stalking Horse APA without further order of this Court.

C. Bid Deadline and Auction

13. Any Prospective Bidder that intends to participate in the Auction must submit in writing to Portage Point (as defined below) (contact information in Sections I and III of the Bidding Procedures) a Qualified Bid on or before **June 24, 2024 at 4:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline"). The Debtors shall promptly provide a copy of each bid to each of the Consultation Parties, but in no event later than the day after the date of the Bid Deadline.

14. If the Debtors receive more than one Qualified Bid for the Assets, the Debtors shall conduct an Auction for the Assets.

15. The Auction, if required, will be conducted on **June 26, 2024, at 10:00 a.m. (prevailing Eastern Time)**, either (a) at the offices of Potter Anderson & Corroon LLP, 1313 N. Market Street, 6th Floor, Wilmington, Delaware 19801-6108, (b) some other physical location to be determined by the Debtors, or (c) virtually or at such other date, time or location as designated by the Debtors, after consulting with the Consultation Parties. If the Debtors conduct the Auction

virtually, the Debtors will provide instructions setting forth how to attend the Auction to the participants and other attendees via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time, or location of the Auction to Qualified Bidders and the Consultation Parties and will cause publication of such change to occur on the KCC Website (as defined below). If held, the Auction proceedings shall be transcribed or video recorded.

16. If the Debtors determine not to hold an Auction, the Debtors shall file with the Court, serve on the Sale Notice Parties (as defined in Section X.B of the Bidding Procedures), and cause to be published on the website maintained by KCC, Inc., the Debtors' claims and noticing agent in these Chapter 11 Cases, located at [https:// www.kccllc.net/supplysource](https://www.kccllc.net/supplysource) (the "KCC Website"), a notice containing the following information (as applicable): (a) a statement that the Auction has been canceled; (b) the identity of the Successful Bidder; (c) either include a copy of the Successful Bid or a summary of the material terms of such bid, or provide instructions for accessing the Successful Bid free of charge from the KCC Website; and (d) the date, time, and location of the Sale Hearing.

17. Only a Qualified Bidder that has submitted a Qualified Bid shall be eligible to participate in the Auction, subject to any other limitations as the Debtors may reasonably impose in accordance with the Bidding Procedures. Qualified Bidders participating in the Auction must attend the Auction personally or through a duly authorized representative. The Debtors may establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of a Qualified Bidder or otherwise attend the Auction.

18. Each Qualified Bidder participating in the Auction shall confirm in writing on the record that (a) it has not engaged in any collusion with respect to the Auction or the submission of

any bid for any of the Assets; and (b) the Qualified Bid that gained the Qualified Bidder admission to participate in the Auction and each Qualified Bid submitted by the Qualified Bidder at the Auction constitutes a binding, good-faith, and *bona fide* offer to purchase the Assets identified in such bids.

19. As soon as practicable after the conclusion of the Auction, the Debtors shall file with the Court, serve on the Sale Notice Parties, and cause to be published on the KCC Website, a notice setting forth the results of the Auction (the “Notice of Auction Results”). The Notice of Auction Results will (a) identify each Successful Bidder and each Backup Bidder, as applicable; (b) either include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bid, or provide instructions for accessing each Successful Bid and each Backup Bid free of charge from the KCC Website; and (c) set forth the date, time, and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

D. Sale Noticing and Objection Procedures

20. Except objections to the conduct of the Auction, the Successful Bidder or the Backup Bidder, all objections to the sale of the Assets (each, a “Sale Objection”), including (a) any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code to the Stalking Horse Bidder, a Successful Bidder, and/or a Backup Bidder (as applicable) and (b) any objection to the entry of any Sale Order shall be (i) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (ii) filed with the Court by **no later than June 18, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”); and (iii) served on the Objection Notice Parties (as defined in Section X.D of the Bidding Procedures).

21. Following service of the Notice of Auction Results, parties in interest may file an objection solely with respect to the conduct of the Auction, the Successful Bidder, the Backup Bidder, or the Sale to the Successful Bidder or the Backup Bidder (in each case, if such bidder is not the Stalking Horse Bidder) (each such objection, a “Supplemental Sale Objection”). Any Supplemental Sale Objection shall be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (b) filed with the Court by **no later than June 28, 2024 at 4:00 p.m. (prevailing Eastern Time)** (the “Supplemental Sale Objection Deadline”); and (c) served on the Objection Notice Parties.

22. Any party who fails to file and serve a timely Sale Objection or Supplemental Sale Objection in accordance with the terms of this Order shall be forever barred from asserting, at the Sale Hearing or thereafter, any Sale Objection or Supplemental Sale Objection to the relief requested in the Motion, or to the consummation or performance of the sale of the Assets, including the transfer of Assets to the Successful Bidder free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and shall be deemed to “consent” to such sale for purposes of section 363(f) of the Bankruptcy Code.

23. The Debtors or any other party in interest may file a reply to any Sale Objection or Supplemental Sale Objection, if any, by **no later than June 30, 2024 at 12:00 p.m. (prevailing Eastern Time)**.

24. Consummation of the sale of the Assets pursuant to a Successful Bid shall be subject to Court approval. The Sale Hearing to (a) approve a sale of all, substantially all, or a portion of the Assets to the Stalking Horse Bidder or another Successful Bidder(s) and (b) authorize the assumption and assignment of certain executory contracts and unexpired leases shall be held before the Court on **July 1, 2024** at [●] (**prevailing Eastern Time**); *provided, that*, the

Debtors may seek an adjournment or rescheduling of the Sale Hearing, consistent with the Bidding Procedures and this Order. At the Sale Hearing, the Debtors will seek Court approval of the Stalking Horse Bid or another Successful Bid(s) and the Backup Bid(s) (if any). Unless the Court orders otherwise, the Sale Hearing shall be an evidentiary hearing on matters relating to the sale transaction and there will be no further bidding at the Sale Hearing. If the Successful Bidder(s) cannot or refuses to consummate the Sale(s) because of the breach or failure on the part of such Successful Bidder, the Debtors may, in accordance with the Bidding Procedures, designate the Backup Bid to be the new Successful Bid and the Backup Bidder to be the new Successful Bidder, and the Debtors shall be authorized, but not required, to consummate the applicable transaction with the Backup Bidder without further order of the Court.

25. The Sale Notice, substantially in the form attached hereto as **Exhibit 2**, is approved, and no other or further notice of the proposed sale of the Assets, the Auction, the Sale Hearing, the Sale Objection Deadline, or the Supplemental Sale Objection Deadline shall be required if the Debtors serve and publish the Sale Notice in the manner provided in the Bidding Procedures and this Order. **By no later than three (3) business days after entry of the Bidding Procedures Order**, the Debtors shall file with the Court, serve on the Sale Notice Parties, and cause to be published on the KCC Website, the Sale Notice.

26. As soon as practicable but no later than five business days after the entry of this Order, the Debtors shall cause the information contained in the Sale Notice, with such modifications as may be appropriate for purposes of publication, to be published once in the national edition of *USA Today National Edition* or *New York Times National Edition* (the "Publication Notice").

E. Assumption and Assignment Procedures

27. The Assumption and Assignment Notice, substantially in the form attached hereto as **Exhibit 3**, is approved, and no other or further notice of the Debtors' intention to assume or assign the Contracts or of the Debtors' proposed Cure Costs is necessary or required.

28. **By no later than three (3) business days after entry of the Bidding Procedures Order**, the Debtors shall file with the Court, serve on the applicable Counterparties (and counsel, if known), and cause to be published on the KCC Website, the Assumption and Assignment Notice.

29. To the extent the Debtors, at any time after the deadline to file and serve the Assumption and Assignment Notice (i) identify additional Contracts to be assumed and assigned to the Stalking Horse Bidder or other Successful Bidder (the "Additional Contracts"), (ii) remove Contracts from the list of executory contracts and leases proposed to be assumed and assigned in connection with the sale of the Assets, (iii) and/or modify the previously stated Cure Cost associated with any Contracts, the Debtors will promptly file with this Court and serve by first-class mail or email a supplemental notice of contract assumption (a "Supplemental Assumption and Assignment Notice") on each of the counterparties to such Contracts and their counsel of record, if any. Each Supplemental Assumption and Assignment Notice will include the same information with respect to listed Additional Contracts as was included in the initial Assumption and Assignment Notice. The Stalking Horse Bidder may designate Additional Contracts to be assumed and assigned at any time until two (2) Business Days prior to the Closing Date (as defined in the Stalking Horse APA), and may remove Contracts from the list of Contracts at any time until two (2) Business Days prior to the Closing Date. Counterparties to Additional Contracts or that otherwise receive a Supplemental Assumption and Assignment Notice shall have until 4:00 p.m. (prevailing Eastern Time) on the date that is seven (7) days after the filing and service of the

Supplemental Assumption and Assignment Notice by the Debtors to the Counterparty to file a Contract Objection (as defined herein).

30. Any objection to the Debtors' proposed Cure Costs (each such objection, a "Cure Objection") or the assumption and assignment on any basis (except objections solely related to adequate assurance of future performance provided by a Successful Bidder other than the Stalking Horse Bidder) (each such objection, an "Assumption/Assignment Objection" and, together with a Cure Objection, a "Contract Objection") shall be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (b) filed with the Court by **no later than June 18, 2024, at 4:00 p.m. (prevailing Eastern Time)**; and (c) served on the Objection Notice Parties.

31. The Debtors or the Successful Bidder, and the objecting Counterparty shall first confer in good faith to attempt to resolve the Cure Objection without Court intervention. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the Sale Hearing, the Court will make all necessary determinations relating to the applicable Cure Costs and Cure Objection at a hearing scheduled pursuant to this Order. If a Cure Objection is resolved in a manner that is not in the best interests of the Debtors and their estates, whether or not such resolution occurs prior to or after the closing of the sale of the Assets, the Debtors or the Successful Bidder may determine that any Contract subject to such resolved Cure Objection no longer will be assumed and assigned in connection with the sale of the Assets (subject to the terms of the applicable purchase agreement). All other objections to the Debtors' proposed assumption and assignment of the Debtors' right, title, and interest in, to, and under a Contract shall be heard at the Sale Hearing or at a subsequent hearing scheduled pursuant to this Order.

32. If a timely Cure Objection cannot otherwise be resolved by the parties, the Cure Objection may be heard at the Sale Hearing or, with the agreement of the Debtors and Successful Bidder, be adjourned to a subsequent hearing, with notice to the party having filed the Cure Objection (each such Cure Objection, an “Adjourned Cure Objection”). An Adjourned Cure Objection may be resolved after the closing date of the sale of the Assets. Any Contract that is the subject of an Adjourned Cure Objection may be assumed and assigned prior to the resolution of such objection, so long as the Debtors or Successful Bidder, as applicable, (i) pay any undisputed Cure Costs on or before (x) the Closing Date (as defined in the Stalking Horse APA) or (y) in the event the Successful Bidder is a party other than the Stalking Horse Bidder, the date designated for consummating the sale under such Successful Bidder’s purchase agreement and (ii) appropriately reserve funding for the disputed portion of the Cure Costs pending resolution of the dispute.

33. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Contract Objection, (i) the Counterparty shall be deemed to have consented to the assumption by the Debtors and assignment to the Stalking Horse Bidder or other Successful Bidder of the Contract (other than as it relates to adequate assurance of future performance of a Successful Bidder that is not the Stalking Horse Bidder), (ii) the Stalking Horse Bidder shall be deemed to have provided adequate assurance of future performance with respect to a Contract in accordance with Bankruptcy Code sections 365(b)(1)(C), 365(f)(2)(B), and, if applicable, Bankruptcy Code section 365(b)(3), notwithstanding anything to the contrary in the Contract or any other document, (iii) the Counterparty shall be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the Stalking Horse Bidder), (iv) any and all defaults under the Contract and

any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to Bankruptcy Code section 365(b)(1)(A) and upon payment of the Cure Costs set forth in the Assumption and Assignment Notice for such Contract, and the Counterparty shall be forever barred from asserting any objection with regard to the cost to cure any defaults under the applicable Contract, and (v) the Counterparty shall be forever barred from asserting any other claims related to such Contract against the Debtors and their estates or the Stalking Horse Bidder or other Successful Bidder, or the property of any of them, that existed prior to the entry of the order resolving such Contract Objection and any Sale Order.

34. In accordance with the Bidding Procedures, Qualified Bids shall be accompanied by Adequate Assurance Information (as defined in the Bidding Procedures). The Debtors shall promptly provide, upon a Counterparty's request to the Debtors' counsel, the Adequate Assurance Information to any Counterparty (and counsel, if known) to any Contract that may be assumed by the applicable Qualified Bidder. Any Adequate Assurance Information provided by the Debtors to a Counterparty shall be provided on a confidential basis unless otherwise agreed by the applicable Qualified Bidder.

35. Any objection to the proposed assumption and assignment of a Contract, the subject of which objection is a Successful Bidder's (or any other relevant assignee's), other than the Stalking Horse Bidder's, proposed form of adequate assurance of future performance with respect to the Contract (each such objection, an "Adequate Assurance Objection"), shall be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (b) filed with the Court by **no later than June 28, 2024 at 4:00 p.m. (prevailing Eastern Time)**; and (c) served on the Objection Notice Parties.

36. The Debtors, the Successful Bidder, and a Counterparty that has filed an Adequate Assurance Objection shall first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, the Adequate Assurance Objection and all issues of adequate assurance of future performance of the Successful Bidder (or any other relevant assignee), other than the Stalking Horse Bidder, shall be determined by the Court at the Sale Hearing or, at the option of the Debtors and the Successful Bidder, be adjourned to a subsequent hearing, with notice to the party having filed the Adequate Assurance Objection.

37. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Adequate Assurance Objection, the Counterparty shall be forever barred from asserting any objection to the assumption and/or assignment of a Contract with regard to adequate assurance of future performance. The Successful Bidder (or any other relevant assignee) shall be deemed to have provided adequate assurance of future performance with respect to a Contract in accordance with Bankruptcy Code sections 365(b)(1)(C), 365(f)(2)(B), and, if applicable, Bankruptcy Code section 365(b)(3), notwithstanding anything to the contrary in the Contract or any other document.

38. As soon as reasonably practicable after the closing of the sale of the Assets, the Debtors shall file with the Court, serve on the applicable Counterparties, and cause to be published on the KCC Website, a notice containing the list of Contracts that the Debtors assumed and assigned pursuant to any asset purchase agreement with a Successful Bidder on the closing date of the sale of the Assets.

39. The inclusion of a Contract or Cure Costs with respect to any Contract on any Assumption and Assignment Notice, shall not constitute or be deemed a determination or admission by the Debtors, any Successful Bidder, or any other party that such Contract is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code, and shall not be a guarantee that such Contract ultimately will be assumed or assigned. The Debtors reserve all of their rights, claims, and causes of action with respect to each Contract listed on any Assumption and Assignment Notice.

F. Other Related Relief

40. Notwithstanding anything herein or in the Bidding Procedures to the contrary, the Debtors shall not be permitted to modify the consultation rights of the Consultation Parties in the Bidding Procedures absent further order of this Court or the consent of any affected Consultation Parties, *provided, however*, that the Debtors will not consult with or provide copies of any bids or other confidential information to any Consultation Party or any insider or affiliate of the Debtors if such party is an active bidder for the Assets at the applicable time, and *provided, further*, that if a member of the Committee submits a Qualified Bid for the Assets, the Committee will maintain its consultation rights as a Consultation Party, *provided* that the Committee shall exclude the bidding Committee member from any discussions or deliberations regarding a transaction involving the relevant Assets, and shall not provide any confidential information regarding the Assets or otherwise involving the Sale Process to such bidding Committee member. Notwithstanding anything to the contrary herein, upon written notice (which may be via email) by the DIP Lender or such Committee member to the Debtors, or express confirmation on the record during the Auction, of its withdrawal as a bidder for the Assets, the DIP Lender's rights and such Committee member's rights, as applicable, as a Consultation Party shall be restored.

41. All persons and entities that participate in the Auction or bid for the Assets during the Sale Process shall be deemed to have knowingly and voluntarily (a) consented to the core jurisdiction of the Court to enter any order related to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order; (b) waived any right to a jury trial in connection with any disputes relating to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order; and (c) consented to the entry of a final order or judgment in connection with any disputes relating to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order, if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the relevant parties.

42. Nothing in this Order or the Bidding Procedures shall prevent the Debtors from, in the exercise of their fiduciary duties, pursuing or otherwise consummating an alternative transaction.

43. Notwithstanding the applicability of any of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014, or any other provisions of the Bankruptcy Rules or the Local Rules stating to the contrary, the terms and provisions of this Order shall be immediately effective and enforceable upon its entry, and any applicable stay of the effectiveness and enforceability of this Order is hereby waived.

44. The Debtors are authorized to take all steps necessary or appropriate to implement the relief granted in this Order.

45. This Order shall be binding on and inure to the benefit of the Debtors, including any Chapter 7 or Chapter 11 trustee or other fiduciary appointed for the estate of the Debtors.

46. This Order shall constitute the findings of fact and conclusions of law and shall take immediate effect upon execution hereof.

47. To the extent any of the deadlines set forth in this Order do not comply with the Local Rules, such Local Rules are waived and the terms of this Order shall govern.

48. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Exhibit 1

Bidding Procedures

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

In re:	Chapter 11
Supply Source Enterprises, Inc., <i>et al.</i> , ¹	Case No. 24- 11054 (___)
Debtors.	(Jointly Administered)

BIDDING PROCEDURES

The above-captioned debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) will use the procedures set forth herein (the “Bidding Procedures”) in connection with a sale or disposition of all, substantially all, or a portion of the Debtors’ assets (the “Assets”).

On May [___], 2024, the Debtors filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) the *Debtors’ Motion for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets, (B) Designating the Stalking Horse Bidder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* [Docket No. ___] (the “Motion”). By the Motion, the Debtors sought, among other things, entry of an order approving Bidding Procedures for soliciting bids for an auction (the “Auction”) of, and consummating a sale of, the Assets, as further described herein.

On May [___], 2024, the Court entered an *Order (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets, (B) Designating the Stalking Horse Bidder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (F) Granting Related Relief* [Docket No. [___]] (the “Order”).²

¹ The Debtors in these chapter 11 proceedings, together with the last four digits of each Debtor’s federal tax identification number, are: Supply Source Enterprises, Inc. (0842); SSE Intermediate, Inc. (1772); SSE Buyer, Inc. (5901); Impact Products, LLC (7450); and The Safety Zone, LLC (4597). The Debtors’ headquarters are located at 385 Long Hill Road, Guilford, Connecticut 06437.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in these Bidding Procedures, the Motion, or the Order, as applicable.

I. ASSETS FOR SALE

The Debtors intend to sell all, substantially all, or a portion of their Assets. The ability to undertake and consummate a sale of the Assets shall be subject to competitive bidding, as set forth herein, and approval by the Court. In addition to the Stalking Horse Bid (as defined in the Motion), the Debtors will consider bids for the Assets from other parties.

The Stalking Horse Bid represents a bid for substantially all of the Debtors' assets and certain contracts, accounts receivable, and all other Purchased Assets (as defined in the Stalking Horse APA).

Parties may submit bids for all or some of the Debtors' business and assets, including for parts of the Debtors' business or assets (each, a "Partial Bid"), which bids may be combined with other Partial Bids or be considered independently and/or together with the liquidation value (as reasonably determined by the Debtors in good faith) of the Debtors' business or assets that are not the subject of other Partial Bids to be deemed a Qualified Bid.

Any party interested in submitting a bid for any of the Debtors' Assets should contact the following individuals at Triple P RTS, LLC ("Portage Point"):

Portage Point

Attn: Jason Cohen and Lisa Lansio

jcohen@ppllc.com

llansio@ppllc.com

II. KEY DATES AND DEADLINES

Three business days after the entry of the Bidding Procedures Order	Deadline for Debtors to file and serve Sale Notice
Three business days after the entry of the Bidding Procedures Order	Deadline for Debtors to file and serve Assumption and Assignment Notice
June 18, 2024, at 4:00 p.m. (prevailing Eastern Time)	Sale Objection Deadline, Cure Objection Deadline, and Contract Objection Deadline
June 24, 2024, at 4:00 p.m. (prevailing Eastern Time)	Bid Deadline
June 26, 2024, at 10:00 a.m. (prevailing Eastern Time)	Auction
One business day after the conclusion of the Auction	Deadline for Debtors to file and serve Notice of Auction Results
June 28, 2024 at 4:00 p.m. (prevailing Eastern Time)	Supplemental Sale Objection Deadline and Adequate Assurance Objection Deadline
June 30, 2024, at 12:00 p.m. (prevailing Eastern Time)	Deadline to Reply to any Sale Objections or Supplemental Sale Objections
July 1, 2024 at [●:● a/p.m.] (prevailing Eastern Time)	<i>Proposed</i> Sale Hearing

III. DUE DILIGENCE

Each person or entity that desires to participate in the Auction process (each, a “Prospective Bidder”) must first deliver to Portage Point (contact information in Section I above and in this Section III) the following:

- documentation identifying the Prospective Bidder, its principals, and the representatives thereof who are authorized to appear and act on its behalf for all purposes regarding the contemplated Sale;
- an executed confidentiality agreement, in form and substance satisfactory to the Debtors;
- a statement and other factual support demonstrating to the Debtors and their advisors, in their sole judgment, that the Prospective Bidder has a *bona fide* interest in purchasing some or all of the Assets; and
- preliminary proof by the Prospective Bidder of its financial capacity to close a proposed sale transaction, which may include current unaudited or verified financial statements of, or verified financial commitments obtained by, the Prospective Bidder (or, if the Prospective Bidder is an entity formed for the purpose of acquiring the Assets to be sold, the party that will bear liability for a breach by the Prospective Bidder of an asset purchase agreement or other agreement entered into in respect of the sale transaction), the adequacy of which the Debtors and their advisors will determine in their sole judgment.

Without the need for any further action, the Stalking Horse Bidder is a Qualified Bidder (as defined in Section VI.C below).

Upon execution of a valid confidentiality agreement and subject to the other limitations and guidelines set forth herein, the Debtors may grant a Prospective Bidder that the Debtors identify as reasonably likely to become a Qualified Bidder with access to information contained in the Debtors’ confidential electronic data room (the “Data Room”) allowing such Prospective Bidder to conduct due diligence with respect to the potential acquisition of some or all of the Assets. Access may be terminated by the Debtors in their reasonable discretion at any time for any reason whatsoever, including that a Potential Bidder does not become a Qualified Bidder, these Bidding Procedures are terminated, the Potential Bidder breaches any obligations under its confidentiality agreement or the Debtors become aware that information submitted by the Potential Bidder for requesting access to the Data Room is inaccurate or misleading. The Debtors may restrict or limit access of a Potential Bidder to the Data Room if the Debtors determine, based on their reasonable business judgment that certain information in the Data Room is sensitive, proprietary, or otherwise not appropriate for disclosure to such Potential Bidder.

If the Debtors determine that a Prospective Bidder is unlikely to qualify as a Qualified Bidder or fails to become a Qualified Bidder, then such Prospective Bidder shall have no further right to access due diligence or any other non-public information. The Prospective Bidder shall return or destroy any non-public information the Debtors or their advisors provided to the Prospective Bidder in accordance with the terms of the confidentiality agreement executed by the

Debtors and the Prospective Bidder. For purposes hereof, the term “Consultation Parties” shall include the Committee and, solely to the extent it is no longer the Stalking Horse Bidder or otherwise participating in the Auction as a bidder, the DIP Lender.

The Debtors will try to accommodate all reasonable requests from Prospective Bidders for additional information and due diligence access. All due diligence requests shall be directed to Jason A. Cohen (jcohen@pppllc.com) and Lisa K. Lansio (llansio@pppllc.com).

Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Debtors’ businesses or assets to any person or entity who (i) is not a Potential Bidder, (ii) does not comply with the participation requirements set forth herein, or (iii) in the case of competitively sensitive information, is a competitor of the Debtors, in the reasonable business judgment of the Debtors after consulting with the Consultation Parties.

Each Qualified Bidder shall be deemed to acknowledge and represent (i) that it has had an opportunity to (x) conduct any and all due diligence regarding the [Applicable] Acquired Assets prior to making a bid and (y) investigate and/or inspect any documents and the Applicable Acquired Assets in making its bid; (ii) that it has relied solely upon its own independent review in making its bid; and (iii) that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise regarding the Applicable Acquired Assets, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures. The Debtors and their respective estates are not responsible for, and will have no liability with respect to, any information obtained by, or provided to, any Potential Bidders in connection with these Bidding Procedures and the Sale Transactions.

IV. STALKING HORSE BIDDER

The Debtors, as sellers, and the DIP Lender, as buyer (in such capacity, the “Stalking Horse Bidder”) have negotiated the asset purchase agreement in the form attached as Exhibit A hereto (the “Stalking Horse APA”), which contemplates a sale of the Assets to the Stalking Horse Bidder on the terms set forth in the Stalking Horse APA under sections 105, 363 and 365 of the Bankruptcy Code (“Stalking Horse Bid”).

The Stalking Horse Bidder shall have the absolute and unconditional right to credit bid, as a component of any or all Qualified Bids (as defined in the Bidding Procedures) or in connection with any Subsequent Bid (as defined below), all or a portion of the aggregate amount of its applicable outstanding secured obligations, including, without limitation, on account of its secured claims under the DIP Facility, Prepetition Term Loan Facility, and Prepetition ABL Facility, notwithstanding any earlier or lower Credit Bid of any portion of its applicable outstanding secured obligations.

Without the need for any further action, the Stalking Horse Bidder is a Qualified Bidder (as defined in Section VI below).

V. BID DEADLINE

Any Prospective Bidder that intends to participate in the Auction must submit in writing to the Bid Notice Parties a Qualified Bid (as defined in Section VI.C below) on or before **June 24, 2024 at 4:00 p.m. (prevailing Eastern Time)** (the “Bid Deadline”). The Debtors shall (subject to Section XI.C hereof) promptly provide a copy of each bid to each of the Consultation Parties, but in no event later than the day after the date of the Bid Deadline.

VI. BID REQUIREMENTS

A. Qualified Bid Requirements

To qualify as a “Qualified Bid,” a bid must be in writing and satisfy the following requirements:

1. Identification of Bidder. A Qualified Bid must fully disclose the following: (a) the legal identity of each person or entity bidding for the Assets and/or otherwise sponsoring, financing (including through the issuance of debt in connection with such bid), or participating in (including through license or similar arrangement with respect to the Assets to be acquired in connection with such bid) the Auction in connection with such bid and the complete terms of any such participation; and (b) any past or present connections or agreements with the Debtors, the Stalking Horse Bidder, any other known Prospective Bidder or Qualified Bidder, the DIP Lender, or any officer or director of any of the foregoing (including any current or former officer or director of the Debtors).
2. Purchased Assets. A Qualified Bid must identify the following:
 - a. the Assets to be purchased, including any executory contracts and unexpired leases (collectively, the “Contracts”) that, as of the submission of such bid, the Prospective Bidder proposes to be assumed and assigned by the Debtors in connection with the proposed sale; and
 - b. the liabilities, if any, to be assumed, including any debt to be assumed.
3. Form of Consideration.
 - a. Credit Bidding. The Stalking Horse Bidder or any Prospective Bidder holding a perfected security interest in any of the Assets may seek to credit bid all or a portion of such party’s claims for the collateral in which such party holds a perfected security interest (each such Bid, a “Credit Bid”) in accordance with section 363(k) of the Bankruptcy Code. A Credit Bid may be applied only with respect to those Assets in which the party submitting such Credit Bid holds a perfected security interest.

- b. Consideration. Each other bid must include a statement confirming that the bid is based on an all-cash offer, or if a bid includes forms of consideration other than cash, the bidder shall include an analysis or description of the value of such non-cash components, including any supporting documentation, to assist the Debtors and the Consultation Parties (subject to Section XI.C hereof) in evaluating the bid.
4. Minimum Bid for Assets. Each bid that is not the Stalking Horse Bid must have a value to the Debtors, as determined by the Debtors, in consultation with the Consultation Parties (subject to Section XI.C hereof), that is greater than or equal to the sum of the value offered under the Stalking Horse APA, plus (b) \$100,000 plus (c) the Expense Reimbursement (collectively, the "Minimum Bid Amount"). For the avoidance of doubt, any bid that is not the Stalking Horse Bid must provide sufficient consideration to allow the Debtors to repay, in full in cash, (x) all of the Obligations under the DIP Facility in accordance with the terms thereof and (y) the amount of the Prepetition Secured Obligations (as defined in the Interim DIP Order) that are credit bid by the Stalking Horse Bidder (the "SH Payment Requirement").

If the value of a bid relative to the Stalking Horse Bid includes additional non-cash components (such as fewer contingencies than are in such Stalking Horse APA), the bidder should include an analysis or description of the value of any such additional non-cash components, including any supporting documentation, to assist the Debtors and the Consultation Parties (subject to Section XI.C hereof) in better evaluating the competing bid. The Debtors, in consultation with their advisors and the Consultation Parties, reserve the right in their sole discretion to ascribe a value to any non-cash components of competing bids so long as the SH Payment Requirement is met.

5. Proposed Asset Purchase Agreement. A Qualified Bid must constitute an irrevocable offer and be in the form of an asset purchase agreement reflecting the terms and conditions of the bid (each, a "Proposed Asset Purchase Agreement"). A Proposed Asset Purchase Agreement shall be (a) duly authorized and executed; (b) based on, and marked against the Stalking Horse APA to reflect the proposed sale transaction and to show any other proposed modifications to the Stalking Horse APA, as applicable; (c) specify the proposed purchase price for the Assets in U.S. dollars; (d) include all exhibits and schedules contemplated thereby (other than exhibits and schedules that, by their nature, must be prepared by the Debtors); and (e) identify any Contracts that, as of the submission of such bid, the Prospective Bidder proposes to be assumed and assigned by the Debtors in connection with the proposed sale transaction.

6. Proposed Sale Order. A Qualified Bid must include a proposed sale order (each, a “Proposed Sale Order”), and be marked against the Stalking Horse Sale Order, which the Debtors have filed with the Motion.
7. Financial Information. A Qualified Bid must include the following:
 - a. a statement that the Prospective Bidder is financially capable of consummating the sale transaction contemplated by the Prospective Bidder’s Proposed Asset Purchase Agreement and Proposed Sale Order;
 - b. sufficient evidence, as determined by the Debtors in their sole discretion, to determine that the Prospective Bidder has, or will obtain, the financial wherewithal to consummate the sale transaction contemplated by the Prospective Bidder’s Proposed Asset Purchase Agreement and Proposed Sale Order; and
 - c. Adequate Assurance Information (as defined in Section VI.A.9 below) with respect to any Contracts included or that may be included in the Prospective Bidder’s bid, including the identity of any known proposed assignee of the applicable Contracts (if different from the Prospective Bidder), including contact information for such proposed assignee;
8. Good Faith Deposit. Each Qualified Bid (other than the Stalking Horse Bid) must be accompanied by a good faith deposit (each, a “Good Faith Deposit”) in the form of cash in an amount equal to ten percent (10%) of the proposed purchase price for the Assets. The Good Faith Deposits shall be deposited **no later than June 24, 2024 at 4:00 pm (prevailing Eastern Time)** with an escrow agent selected by the Debtors (the “Escrow Agent”) and held in escrow until 10 business days after the conclusion of the Auction, except for the Good Faith Deposit of any bidder who is selected at the Auction as a Successful Bidder or as a Backup Bidder, and thereafter returned to the respective Qualified Bidders in accordance with Section VII.D of these Bidding Procedures.
9. Adequate Assurance. A Qualified Bid must include evidence of the Prospective Bidder’s (or any other relevant assignee’s) ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Prospective Bidder’s (or any other relevant assignee’s) ability to perform future obligations arising under any Contracts included in its bid. The Debtors may require the following information in connection with demonstrating adequate assurance of future performance: (a) information evidencing the Prospective Bidder’s (or any other relevant assignee’s) financial wherewithal and willingness to perform under any Contracts included in the bid, which information may include (i) a corporate organizational chart or

similar disclosure identifying corporate ownership and control, (ii) financial statements, (iii) tax returns, and (iv) annual reports; and (b) the Prospective Bidder's (or any other relevant assignee's) proposed use of any leased premises or other property included in the bid (the information described in clauses (a) and (b) of this Section VI.A.9, the "Adequate Assurance Information").

All Adequate Assurance Information must be in a form that will permit its immediate dissemination to Contract counterparties ("Counterparties").

10. Representations and Warranties (As-Is, Where-Is). Each Qualified Bid must include a written acknowledgement and representation that (a) the Prospective Bidder has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its Qualified Bid, (b) the Prospective Bidder has relied solely upon its own or its advisors' independent review, investigation, and/or inspection of any documents and/or the Assets in making its Qualified Bid, (c) the Prospective Bidder did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Prospective Bidder's Proposed Asset Purchase Agreement, and (d) the Assets will be conveyed "as is, where is, with all faults," with limited representations and warranties, and no indemnification or guarantees by the Debtors.
11. Authorization. A Qualified Bid must (a) include evidence of authorization and approval from the Prospective Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of any bid for the Assets, participation in the Auction, and closing of the sale transaction contemplated by the Prospective Bidder's Proposed Asset Purchase Agreement and Proposed Sale Order; or, (b) if the Prospective Bidder is an entity formed for the purpose of effecting the proposed sale transaction, a Qualified Bid must provide written evidence acceptable to the Debtors of authorization and the approval by the equity holder(s) of such Prospective Bidder.
12. Other Requirements. A Qualified Bid must:
 - a. state that the Prospective Bidder agrees to serve as a backup bidder (a "Backup Bidder") if such bidder's Qualified Bid is selected at the Auction as the next highest or next best bid after the Successful Bid (as defined in Section VII.C.1 below) for the Assets (each such bid, a "Backup Bid");
 - b. state that the bid represents a binding, good-faith, and *bona fide* offer to purchase the Assets and is not subject to or conditioned on any

further due diligence, and is irrevocable (i) until the selection of the Successful Bid in accordance with these Bidding Procedures; or (ii) if the bid is selected as a Successful Bid or as a Backup Bid, until the Backup Bid Expiration Date (as defined in Section VII.C.2 below);

- c. for any bidder other than the Stalking Horse Bidder, state and acknowledge that the Prospective Bidder shall not be entitled to any bidding protection or payment in connection with the submission of a bid for the Assets or otherwise participating in the Sale Process;
- d. state that the Prospective Bidder is committed to closing the sale transaction contemplated in its bid as soon as practicable;
- e. expressly waive any claim or right to assert any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code in connection with bidding for any of the Assets and/or otherwise participating in the Auction or the Sale Process;
- f. not contain any financing contingencies of any kind;
- g. state whether the Prospective Bidder intends to offer future employment to any of the Debtors' employees and, if so, to whom;
- h. certify that the Prospective Bidder did not collude with any other bidders and is not otherwise a partnership, joint venture, or other entity in which more than one bidder (or any affiliates of a bidder) has a direct or indirect interest, unless consented to in writing by the Debtors;
- i. include a covenant to comply with the terms of these Bidding Procedures and the Bidding Procedures Order; and
- j. contain such other information as may be reasonably requested by the Debtors.

B. Bid Review Process

The Debtors will evaluate bids and, based upon their evaluation of the content of each bid, the Debtors may, as they deem appropriate in their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, engage in negotiations with any Prospective Bidder for the purposes of (i) curing any deficiencies in a bid that prevents them from constituting a Qualified Bid, (ii) improving the terms of the Prospective Bidder's bid, or (iii) otherwise promoting a more competitive bidding and Auction process with the ultimate goal of maximizing the value of the Assets.

In evaluating a bid, the Debtors may take into consideration any and all factors that the Debtors deem reasonably pertinent, including (i) the amount of the proposed purchase price and proposed form of consideration (provided that any credit bid satisfying the requirements set forth in the Order and the Bidding Procedures shall be deemed to have the same value as the equivalent amount of cash); (ii) any Assets included in, or excluded from, the bid, including any Contracts to be assumed and assigned; (iii) the value to be provided to the Debtors under the bid, including the net economic effect on the Debtors' estates; (iv) any benefits to the Debtors' estates from any assumption or waiver of liabilities contemplated by the bid; (v) the structure of the proposed sale transaction and any attendant execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and general financial wherewithal to meet all commitments; and any required governmental approvals; and (vi) the impact of the proposed sale transaction on the Debtors' employees, trade creditors, landlords, and any other parties-in-interest.

The Debtors will evaluate timely bids and will (i) after consultation with the Consultation Parties (subject to Section XI.C hereof), determine which bids qualify as Qualified Bids and which Qualified Bid has been selected as the Baseline Bid and (ii) notify bidders whether they are Qualified Bidders as soon as commercially reasonable following the Bid Deadline. A Qualified Bidder shall not (without the consent of the Debtors), modify, amend, or withdraw its Qualified Bid, unless for the purposes of increasing the purchase price or otherwise improving the terms of the Qualified Bid, as determined by the Debtors in their reasonable business judgment. Any Consultation Party that submits a bid or a Credit Bid shall immediately upon submission of such bid or Credit Bid cease to be a Consultation Party, *provided, however*, that upon written notice (which may be via email) by the DIP Lender or a Committee member to the Debtors, or express confirmation on the record during the Auction, of its withdrawal as a bidder for the Debtors' assets, the DIP Lender's or the Committee member's (as applicable) rights as a Consultation Party (directly or as a member of the Committee) shall be restored.

C. Qualified Bidders

Any bidder that submits a Qualified Bid as set forth in Sections V and VI.A above will qualify as a "Qualified Bidder."

The Debtors may, after consultation with the Consultation Parties, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, amend or waive the conditions precedent to qualifying as a Qualified Bidder.

D. Expense Reimbursement

Other than the Stalking Horse Bidder, who shall be entitled to the Expense Reimbursement, no bidder or any other party shall be entitled to any termination or "break-up" fee, expense reimbursement, or any other bidding protection in connection with the submission of a bid for the Assets or otherwise participating in the Auction or the Sale process.

VII. THE AUCTION

If the Debtors receive more than one Qualified Bid (including a combination of bids that, when considered together, constitute a Qualified Bid) for the Assets, the Debtors will conduct an

Auction for the Assets. If the Stalking Horse Bid is the only Qualified Bid received in respect of the Assets, the Debtors will not conduct an Auction for the Assets and will seek approval of such Stalking Horse Bid at the Sale Hearing. If the Debtors determine not to hold an Auction, the Debtors will file with the Court, serve on the Sale Notice Parties, and cause to be published on the KCC Website, a notice containing the following information, as applicable: (a) a statement that the Auction for the Assets has been canceled; (b) the identity of the Successful Bidder; (c) a copy of the Successful Bid or a summary of the material terms of such bid, including any assumption and assignment of Contracts contemplated thereby, or provide instructions for accessing the Successful Bid free of charge from the KCC Website; and (d) the date, time, and location of the Sale Hearing.

The Auction, if required, will be conducted on **June 26, 2024, at 10:00 a.m. (prevailing Eastern Time)**, either (a) at the offices of Potter Anderson & Corroon LLP, 1313 N. Market Street, 6th Floor, Wilmington, Delaware 19801-6108, (b) some other physical location to be determined by the Debtors, or (c) virtually or at such other date, time or location as designated by the Debtors, after consulting with the Consultation Parties (subject to Section XI.C hereof). If the Debtors conduct the Auction virtually, the Debtors will provide instructions setting forth how to attend the Auction to the participants and other attendees via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of the Auction to Qualified Bidders and the Consultation Parties (subject to Section XI.C hereof), and will cause publication of such change to occur on the KCC Website.

If held, the Auction proceedings will be transcribed and/or video recorded.

A. Participants and Attendees

Only Qualified Bidders are eligible to participate in the Auction, subject to other limitations as may be reasonably imposed by the Debtors in accordance with these Bidding Procedures. Qualified Bidders participating in the Auction must attend the Auction personally or through a duly authorized representative. Subject to the Auction procedures set forth in Section VII.B, all Qualified Bidders and the Consultation Parties (including the members of the Committee and its counsel) are permitted to attend the Auction; *provided* that the Debtors may, in their sole discretion, establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of a Qualified Bidder or otherwise attend the Auction.

Each Qualified Bidder participating in the Auction will be required to confirm in writing and on the record at the Auction that (i) it has not engaged in any collusion with respect to the Auction or the submission of any bid for any of the Assets and (ii) its Qualified Bid that gained the Qualified Bidder admission to participate in the Auction and each Qualified Bid submitted by the Qualified Bidder at the Auction is a binding, good-faith, and *bona fide* offer to purchase the Assets identified in such bids.

All Prospective Bidders and Qualified Bidders (including the Stalking Horse Bidder, Successful Bidder, and Backup Bidder) shall be deemed to have (i) agreed that all proceedings in the Court related to these Bidding Procedures, the Auction, any other relief requested in the Motion or granted pursuant to the Bidding Procedures Order, or the construction or enforcement of any agreement or any other document directly relating to the sale transaction are core proceedings as

described in 28 U.S.C. § 157; (ii) waived any right to a jury trial in connection with any disputes relating to these Bidding Procedures, the Auction, or the construction or enforcement of any agreement or any other document directly relating to the sale transaction; and (iii) consented to the entry of a final order or judgment by the Court in connection with any disputes relating to these Bidding Procedures, the Auction, or the construction or enforcement of any agreement or any other document relating directly to the sale transaction, if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the relevant parties.

B. Auction Procedures

The Auction shall be governed by the following procedures, subject to the Debtors' rights to modify such procedures in their reasonable business judgment (in a manner consistent with their fiduciary duties and in consultation with the Consultation Parties (subject to Section XI.C hereof)):

1. **Baseline Bids.** Prior to the commencement of the Auction, the Debtors will determine, in their reasonable business judgment (and in consultation with the Consultation Parties (subject to Section XI.C hereof)) the highest or otherwise best Qualified Bid submitted for the Assets (such Qualified Bid, a "**Baseline Bid**"). Bidding at the Auction shall commence at the amount of the Baseline Bid. **No later than June 25, 2024 at 5:00 p.m. (prevailing Eastern Time)**, the Debtors will provide all Qualified Bidders with (a) a notice identifying which Qualified Bid is the Baseline Bid; and (b) a copy of each Qualified Bid.
2. **Minimum Overbid.** Bidding shall commence at the Baseline Bid. The first overbid at the Auction shall be in an amount not less than the amount of the Baseline Bid (plus the Expense Reimbursement if the Stalking Horse Bid is the Baseline Bid) plus \$100,000 (the "**Minimum Overbid**"). At each round of bidding, Qualified Bidders may submit successive bids higher than the Leading Bid (as defined below) from the prior round. During the Auction, the Debtors may, in their reasonable discretion, announce increases or reductions to Minimum Overbids at any time.

Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by any bid subsequent to the Baseline Bid, the Debtors will, at each round of bidding, consider and/or give effect to (a) any additional liabilities to be assumed by a Qualified Bidder under the bid, including whether such liabilities are secured or unsecured; and (b) any additional costs that may be imposed on the Debtors.

3. **Leading Bid.** After the first round of bidding and between each subsequent round of bidding, the Debtors will announce, after consultation with the Consultation Parties, the bid that they believe to be the highest or otherwise best offer for the Assets (such bid, a "**Leading Bid**") and describe the material terms thereof. Each round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a

subsequent bid with full knowledge of the material terms of the Leading Bid.

The Auction will include open bidding in the presence of all other Qualified Bidders. Each Qualified Bidder shall have the right to be present for all rounds of bidding and to submit additional bids and make modifications to its Proposed Asset Purchase Agreement at the Auction to improve its bid. The Debtors may, in their reasonable business judgment, negotiate with any and all Qualified Bidders participating in the Auction.

The Debtors shall have the right to determine, in their reasonable business judgment after consultation with the Consultation Parties, which bid is the highest or otherwise best bid with respect to the Assets and, after consultation with the Consultation Parties (subject to Section XI.C hereof), reject, at any time, without liability (but only in the absence of gross negligence or willful misconduct), any bid that the Debtors deem to be inadequate or insufficient, not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, these Bidding Procedures, any order of the Court, or the best interests of the Debtors and their estates.

C. Auction Results

1. Successful Bids. Immediately prior to the conclusion of the Auction, the Debtors will (a) determine, consistent with these Bidding Procedures and in consultation with the Consultation Parties, which Qualified Bid constitutes the highest or otherwise best bid (such bid, including the Stalking Horse Bid, if no additional Qualified Bids are received and no Auction conducted, a “Successful Bid”) and (b) notify all Qualified Bidders at the Auction of the identity of the bidder that submitted the Successful Bid (such bidder, including the Stalking Horse Bidder if no Qualified Bids are received and no Auction conducted, a “Successful Bidder”) and the amount of the purchase price and other material terms of the Successful Bid.
2. Backup Bids. Immediately prior to the conclusion of the Auction, the Debtors will (a) determine, in a manner consistent with these Bidding Procedures and in consultation with the Consultation Parties, which Qualified Bid, other than any Credit Bid, is the Backup Bid; and (b) notify all Qualified Bidders at the Auction of the identity of the Backup Bidder and the amount of the purchase price and other material terms of the Backup Bid.

Subject to the terms of the Stalking Horse APA as it relates to the termination events set forth in section 4.4 of the Stalking Horse APA, a Backup Bid will remain binding on the applicable Backup Bidder until the earlier of (a) the first business day after the closing of the sale transaction with the Successful Bidder for the Assets and (b) 30 days after the Sale

Hearing (such date, the “Backup Bid Expiration Date”). If the sale transaction with the Successful Bidder is terminated prior to the Backup Bid Expiration Date, the Backup Bidder shall be deemed the new Successful Bidder for the Assets and shall be obligated to consummate the Backup Bid as if it were the Successful Bid at the Auction; *provided* that the Debtors may, in their reasonable business judgment (after providing notice to the Sale Notice Parties and after consultation with the Consultation Parties), elect not to pursue the sale transaction contemplated by the Backup Bid.

3. Notice of Auction Results. Within one business day after the conclusion of the Auction, the Debtors will file with the Court, serve on the Sale Notice Parties, and cause to be published on the KCC Website, a notice setting forth the results of the Auction (the “Notice of Auction Results”), which will (a) identify each Successful Bidder and the Backup Bidder; (b) include a copy of each Successful Bid and the Backup Bid or a summary of the material terms of such bids, or provide instructions for accessing each Successful Bid and the Backup Bid free of charge from the KCC Website; and (c) set forth the Supplemental Sale Objection Deadline (as defined in Section X.D below), the date, time, and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

D. Disposition of Good Faith Deposit

1. Prospective Bidders. Within five business days after the Debtors make final determinations as to which Prospective Bidders qualify as Qualified Bidders, the Escrow Agent shall return to each Prospective Bidder that did not qualify as a Qualified Bidder, as confirmed by the Debtors, such Prospective Bidder’s Good Faith Deposit. Upon the authorized return of a Prospective Bidder’s Good Faith Deposit in accordance with this Section VII.D, the bid of such Prospective Bidder shall be deemed terminated and no longer binding against the Prospective Bidder.
2. Qualified Bidders.
 - a. Forfeiture of Good Faith Deposit. The Good Faith Deposit of a Qualified Bidder shall be forfeited if the Qualified Bidder attempts to withdraw its Qualified Bid, except as may be permitted by these Bidding Procedures, during the time the Qualified Bid remains binding and irrevocable under these Bidding Procedures. The Debtors and their estates shall be entitled to retain the Qualified Bidder’s Good Faith Deposit as partial compensation for the damages caused to the Debtors and their estates as a result of the Qualified Bidder’s failure to adhere to the terms of these Bidding Procedures and/or the relevant Qualified Bid. If a Qualified Bidder’s Good Faith Deposit is deemed forfeited, the Escrow Agent shall release such Good Faith Deposit by wire transfer of

immediately available funds to an account designated by the Debtors within two business days after the Escrow Agent receives written notice by an authorized officer of the Debtors stating that the applicable Qualified Bidder has breached or otherwise failed to satisfy its obligations in accordance with these Bidding Procedures and the applicable Qualified Bid.

- b. Return of Good Faith Deposit. With the exception of the Good Faith Deposits of the Successful Bidder and the Backup Bidder, the Escrow Agent shall return to any other Qualified Bidder the Qualified Bidder's Good Faith Deposit, within 10 business days after the conclusion of the Auction for the Assets.
- c. Backup Bidder. Unless the Backup Bidder becomes the Successful Bidder, the Escrow Agent shall return the Backup Bidder's Good Faith deposit, within 10 business days after the occurrence of the applicable Backup Bid Expiration Date; *provided, however*, if the Backup Bidder becomes the Successful Bidder, its Good Faith Deposit shall be forfeited if it fails to consummate the sale transaction because of a breach that entitles the Debtors to terminate the applicable asset purchase agreement with such Backup Bidder, and the Debtors and their estates shall be entitled to retain the Backup Bidder's Good Faith Deposit as partial compensation for the damages caused to the Debtors and their estates as a result of such breach. If a Backup Bidder's Good Faith Deposit is deemed forfeited, the Escrow Agent shall release such Good Faith Deposit by wire transfer of immediately available funds to an account designated by the Debtors within two business days after the Escrow Agent receives written notice by an authorized officer of the Debtors stating that the applicable Backup Bidder has breached or otherwise failed to satisfy its obligations in accordance with these Bidding Procedures and the applicable Backup Bid.
- d. Successful Bidder. At the closing of the sale transaction, the Successful Bidder shall be entitled to a credit against the purchase price in the amount of the Successful Bidder's Good Faith Deposit. The Good Faith Deposit of a Successful Bidder shall be forfeited if the Successful Bidder fails to consummate the sale transaction because of a breach that entitles the Debtors to terminate the applicable asset purchase agreement with such Successful Bidder, and the Debtors and their estates shall be entitled to retain the Successful Bidder's Good Faith Deposit as partial compensation for the damages caused to the Debtors and their estates as a result of such breach. If a Successful Bidder's Good Faith Deposit is deemed forfeited, the Escrow Agent shall release such Good Faith Deposit by wire transfer of immediately available funds to an account designated by the Debtors within two business days after the Escrow

Agent receives written notice by an authorized officer of the Debtors stating that the Successful Bidder has breached or otherwise failed to satisfy its obligations in accordance with these Bidding Procedures and the Successful Bid.

VIII. SALE HEARING

The Successful Bid (including any Backup Bid that is subsequently deemed a Successful Bid) will be subject to Court approval. The hearing to approve the sale transaction consummated in accordance with these Bidding Procedures (except in the case of the sale transaction contemplated by a Backup Bid that subsequently is deemed a Successful Bid) shall take place on **July 1, 2024 at [●:● a/p.m.] (prevailing Eastern Time)** (the “Sale Hearing”) before the Honorable ●, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801, floor [], courtroom [].

At the Sale Hearing, the Debtors will seek entry of an order (a “Sale Order”) approving, among other things, the sale of the Assets to the Stalking Horse Bidder or Successful Bidder(s).

The Debtors may, in their reasonable business judgment (after consulting with the Consultation Parties, adjourn or reschedule the Sale Hearing with sufficient notice to the Sale Notice Parties, including by announcing such adjournment or rescheduling at the Auction or in Court on the date of the originally scheduled Sale Hearing.

The Debtors’ presentation to the Court for approval of a selected Qualified Bid as a Successful Bid does not bind the Debtors to such bid. The Debtors will be bound to the Successful Bid only when such Successful Bid has been approved by the Court at the Sale Hearing.

IX. RESERVATION OF RIGHTS TO MODIFY BIDDING PROCEDURES

Subject to the terms of the Interim DIP Order, the Final DIP Order, and the Stalking Horse APA, the Debtors reserve the right to, in their reasonable business judgment, after consultation with the Consultation Parties (subject to Section XI.C hereof) and in a manner consistent with their fiduciary duties and applicable law, (i) modify these Bidding Procedures, including to, among other things, extend or waive deadlines or other terms and conditions set forth herein; adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are disclosed to all Prospective Bidders and Qualified Bidders, as applicable; or (ii) otherwise modify these Bidding Procedures to further promote competitive bidding for and maximizing the of value of the Assets, in each case, to the extent not materially inconsistent with these Bidding Procedures or the Bidding Procedures Order.

X. NOTICING

A. Bid Notice Parties

Qualified Bids must be submitted in writing to the following parties (collectively, the “Bid Notice Parties”):³

- Proposed counsel for the Debtors: (i) McDermott Will & Emery LLP, 444 West Lake Street, Chicago, IL 60606-0029 (Attn: Felicia Gerber Perlman (fperlman@mwe.com), Bradley Thomas Giordano (bgiordano@mwe.com), and Carole M. Wurzelbacher (cwurzelbacher@mwe.com)) and (ii) Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: M. Blake Cleary (bcleary@potteranderson.com) and R. Stephen McNeill (rmcneill@potteranderson.com));
- Triple P RTS, LLC, 640 Fifth Ave, 10th Floor, New York, New York 10019 (Attn: Jason Cohen (jcohen@ppllc.com) and Lisa Lansio (llansio@ppllc.com)); and
- counsel for the Committee.

B. Sale Notice Parties

The “Sale Notice Parties” shall include the following persons and entities:

- the Consultation Parties (as applicable);
- counsel for the DIP Lender, the Prepetition Secured Parties, and the Stalking Horse Bidder, (i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Ray C. Schrock, Esq. (ray.schrock@weil.com) and Kevin Bostel, Esq. (kevin.bostel@weil.com)) and (ii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Zachary I. Shapiro, Esq. (shapiro@rlf.com));
- all persons and entities known by the Debtors to have asserted any lien, claim, interest, or encumbrance in the Assets (for whom identifying information and addresses are available to the Debtors);
- all relevant non-debtor parties (each, a “Counterparty”) to any Contract that may be assumed or rejected in connection with the sale transaction;
- all of the Debtors’ known creditors (for whom identifying information and addresses are available to the Debtors);

³ If the Stalking Horse Bidder indicates that it is withdrawing its bid in accordance with Section XI.C hereof, counsel for the Debtors shall promptly share copies of the Qualified Bids with counsel to the DIP Lender.

- any governmental authority known to have a claim against the Debtors in the Chapter 11 Cases;
- the U.S. Trustee;
- all applicable federal, state, and local taxing authorities, including the Internal Revenue Service;
- the United States Securities and Exchange Commission;
- the United States Attorney’s Office for the District of Delaware;
- United States Attorney General’s Office for the District of Delaware;
- the Office of the Attorney General and the Secretary of State in each state in which the Debtors operate;
- the Antitrust Division of the United States Department of Justice;
- the Federal Trade Commission;
- counsel for the Committee, [●];
- all of the parties entitled to notice pursuant to Bankruptcy Rule 2002; and
- all other parties as directed by the Court.

C. Sale Notice and Publication Notice

No later than **three business days after the entry of the Bidding Procedures Order**, the Debtors will file with the Court, serve on the Sale Notice Parties, and cause to be published on the KCC Website a notice (the “Sale Notice”) setting forth (i) a description of the Assets available for sale in accordance with these Bidding Procedures; (ii) the date, time, and location of the Auction and Sale Hearing; (iii) the Sale Objection Deadline and Supplemental Sale Objection Deadline (each as defined in Section X.D below) and the procedures for filing such objections; and, (iv) a summary of the material terms of the Stalking Horse APA, as of the date of the Sale Notice.

As soon as practicable but no later than five business days after the entry of the Bidding Procedures Order, the Debtors shall cause the information contained in the Sale Notice, with such modifications as may be appropriate for purposes of publication, to be published once in the national edition of *USA Today National Edition* or *New York Times National Edition*.

D. Sale Objections and Supplemental Sale Objections

Except objections to the conduct of the Auction, the Successful Bidder or the Backup Bidder, all objections to a sale of the Assets, including (i) any objection to a sale of the Assets free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code and (ii) entry of any Sale Order (each such objection, a “Sale Objection”) shall,

by no later than **June 18, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”), be filed with Court and served on the following parties (collectively, the “Objection Notice Parties”):

- Counsel for the Debtor: (i) McDermott Will & Emery LLP, 444 West Lake Street, Chicago, IL 60606-0029 (Attn: Felicia Gerber Perlman (fperlman@mwe.com), Bradley Thomas Giordano (bgiordano@mwe.com), and Carole M. Wurzelbacher (cwurzelbacher@mwe.com)) and (ii) Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: M. Blake Cleary (bcleary@potteranderson.com) and R. Stephen McNeill (rmcneill@potteranderson.com));
- counsel for the DIP Lender, the Prepetition Secured Parties, and the Stalking Horse Bidder, (i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Ray C. Schrock, Esq. (ray.schrock@weil.com) and Kevin Bostel, Esq. (kevin.bostel@weil.com)) and (ii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Zachary I. Shapiro, Esq. (shapiro@rlf.com)),
- counsel for the Committee, [●];
- the U.S. Trustee;
- if applicable, counsel for the relevant Successful Bidder; and
- if applicable, counsel for any relevant Backup Bidder(s).

Following service of the Notice of Auction Results, Sale Notice Parties may object solely with respect to the conduct of the Auction and/or the Successful Bidder or Backup Bidder (in each case, if such bidder is not the Stalking Horse Bidder) (each such objection, a “Supplemental Sale Objection”) by **June 28, 2024 at 4:00 p.m. (prevailing Eastern Time)** (the “Supplemental Sale Objection Deadline”).

E. Notices Regarding Assumption and Assignment of Contracts

The Debtors will provide all notices regarding the proposed assumption and assignment of Contracts in accordance with the Assumption and Assignment Procedures set forth in the Bidding Procedures Order.

XI. CONSULTATION BY THE DEBTORS

A. Throughout the Sale Process, the Debtors and their advisors will consult with the Consultation Parties as provided in these Bidding Procedures, or as is otherwise necessary or appropriate, as determined in the Debtors’ business judgment.

B. The Debtors shall consult with the Consultation Parties in good faith regarding the sale process, any diligence and other information requested by the Consultation Parties, and the Debtors will provide to the Consultation Parties reports concerning the sale process, including parties contacted, buyer feedback, copies of all letters of intent, drafts of definitive agreements and updates on proposals. For the avoidance of doubt, and without limitation, the Debtors shall consult with the Consultation Parties on the selection of the Baseline Bid, how the Auction is conducted, any additional Auction procedures, adjourning the Auction, and selecting the Successful Bidder and the Backup Bidder.

C. Notwithstanding the foregoing, the Debtors will not consult with or provide copies of any bids or other confidential information to any Consultation Party or any insider or affiliate of the Debtors if such party is an active bidder for the Assets at the applicable time. For the avoidance of doubt, upon written notice by the DIP Lender (which may be via email) to the Debtors, or express confirmation on the record during the Auction, of its withdrawal as a bidder for the Debtors' assets, the DIP Lender's rights as a Consultation Party shall be restored. If a member of the Committee submits a Qualified Bid for the Assets, the Committee will maintain its consultation rights as a Consultation Party; *provided* that the Committee excludes the bidding Committee member from any discussions or deliberations regarding a transaction involving the relevant Assets, and shall not provide any confidential information regarding the Assets or otherwise involving the Sale Process to such bidding committee member; provided further that, upon written notice by such Committee member (which may be via email) to the Debtors, or express confirmation on the record during the Auction, of its withdrawal as a bidder for the Debtors' assets, such Committee member's rights as a Consultation Party (as a Committee member) shall be restored.

For the avoidance of doubt, any consultation rights afforded to the Consultation Parties by these Bidding Procedures or the Bidding Procedures Order shall not in any way limit the Debtors' discretion and shall not include the right to veto any decision made by the Debtors in the exercise of their reasonable business judgment.

Exhibit A

Stalking Horse APA

Exhibit 2

Sale Notice

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

In re: Supply Source Enterprises, Inc., <i>et al.</i> , ¹ Debtors.	Chapter 11 Case No. 24-11054 (____) (Jointly Administered)
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**NOTICE OF SALE, BIDDING PROCEDURES, AUCTION,
SALE HEARING AND OTHER DEADLINES RELATED THERETO**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On May [____], 2024, the debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) a motion [Docket No. ____] (the “Motion”) seeking entry of (A) an order (the “Bidding Procedures Order”) (i) approving bidding procedures (the “Bidding Procedures”) ² to be used in connection with the sale (each, a “Sale”) of all, substantially all, or a portion of the Debtors’ assets (the “Assets”); (ii) designation of the Stalking Horse Bidder; (iii) scheduling (a) an auction of the Assets (the “Auction”) and (b) a final hearing to consider approval of the proposed Sale (the “Sale Hearing”); (iv) approving the form and manner of notice of the Bidding Procedures, the Auction and the Sale Hearing; (v) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the “Contracts”) in connection with the Sale; (vi) approving the form and manner of notice to each relevant non-debtor counterparty to a Contract of the Debtors’ calculation of the amount necessary to cure any defaults under an applicable Contract and certain other information regarding the potential assumption and assignment of Contracts in connection with a Sale; and (vii) granting related relief; and (B) an order (the “Sale Order”) (i) authorizing the sale of the Assets free and clear of all liens, claims, interests and encumbrances, except certain permitted encumbrances as determined by the Debtors and any Successful Bidder (as defined in Section VII.C.1 of the Bidding

¹ The Debtors in these chapter 11 proceedings, together with the last four digits of each Debtor’s federal tax identification number, are: Supply Source Enterprises, Inc. (0842); SSE Intermediate, Inc. (1772); SSE Buyer, Inc. (5901); Impact Products, LLC (7450); and The Safety Zone, LLC (4597). The Debtors’ headquarters are located at 385 Long Hill Road, Guilford, Connecticut 06437.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion or the Bidding Procedures, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order (or any provision thereof) contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any inconsistency between any summary in this Sale Notice and the terms and conditions of either of the Bidding Procedures or the Bidding Procedures Order, the actual terms and conditions in those documents shall control.

Procedures), with liens to attach to the proceeds of the Sale; (ii) authorizing the assumption and assignment of certain Contracts in connection with approved Sale; and (iii) granting related relief.

On May [], 2024, the Court entered the Bidding Procedures Order [Docket No. []].

ASSETS FOR SALE

The Debtors intend to sell all, substantially all, or a portion of their Assets.

A Prospective Bidder (as defined in Section III of the Bidding Procedures) may bid on the Assets, subject to the conditions set forth herein.

The ability to undertake and consummate a sale of the Assets shall be subject to competitive bidding, as set forth herein, and approval by the Court. In addition to the Stalking Horse Bid (as defined in the Motion), and as set forth herein, the Debtors will consider bids for the Assets from other parties.

Any party interested in submitting a bid for any of the Debtors' Assets should contact the following individuals at Triple P RTS, LLC ("Portage Point"):

Portage Point

Attn: Jason Cohen and Lisa Lansio
jcohen@ppllc.com
llansio@ppllc.com

KEY DATES AND DEADLINES

A. Bid Deadline

Any Prospective Bidder that intends to participate in the Auction must submit in writing to the Bid Notice Parties a Qualified Bid (as defined in Section VI.A of the Bidding Procedures) **on or before June 24, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline").

The Qualified Bid requirements are set forth in Section VI.A of the Bidding Procedures.

B. Auction

If the Debtors receive more than one Qualified Bid (including a combination of bids that, when considered together, constitute a Qualified Bid) for the Assets, the Debtors will conduct an Auction for the Assets. If the Stalking Horse Bid is the only Qualified Bid received in respect of the Assets subject to such Stalking Horse Bid, the Debtors will not conduct an Auction for such applicable Assets and will seek approval of the Stalking Horse Bid at the Sale Hearing.

The Auction, if required, will be conducted on **June 26, 2024, at 10:00 a.m. (prevailing Eastern Time)**, either (i) at the offices of Potter Anderson & Corroon LLP, 1313 N. Market Street, 6th Floor, Wilmington, Delaware 19801-6108, (ii) some other physical location to be determined by the Debtors, or (iii) virtually or at such other date, time or location as designated by the Debtors. If the Debtors conduct the Auction virtually, the Debtors will provide instructions setting forth

how to attend the Auction to the participants and other attendees via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of the Auction to Qualified Bidders, and will cause publication of such change to occur on the website maintained by KCC, Inc. the Debtors' claims and noticing agent in these Chapter 11 Cases, located at [https:// www.kccllc.net/supplysource](https://www.kccllc.net/supplysource) (the "KCC Website").

One day after the conclusion of the Auction, the Debtors will file with the Court, serve on the Sale Notice Parties (as defined in Section X.B of the Bidding Procedures) and cause to be published on the KCC Website, a notice of the results of the Auction, which will, among other things, (i) identify the Successful Bidder and Backup Bidder(s); (ii) either include a copy of the Successful Bid and the Backup Bid or a summary of the material terms of such bids, including any assumption and assignment of Contracts contemplated thereby, or provide instructions for accessing the Successful Bid and the Backup Bid free of charge from the KCC Website; and (iii) set forth the date, time, and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

If the Debtors determine not to hold an Auction for some or all of the Assets, the Debtors shall file with the Court, serve on the Sale Notice Parties, and cause to be published on the KCC Website, a notice containing the following information (as applicable): (i) a statement that the Auction for the relevant Assets has been canceled; (ii) the identity of the Successful Bidder; (iii) either include a copy of the Successful Bid or a summary of the material terms of such bid, including any assumption and assignment of Contracts contemplated thereby, or provide instructions for accessing the Successful Bid free of charge from the KCC Website; and (iv) the date, time, and location of the Sale Hearing.

C. **Objection Deadlines**

1. **Sale Objection Deadline.** Except objections to the conduct of the Auction, the Successful Bidder or the Backup Bidder (in each case other than the Stalking Horse Bidder), all objections to a sale of the Assets, including (a) any objection to a sale of the Assets free and clear of all liens, claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code and (b) entry of any Sale Order must be (i) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; and (ii) filed with the Court by **no later than June 18, 2024 at 4:00 p.m. (prevailing Eastern Time)** and served on the Objection Notice Parties (as defined in Section X.D of the Bidding Procedures).
2. **Supplemental Sale Objection Deadline.** Following service of the Notice of Auction Results, parties may object solely with respect to the particular terms of a proposed Sale or the Successful Bid or Backup Bid (in each case, if such bidder is not the Stalking Horse Bidder). Any Supplemental Sale Objection must be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; and (b) filed with the Court by no later **June 28, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the "Supplemental Sale Objection Deadline") and served on the Objection Notice Parties.

D. Sale Hearing

The Sale Hearing shall take place on **July 1, 2024** at [**•:•** a/p.m.] (**prevailing Eastern Time**) before The Honorable •, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801, []th floor, courtroom [].

RESERVATION OF RIGHTS TO MODIFY BIDDING PROCEDURES

The Debtors reserve the right to, in their reasonable business judgment and after consultation with the Consultation Parties (subject to Section XI.C of, as defined in, the Bidding Procedures) in a manner consistent with their fiduciary duties and applicable law, modify the Bidding Procedures, including to, among other things, extend or waive deadlines or other terms and conditions set forth therein; adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are disclosed to all Prospective Bidders and Qualified Bidders, as applicable; or otherwise modify these Bidding Procedures to further promote competitive bidding for and maximizing the of value of the Assets, in each case, to the extent not materially inconsistent with the Bidding Procedures or the Bidding Procedures Order.

ADDITIONAL INFORMATION

Copies of the Motion, the Bidding Procedures Order and the Bidding Procedures may be obtained free of charge by visiting the KCC Website located at <https://www.kccllc.net/supplysource>.

FAILURE TO ABIDE BY THE BIDDING PROCEDURES, THE BIDDING PROCEDURES ORDER OR ANY OTHER APPLICABLE ORDER OF THE COURT ENTERED IN THE CHAPTER 11 CASES MAY RESULT IN THE REJECTION OF YOUR BID AND YOUR DISQUALIFICATION FROM PARTICIPATING IN THE BIDDING FOR AND AUCTION OF ANY OF THE DEBTORS' ASSETS.

THE FAILURE OF ANY PERSON OR ENTITY TO FILE AND SERVE AN OBJECTION IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER, INCLUDING THE FAILURE TO FILE ANY SUCH OBJECTION BY THE APPLICABLE OBJECTION DEADLINE, SHALL FOREVER BAR SUCH PERSON OR ENTITY FROM ASSERTING, AT THE SALE HEARING OR THEREAFTER, ANY SUCH OBJECTION TO THE RELIEF REQUESTED IN THE MOTION, THE CONSUMMATION OF ANY APPLICABLE SALE, INCLUDING THE SALE OF ANY ASSETS TO A SUCCESSFUL BIDDER FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO SECTION 363(f) OF THE BANKRUPTCY CODE OR THE TERMS OF THE STALKING HORSE APA OR OTHER ASSET PURCHASE AGREEMENT EXECUTED BY THE DEBTORS.

Dated: May __, 2024

POTTER ANDERSON & CORROON LLP

M. Blake Cleary (No. 3614)
R. Stephen McNeill (No. 5210)
Katelin A. Morales (No. 6683)
1313 N. Market Street, 6th Floor
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and-

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*Proposed Counsel to the Debtors and
Debtors in Possession*

Exhibit 3

Assumption and Assignment Notice

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

In re:

Supply Source Enterprises, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 24- 11054 (___)

(Jointly Administered)

**NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION
AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED
LEASES IN CONNECTION WITH SALE OF SUBSTANTIALLY ALL ASSETS**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On May [___], 2024, the debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 case (the “Chapter 11 Case”) filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) a motion [Docket No. ___] (the “Motion”) seeking entry of (A) an order (the “Bidding Procedures Order”) (i) approving bidding procedures (the “Bidding Procedures”) ² to be used in connection with a sale (the “Sale”) of all, substantially all, or a portion of the Debtors’ assets (the “Assets”); (ii) designation of the Stalking Horse Bidder; (iii) scheduling (a) an auction of the Assets (the “Auction”) and (b) a final hearing to consider approval of the proposed Sale (the “Sale Hearing”); (iv) approving the form and manner of notice of the Bidding Procedures, the Auction and the Sale Hearing; (v) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the “Contracts”) in connection with any Sale; (vi) approving the form and manner of notice to each relevant non-debtor counterparty to a Contract of the Debtors’ calculation of the amount necessary to cure any defaults under an applicable Contract (the “Cure Cost”) and certain other information regarding the potential assumption and assignment of Contracts in connection with the Sale; and (vii) granting related relief; and (B) an order (the “Sale Order”) (i) authorizing the sale of the Assets free and clear of all liens, claims, interests and encumbrances, except certain permitted encumbrances as determined by the Debtors and any Successful Bidder (as defined in the Bidding

¹ The Debtors in these chapter 11 proceedings, together with the last four digits of each Debtor’s federal tax identification number, are: Supply Source Enterprises, Inc. (0842); SSE Intermediate, Inc. (1772); SSE Buyer, Inc. (5901); Impact Products, LLC (7450); and The Safety Zone, LLC (4597). The Debtors’ headquarters are located at 385 Long Hill Road, Guilford, Connecticut 06437.

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion or the Bidding Procedures, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order (or any provision thereof) contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any inconsistency between any summary in this Sale Notice and the terms and conditions of either of the Bidding Procedures or the Bidding Procedures Order, the actual terms and conditions in those documents shall control.

Procedures), with liens to attach to the proceeds of the Sale; (ii) authorizing the assumption and assignment of certain Contracts in connection with approved Sale; and (iii) granting related relief.

On May [___], 2024, the Court entered the Bidding Procedures Order [Docket No. [___].

You are receiving this Notice because you may be a Counterparty to a Contract of the Debtor that may be assumed and assigned to the Successful Bidder for the Debtors' Assets.

CURE COSTS

In accordance with the Assumption and Assignment Procedures and the Bidding Procedures Order, the Debtors may, in connection with the Sale with the Successful Bidder at the Auction, seek to assume and assign to the Successful Bidder certain of their Contracts. Each of the Contracts that potentially could be assumed and assigned in connection with the Sale, together with the Debtors' calculation of Cure Costs with respect to such Contracts, is set forth on Schedule 1 hereto. The inclusion of any Contract on Schedule 1 does not constitute an admission by the Debtors, the Stalking Horse Bidder, any Successful Bidder, or any other party that such Contract is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code or require or guarantee that such Contract ultimately will be assumed or assigned. All rights of the Debtors with respect thereto are reserved.

In addition, to the extent that any of the Cure Costs set forth on Schedule 1 do not reflect (i) postpetition payments that have been made by the Debtors in respect of applicable Cure Costs or (ii) any payments that are made by the Debtors in respect of such Cure Costs after the filing of this Notice, the respective amounts required to be paid to cure any existing defaults under the applicable Contracts shall be reduced by any such corresponding postpetition payments, and the Debtors reserve their rights to update the Cure Costs set forth on Schedule 1 accordingly, either by filing a supplemental notice with the Court or by written notice to the applicable Counterparty.

CURE OBJECTIONS

A. Contract Objection Deadline

Any Counterparty that wishes to object to the Debtors' proposed Cure Costs (each such objection, a "Cure Objection") or the assumption and assignment on any basis (except objections solely related to adequate assurance of future performance provided by a Successful Bidder other than the Stalking Horse Bidder) (each such objection, an "Assumption/Assignment Objection" and, together with a Cure Objection, a "Contract Objection") must file with the Court by **no later than June 18, 2024, at 4:00 p.m. (prevailing Eastern Time)** and serve on the Objection Notice Parties (as defined in Section X.D of the Bidding Procedures) its Contract Objection, which must be in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof.

B. Resolution of Cure Objections

Pursuant to the Bidding Procedures Order, the Debtors, the Stalking Horse Bidder or Successful Bidder (if applicable) and the objecting Counterparty must first confer in good faith to attempt to resolve the Cure Objection without Court intervention. If the parties are unable to

consensually resolve the Cure Objection prior to the commencement of the Sale Hearing, the Court shall make all necessary determinations relating to the applicable Cure Costs and Cure Objection at a hearing scheduled pursuant to the following paragraph. If a Cure Objection is resolved in a manner that is not in the best interests of the Debtors and their estates, whether or not such resolution occurs prior to or after the closing of the Sale, the Debtors and the Successful Bidder may determine that any Contract subject to such resolved Cure Objection no longer will be assumed and assigned. All other objections to the Debtors' proposed assumption and assignment of the Debtors' right, title, and interest in, to, and under a Contract shall be heard at the Sale Hearing or at a subsequent hearing scheduled pursuant to the Bidding Procedures Order.

C. Adjourned Cure Objections

If a timely filed Cure Objection cannot otherwise be resolved by the parties, the Cure Objection may be heard at the Sale Hearing, or, at the option of the Debtors, in consultation with the Consultation Parties (subject to Section XI.C of, and as defined in, the Bidding Procedures) and the Successful Bidder, be adjourned to a subsequent hearing (each such Cure Objection, an "Adjourned Cure Objection"). Any Contract that is the subject of such Adjourned Cure Objection may, at the election of the Successful Bidder, and subject to the Debtors' rights set forth in the Bidding Procedures Order, be assumed and assigned to the Successful Bidder prior to the resolution of such objection as of the closing date of the Sale, so long as the Debtors or Successful Bidder, as applicable, (i) pay any undisputed Cure Costs on or before (x) the Closing Date (as defined in the Stalking Horse APA) or (y) in the event the Successful Bidder as of the closing date of the sale of the Assets is a party other than the Stalking Horse Bidder, the date designated for consummating the sale under such Successful Bidder's purchase agreement and (ii) appropriately reserve funding for the disputed portion of the Cure Costs pending resolution of the dispute.

IF A COUNTERPARTY FAILS TO FILE WITH THE COURT AND SERVE ON THE OBJECTION NOTICE PARTIES A TIMELY CURE OBJECTION, THE COUNTERPARTY SHALL BE (i) DEEMED TO HAVE CONSENTED TO THE ASSUMPTION BY THE DEBTORS AND ASSIGNMENT TO THE SUCCESSFUL BIDDER, (ii) PROHIBITED FROM ASSERTING THAT THE STALKING HORSE BIDDER FAILED TO PROVIDE ADEQUATE ASSURANCE, AND (iii) FOREVER BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO THE ASSUMPTION AND ASSIGNMENT OF THE APPLICABLE CONTRACT OR THE COST TO CURE ANY DEFAULTS UNDER THE APPLICABLE CONTRACT, AND THE CURE COSTS SET FORTH ON SCHEDULE 1 HERETO SHALL BE CONTROLLING AND WILL BE THE ONLY AMOUNT NECESSARY TO CURE OUTSTANDING DEFAULTS UNDER THE CONTRACT AND SATISFY THE REQUIREMENTS OF SECTION 365(b) OF THE BANKRUPTCY CODE, AND THE COUNTERPARTY TO THE CONTRACT SHALL BE DEEMED BOUND BY AND TO HAVE CONSENTED TO THE CURE COSTS.

NOTICE OF AUCTION RESULTS

The Auction, if required, will be conducted on **June 26, 2024, at 10:00 a.m. (prevailing Eastern Time)**, either (i) at the offices of Potter Anderson & Corroon LLP, 1313 N. Market Street, 6th Floor, Wilmington, Delaware 19801-6108, (ii) some other physical location to be determined

by the Debtors, or (iii) virtually or at such other date, time or location as designated by the Debtor. If the Debtors conduct the Auction virtually, the Debtors will provide instructions setting forth how to attend the Auction to the participants and other attendees via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of the Auction to Qualified Bidders, and will cause publication of such change to occur on the KCC Website.

One day after the conclusion of the Auction, the Debtors will file with the Court, serve on the Sale Notice Parties (as defined in Section X.B of the Bidding Procedures) and cause to be published on the website maintained by KCC, Inc., the Debtors' claims and noticing agent in these Chapter 11 Cases, located at [https:// www.kccllc.net/supplysource](https://www.kccllc.net/supplysource) (the "KCC Website") a notice of the results of the Auction, which will, among other things, (i) identify the Successful Bidder(s) and Backup Bidder(s); (ii) either include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bids, or provide instructions for accessing each Successful Bid and each Backup Bid free of charge from the KCC Website; and (iii) set forth the date, time, and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

ADEQUATE ASSURANCE OBJECTIONS

A. Adequate Assurance Objection Deadline

Any Counterparty to a Contract that wishes to object to the proposed assumption and assignment of a Contract, the subject of which objection is the Successful Bidder's (or any other relevant assignee's but not the Stalking Horse Bidder's) proposed form of adequate assurance of future performance with respect to the Contract (each such objection, an "Adequate Assurance Objection"), must file with the Court and serve on the Objection Notice Parties an Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, by **June 28, 2024 at 4:00 p.m. (prevailing Eastern Time)**.

B. Resolution of Adequate Assurance Objections

Pursuant to the Bidding Procedures Order, the Debtors, the Successful Bidder and the objecting Counterparty must first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, the Adequate Assurance Objection and all issues of adequate assurance of future performance of the Successful Bidder (or any other relevant assignee) shall be determined by the Court at the Sale Hearing or, at the option of the Debtors and the Successful Bidder, be adjourned to a subsequent hearing, with notice to the party having filed the Adequate Assurance Objection.

IF A COUNTERPARTY FAILS TO FILE WITH THE COURT AND SERVE ON THE OBJECTION NOTICE PARTIES A TIMELY ADEQUATE ASSURANCE OBJECTION, THE COUNTERPARTY SHALL FOREVER BE BARRED FROM ASSERTING ANY OBJECTION TO THE ASSUMPTION AND/OR ASSIGNMENT OF THE APPLICABLE CONTRACT WITH REGARD TO ADEQUATE ASSURANCE OF FUTURE

PERFORMANCE. THE APPLICABLE SUCCESSFUL BIDDER SHALL BE DEEMED TO HAVE PROVIDED ADEQUATE ASSURANCE OF FUTURE PERFORMANCE WITH RESPECT TO THE CONTRACT IN ACCORDANCE WITH BANKRUPTCY CODE SECTIONS 365(b)(1)(C), 365(f)(2)(B) AND, IF APPLICABLE, 365(b)(3), NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT OR ANY OTHER DOCUMENT.

SALE HEARING

The Sale Hearing shall take place on **July 1, 2024 at [●:● a/p.m.] (prevailing Eastern Time)** before The Honorable [JUDGE], United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801 [] floor, courtroom [].

ADDITIONAL INFORMATION

Copies of the Motion, the Bidding Procedures Order and the Bidding Procedures may be obtained free of charge by visiting the KCC Website.

Dated: May __, 2024
Wilmington, Delaware

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R. Stephen McNeill (No. 5210)
Katelin A. Morales (No. 6683)
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Proposed Counsel to the Debtors and Debtors in Possession

Schedule 1

EXHIBIT B

Sale Order

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

In re:

Supply Source Enterprises, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11054 (____)

(Joint Administration Requested)

Re: Docket No. ____

**ORDER (A) APPROVING
THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF
LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (B) APPROVING
THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, AND (C) GRANTING RELATED RELIEF**

Upon consideration of the *Debtors' Motion for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets, (B) Designating the Stalking Horse Bidder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* [Docket No. ____] (the "Motion"), filed by the debtors and debtors in possession (the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"); and the Court having taken into consideration this Court's prior order, dated [●], 2024 (Docket No. [●]) (the "Bidding Procedures Order"), approving bidding procedures for

¹ The Debtors in these chapter 11 proceedings, together with the last four digits of each Debtor's federal tax identification number, are: Supply Source Enterprises, Inc. (0842); SSE Intermediate, Inc. (1772); SSE Buyer, Inc. (5901); Impact Products, LLC (7450); and The Safety Zone, LLC (4597). The Debtors' headquarters are located at 385 Long Hill Road, Guilford, Connecticut 06437.

the sale of the Assets (the “Bidding Procedures”) and granting certain related relief; and the Stalking Horse Bidder, (the “Purchaser”) having submitted the highest or best bid for the Purchased Assets (as defined in Stalking Horse APA), which was declared the Successful Bid for the Purchased Assets pursuant to the Bidding Procedures; and this Court having conducted a hearing to consider the Sale and the transactions contemplated under the Stalking Horse APA (the “Transactions”) on [●], 2024 (the “Sale Hearing”), at which all interested parties were offered an opportunity to be heard with respect to the Sale and the Transactions; and this Court having reviewed and considered: (i) the Motion and the exhibits thereto, (ii) the Stalking Horse APA, whereby the Debtors have agreed, among other things, to sell the Purchased Assets to the Purchaser, including certain executory contracts and unexpired leases of the Debtors that will be assumed and assigned to the Purchaser (the “Assigned Contracts”), on the terms and conditions set forth in the Bidding Procedures Order, this Order, the Stalking Horse APA, and any ancillary or supplemental documents executed in connection therewith, (iii) the First Day Declaration,² and the Sale Declaration,³ (iv) the objections and reservations of rights filed or informally raised by parties in interest (collectively, the “Objections”), and (v) the arguments of counsel made, and the evidence proffered and adduced, at the Sale Hearing; and due notice of the Motion and this Order having been provided; and all objections to the Sale, the Transactions, and this Order having been withdrawn, resolved, or overruled on the merits; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and all other parties in

² Declaration of Thomas Studebaker in Support of Chapter 11 Petitions and First Day Motions (Docket No. [●]).

³ Declaration of Lisa K. Lansio in Support of the Debtors’ Motion for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets, (B) Designating the Stalking Horse Bidder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption And Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief (Docket No. [●]).

interest in these Chapter 11 Cases; and this Court having found that the Debtors' notice of the Sale and opportunity for a hearing on the Sale, including the adequacy of the Sale Notice and the Assumption Notices (defined below), were appropriate and no other notice need be provided; and 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 upon the record of the Sale Hearing and these Chapter 11 Cases; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND, DETERMINED AND CONCLUDED THAT:

A. **Fed. R. Bankr. P. 7052.** The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. **Jurisdiction and Venue.** This Court has jurisdiction over this matter and over the property of the Debtors' estates, including the Purchased Assets to be sold, transferred, or conveyed pursuant to the Stalking Horse APA, pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order hereon under Article III of the United States Constitution. Venue of these Chapter 11 Cases and approval of the Sale and the Transactions contemplated by the Stalking Horse APA is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Statutory and Rule Predicates.** The statutory and rule-based predicates for the approvals and authorizations herein, including for the Sale and the Transactions contemplated by the Stalking Horse APA, are: (i) sections 105, 363, 365, 503, and 507 of title 11 of the United States Code (the “Bankruptcy Code”), (ii) Bankruptcy Rules 2002, 6004, 6006, 9006, 9007, 9008 and 9014, and (iii) Rules 2002-1, 6004-1, and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

D. **Opportunity to Object.** Proper, timely, adequate, and sufficient notice of, and a reasonable opportunity to object or otherwise to be heard regarding the Sale Notice, the Assumption Notices, [the Auction], the Sale Hearing, the assumption and assignment of the Assigned Contracts, the Sale, or the Transactions contemplated by the Stalking Horse APA have been provided in accordance with sections 102(1) and 363(b) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 9006, 9007, 9008, and 9014, the Local Rules, the procedural due process requirements of the United States Constitution, and in compliance with the Bidding Procedures Order. The Debtors also gave due and proper notice of the potential assumption and assignment of each Assigned Contract available to be assumed by the Debtors and assigned to the Purchaser to each non-debtor party under each such Assigned Contract (collectively, the “Non-Debtor Counterparties”) as reflected on certain Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Proposed Cure Amounts filed on [●], 2024 (Docket No. [●]) (the “First Assumption Notice”), [as further supplemented by that certain Supplemental Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Proposed Cure Amounts filed on [●], 2024 (Docket No. [●]) (the “Supplemental Assumption Notice”, and together with the First Assumption Notice,

collectively, the “Assumption Notices”). Such notice was good, sufficient, and appropriate under the particular circumstances, and, in the absence of an objection that is filed and served in accordance with the applicable Assumption Notice, the Non-Debtor Counterparties are hereby deemed to consent to the relief granted herein unless otherwise provided in this Order. No other or further notice of, opportunity to object to, or other opportunity to be heard regarding the Sale Notice, the Assumption Notices, [the Auction], the Sale Hearing, the assumption and assignment of the Assigned Contracts, the Sale, the Transactions contemplated by the Stalking Horse APA, or of the entry of this Order is necessary or shall be required.

E. **Notice.** The Debtors gave due and proper notice of the Sale on [●], 2024 (the “Sale Notice”) (Docket No. [●]). The Sale Notice constituted good, sufficient, and appropriate notice of the Sale under the particular circumstances and no further notice need be given with respect to the proposed Sale. As provided by the Sale Notice, a reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities, including, without limitation: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel for the DIP Lender and Prepetition Secured Lenders; (iii) counsel for the Committee; (iv) all persons known, or reasonably believed to have asserted, an interest in or liens against the Assets; (v) all Non-Debtor Counterparties; (vi) the Attorneys General in the State(s) where the Assets are located; (vii) all state and local taxing authorities in the State(s) where the Assets are located; (viii) the Internal Revenue Service; (ix) all parties that filed requests for notices under Bankruptcy Rule 9010(b) or were entitled to notice under Bankruptcy Rule 2002 or any applicable Local Rule, all creditors (whether their Claims are liquidated, contingent, or unmatured) of the Debtors; and (x) all entities that heretofore entered into non-disclosure agreements with the Debtors with respect to potential purchase of the Debtors’ businesses and assets. Other parties

interested in bidding on the Assets, including the Purchased Assets were provided, pursuant to the Bidding Procedures Order, sufficient information to make an informed judgment on whether to submit a bid.

F. **Final Order.** This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). 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, this Court expressly finds that there is no just reason for delay in the implementation of this Order, and authorizes the closing of all Transactions contemplated hereby without regard to any stay or delay in its implementation.

G. **Sound Business Purpose.** The Debtors, in a reasonable exercise of their business judgment, have demonstrated a sufficient basis and the existence of reasonable, appropriate, and compelling circumstances requiring them to enter into the Stalking Horse APA, transfer the Purchased Assets, and assume and assign the Assigned Contracts to the Purchaser under sections 363 and 365 of the Bankruptcy Code, and such actions are entirely fair and appropriate exercises of the Debtors' reasonable business judgment and in the best interests of the Debtors, their estates and their stakeholders.

H. **Compliance with Bidding Procedures Order.** The Debtors, the Purchaser, and their professionals have complied, in good faith, in all respects with the Bidding Procedures Order and the bidding process was free of any fraud, collusion, or unfair dealing. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing or submitted by affidavit or declaration at, or prior to, the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, through marketing efforts and a competitive sale process conducted in accordance with the Bidding Procedures Order, the Debtors (a) afforded all

potentially interested parties a full, fair, and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase the Assets, (b) provided all interested parties, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Assets, and (c) considered any bids submitted on or before the deadline to submit bids as set forth in the Bidding Procedures (the “Bid Deadline”).

I. **Good Faith**. The Stalking Horse APA was not entered into and the Sale is not being consummated for the purpose of hindering, delaying, or defrauding present or future creditors of the Debtors. The Debtors and the Purchaser were each represented by separate and independent advisors throughout the negotiation of the terms of the Stalking Horse APA. All payments and other consideration (including the credit bidding of secured debt) to be made by the Purchaser in connection with the Transactions contemplated by the Stalking Horse APA have been disclosed. Neither the Debtors nor the Purchaser are proposing to consummate the Sale fraudulently, for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia.

J. The Purchaser is a purchaser in “good faith,” as that term is used in the Bankruptcy Code and the decisions thereunder and is entitled to the protections of section 363(m) of the Bankruptcy Code with respect to the purchase of the Purchased Assets and the consummation of the Transactions. The Stalking Horse APA was negotiated and entered into in good faith, based upon arm’s length bargaining, and without collusion or fraud of any kind. Neither the Debtors nor the Purchaser has engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code or cause the application of, or implicate, section 363(n) of the Bankruptcy Code to the Stalking Horse APA, or to the consummation of the Transactions contemplated

thereby, and the transfer of the Purchased Assets, and the Assigned Contracts, to the Purchaser. The Purchaser is purchasing the Purchased Assets (including the Assigned Contracts) in good faith and is a good faith Purchaser within the meaning of section 363(m) of the Bankruptcy Code and is, therefore, entitled to the protection of that provision, and otherwise has proceeded in good faith in all respects in connection with this proceeding in that: (i) the Purchaser recognized that the Debtors were free to deal with any other party interested in acquiring the Purchased Assets; (ii) the Purchaser fully complied with all of the provisions of the Bankruptcy Code, the Bidding Procedures Order, and the Bidding Procedures; (iii) there was no fraud, collusion, or unfair dealing in connection with the bidding process and the sale of the Purchased Assets; (iv) the Purchaser has fully disclosed all of its connections with the Debtors; (v) all consideration to be paid or provided to the Debtors by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the sale have been disclosed; (vi) the Purchaser has not violated section 363(n) of the Bankruptcy Code by any action or inaction; and (vii) the negotiations and execution of the Stalking Horse APA and any other agreements or instruments related thereto were in good faith and free from any collusion, fraud, or unfair dealing.

K. **Highest or Best Value.** (i) The Debtors and their advisors conducted a fair, extensive, and open sale process that complied with the Bidding Procedures and the Bidding Procedures Order in all respects; (ii) the sale process and the Bidding Procedures set forth in the Bidding Procedures Order were: (a) non-collusive, (b) substantively and procedurally fair to all parties in interest, (c) duly noticed, (d) provided a full, fair, and reasonable opportunity for any entity to make an offer to purchase the Purchased Assets, and (e) resulted in a fair bidding process; (iii) the process conducted by the Debtors pursuant to the Bidding Procedures obtained the highest or otherwise best value for the Purchased Assets for the Debtors and their estates, and any other

transaction would not have yielded as favorable an economic result; (iv) the Purchaser has put forth the highest or otherwise best offer for the Purchased Assets pursuant to the terms of the Bidding Procedures Order; (v) the Purchase Price received by the Debtors for the Purchased Assets, after considering all of the relevant facts and circumstances of the Sale as a whole, is fair; and (vi) the Bidding Procedures resulted in the highest or best value for the Purchased Assets for the Debtors and their estates.

L. The Debtors determined, in a valid and sound exercise of their business judgment and after a robust and extensive marketing process, the Transactions contemplated by the Stalking Horse APA represented the highest or otherwise best bid. Therefore, the Purchaser's bid was designated the Successful Bid for the Purchased Assets. The Bidding Procedures have been complied with in all respects by the Debtors and the Purchaser and afforded a full, fair, and reasonable opportunity for any entity or person to make a higher or otherwise better offer for the Purchased Assets.

M. The sale of the Purchased Assets outside of a plan of reorganization pursuant to the Stalking Horse APA neither impermissibly restructures the rights of the Debtors' creditors, nor impermissibly dictates the terms of a liquidating plan or reorganization of the Debtors. The Sale does not constitute a *sub rosa* chapter 11 plan.

N. **Fair Consideration.** The offer of the Purchaser, upon the terms and conditions set forth in the Stalking Horse APA, including the form and total consideration (including the Purchase Price, the ABL Credit Bid, and the DIP Credit Bid (each as defined in the Stalking Horse APA)) to be realized by the Debtors pursuant to the Stalking Horse APA: (i) is the highest or best offer received by the Debtors and their estates, (ii) is fair and reasonable, (iii) is in the best interests of the Debtors' stakeholders and estates, (iv) constitutes full and fair consideration and reasonably

equivalent value for the Purchased Assets, and (v) will provide a greater recovery for the Debtors' creditors, and other interested parties than would be provided by any other practically available alternative. No other entity or group of entities has offered to purchase the Purchased Assets for greater economic value to the Debtors' estates than the Purchaser.

O. **Validity of Transfer.** The Purchased Assets are property of the Debtors' estates and title thereto is vested in the Debtors' estates. The Debtors have full corporate power and authority to execute the Stalking Horse APA (and all other documents contemplated thereby) and to consummate the Transactions contemplated thereby, and the sale or transfer of the Purchased Assets has been duly and validly authorized by all necessary corporate actions on the part of the Debtors' estates. No consents or approvals, other than as may be expressly provided for in the Stalking Horse APA, are required by the Debtors' estates to consummate such Transactions.

P. As set forth in paragraph E of the Final DIP Order and subject to the terms therein, the Debtors have stipulated, among other things: (i) to the Prepetition Secured Parties' (as defined in the Final DIP Order) valid, binding, perfected and enforceable, first priority liens over the Prepetition Collateral (as defined in the Final DIP Order) that secure the Prepetition Secured Obligations (as defined in the Final DIP Order) and (ii) that the Prepetition Secured Parties have the right to credit bid the entirety of the Prepetition Secured Obligations pursuant to section 363(k) without further challenges from the Debtors or any other party in interest. Pursuant to paragraph 13 of the Final DIP Order, upon entry of this Order, such stipulations are binding on all parties in interest.

Q. Pursuant to paragraph 27 of the Final DIP Order, the Court previously ordered that each of the Prepetition Secured Parties (subject to paragraph 13 of the Final DIP Order) and the

DIP Lender have the unqualified right to credit bid the full amount of the Prepetition Secured Obligations and the DIP Obligations (each as defined in the Final DIP Order), respectively.

R. **Satisfaction of 363(f) Standards.** The Debtors are authorized to sell the Purchased Assets free and clear of the Liens, Claims, and Interests, other than Assumed Liabilities, Permitted Liens, and as otherwise provided in the Stalking Horse APA (with the Liens, Claims, and Interests attaching to the proceeds with the same nature, validity, priority, extent, perfection, and force and effect that the Liens, Claims, and Interests encumbered the Purchased Assets immediately prior to the entry of this Order) because, with respect to each creditor or other person or entity asserting a Lien, Claim, or Interest, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Each creditor or other person or entity asserting a Lien, Claim, or Interest in the Purchased Assets (i) has, subject to the terms and conditions of this Order, consented to the Sale and Transactions or is deemed to have consented to the Sale and Transactions, (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such Lien, Claim, or Interest, or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code. Those holders of the Liens, Claims, and Interests who did not object (or who ultimately withdrew their objections, if any) to the Sale and Transactions or the Motion are deemed to have consented to the Motion, Sale, and Transactions pursuant to section 363(f)(2) of the Bankruptcy Code. Creditors or other persons or entities asserting a Lien, Claim, or Interest in or against the Assets could be compelled in a legal or equitable proceeding to accept money satisfaction of such Lien, Claim, or Interest.

S. The Purchaser would not have entered into the Stalking Horse APA and would not consummate the Transactions contemplated thereby, thus adversely affecting the Debtors and their estates and their creditors: (i) if the sale of the Purchased Assets was not free and clear of all Liens,

Claims, and Interests, including, without limitation, any rights, Liens, Claims, or Interests based on any successor or transferee liability, or (ii) if Purchaser would, or in the future could, be liable for any Liens, Claims, or Interests, including, without limitation, any rights, Liens, Claims, or Interests based on any successor or transferee liability. The Purchaser will not consummate the Transactions contemplated by the Stalking Horse APA unless this Court expressly orders that none of the Purchaser, its affiliates, its present or contemplated members or shareholders, or the Purchased Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Liens, Claims, and Interests, including rights or claims based on any successor or transferee liability other than as expressly set forth in the Stalking Horse APA.

T. Not selling the Purchased Assets free and clear of all Liens, Claims, and Interests would adversely impact the Debtors' estates, and the sale of Purchased Assets other than free and clear of all Liens, Claims, and Interests would be of substantially less value to the Debtors' estates.

U. Except with respect to the Permitted Liens that the Purchaser has expressly agreed to permit to survive the Closing pursuant to the express terms of the Stalking Horse APA, the Liens shall attach to the consideration to be received by the Debtors (if any) in the same priority and subject to the same defenses and avoidability, if any, as before the closing of the Transactions contemplated by the Stalking Horse APA (the "Closing"), and the Purchaser would not enter into the Stalking Horse APA to purchase the Purchased Assets or proceed to the Closing otherwise.

V. **Transfer of Assets Free and Clear.** The transfer of the Purchased Assets to the Purchaser free and clear of any Liens, Claims, and Interests will not result in any undue burden or prejudice to any holders of any Liens, because all such Liens of any kind or nature whatsoever shall attach to the net proceeds (if any) of the sale of the Purchased Assets received by the Debtors

in the order of their priority, with the same validity, force, and effect which they now have as against the Purchased Assets and subject to any claims and defenses the Debtors or other parties may possess with respect thereto. All persons having Liens of any kind or nature whatsoever against or in any of the Debtors or the Purchased Assets shall be forever barred and estopped from pursuing or asserting such Liens (subject to the Permitted Liens that the Purchaser has expressly agreed to permit to survive the Closing pursuant to the express terms of the Stalking Horse APA) against the Purchaser, or any of its respective assets, property, successors or assigns, or the Purchased Assets. The Purchaser shall have no obligations with respect to any Liens, Claims, and Interests against the Debtors.

W. **Assumption and Assignment of Assigned Contracts.** The Debtors have advanced sound business reasons for entering into the Stalking Horse APA and transferring, or assuming and assigning (with respect to the Assigned Contracts), the Purchased Assets, as more fully set forth in the Motion and the Stalking Horse APA, and as demonstrated at the Sale Hearing, and it is entirely fair to all parties in interest, and a reasonable exercise by the Debtors of the Debtors' business judgment to transfer, or assume and assign (with respect to the Assigned Contracts), the Purchased Assets to the Purchaser and to consummate the Transactions contemplated by the Stalking Horse APA with the Purchaser. Each and every provision of the Assigned Contracts or applicable non-bankruptcy law that purports to prohibit, restrict, or condition, or could be construed as prohibiting, restricting, or conditioning assignment of any Assigned Contract has been or will be satisfied or is otherwise unenforceable under section 365 of the Bankruptcy Code. All counterparties of the Assigned Contracts that did not or do not timely file an objection to the assumption and/or assignment of the Assigned Contract(s) to which they are a counterparty are deemed to consent to the assumption and/or assignment by the Debtors of

their Assigned Contract to the Purchaser, and the Purchaser shall enjoy all of the rights and benefits under each such Assigned Contract as of the applicable date of assumption and/or assignment without the necessity of obtaining such non-debtor party's consent to the assumption or assignment thereof. All Non-Debtor Counterparties for which the deadline to file an objection to the assumption and assignment to Purchaser has not passed as of the date of entry of this Order, and that did not or do not timely file such an objection prior to the applicable deadline, shall be deemed to consent to the assumption and/or assignment by the Debtors of their Assigned Contract to the Purchaser effective as of the Closing Date, and the Purchaser shall enjoy all of the rights and benefits under each such Assigned Contract as of the applicable date of assumption and/or assignment without the necessity of obtaining such Non-Debtor Counterparty's consent to the assumption or assignment thereof. If an objection to the Cure Amount timely filed with respect to an Assigned Contract cannot be resolved by the parties, the Debtors may, after consultation with the Purchaser, assume and assign the applicable contract(s) or lease(s) pending resolution of such objection in accordance with the Bidding Procedures Order. Upon the assignment and sale to the Purchaser in accordance with the terms of the Staking Horse APA, the Assigned Contracts shall be deemed valid and binding, in full force and effect in accordance with their terms, subject to the provisions of this Order, and shall be assigned and transferred to the Purchaser, notwithstanding any provision in the Assigned Contracts prohibiting or otherwise restricting assignment or transfer. To the extent any Assigned Contract is not an executory contract within the meaning of section 365 of the Bankruptcy Code, it shall be transferred to the Purchaser in accordance with the terms of the Stalking Horse APA and, other than with respect to Assumed Liabilities, the Purchaser shall have no liability or obligation for any (i) defaults or breaches under such agreement that relate to acts or omissions that arose or occurred prior to the Closing and (ii) claims, counterclaims, or

offsets, with respect to such Assigned Contract, that relate to any acts or omissions that arose or occurred prior to the Closing. The Purchaser shall not assume or become liable for any Liens, Claims, and Interests relating to the Purchased Assets, except as may be expressly set forth in the Stalking Horse APA.

X. Pursuant to the Stalking Horse APA, the Cure Amounts will be paid by the Debtors in accordance with the terms of this Order and the Stalking Horse APA. The Purchaser has demonstrated adequate assurance of future performance of each Assigned Contract within the meaning of section 365 of the Bankruptcy Code that is assumed by the Purchaser or any of its permitted assignees to which such Assigned Contract is assumed and/or assigned by the Debtors, including a promise to perform the Debtors' obligations under such Assigned Contract for periods at or after the Closing. The Cure Amounts are deemed the amounts necessary to "cure" (within the meaning of section 365(b)(1) of the Bankruptcy Code) all "defaults" (within the meaning of section 365(b) of the Bankruptcy Code) under such Assigned Contracts that are assumed. The Debtors' payment of Cure Amounts in accordance with the terms of this Order and the Stalking Horse APA and the Purchaser's promise under the Stalking Horse APA to perform the obligations under the Assigned Contracts as of the Closing shall constitute adequate assurance of future performance under such Assigned Contracts. Any objections to the Cure Amounts, to the extent not otherwise resolved, are hereby overruled. To the extent that any counterparty failed to timely object to its Cure Amount or to raise any other alleged default or breach of contract, such counterparty is deemed to have consented to such Cure Amount and to the assignment of its respective Assigned Contract(s) to the Purchaser and to have waived any other defaults or breaches. The Court finds that with respect to all Assigned Contracts, the payment of the Cure Amounts as provided in this Order and the Stalking Horse APA is reasonable and appropriate and

is deemed to fully satisfy the Debtors' obligations under sections 365(b) and 365(f) 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 by the Debtors, and the assignment by the Debtors to the Purchaser, of each Assigned Contract to be assumed and/or assigned to the Purchaser as of Closing.

Y. The assumption and assignment of the Assigned Contracts pursuant to the terms of this Order is integral to the Stalking Horse APA and is in the best interests of the Debtors, their estates, their stakeholders and other parties in interest, and represents an exercise by the Debtors of the sound and prudent business judgment of the Debtors and their estates.

Z. **Notice.** The notice and opportunity to object provided to all parties in interest, as set forth in the Bidding Procedures Order and the Stalking Horse APA, fairly and reasonably protects any rights of any party in interest.

AA. **No Successor or Other Derivative Liability.** The Transactions contemplated by the Stalking Horse APA do not amount to a consolidation, merger, or *de facto* merger of the Purchaser, on the one hand, and any of the Debtors and/or their estates, on the other. There is not substantial continuity between the Purchaser, on the one hand, and the Debtors, on the other. There is no continuity of enterprise between the Debtors and the Purchaser. The Purchaser is not a mere continuation of the Debtors or their estates, and the Purchaser is not a successor to any of the Debtors or their estates.

BB. **Fair Purchase Price.** The total consideration provided by the Purchaser for the Purchased Assets constitutes (a) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (b) fair consideration under the Uniform Fraudulent Conveyance Act, and (c) reasonably equivalent value, entirely fair consideration, and fair value

under any other applicable laws of the United States, any state, territory or possession, or the District of Columbia. The Sale and the Purchase Price were negotiated in good faith and are fair and the product of good faith negotiations among the parties.

CC. **Waiver of Bankruptcy Rules 6004 and 6006.** The Debtors and the Purchaser will be acting in good faith, pursuant to section 363(m) of the Bankruptcy Code, in closing the Transactions contemplated by the Stalking Horse APA at any time on or after the entry of this Order and cause has been shown as to why this Order should not be subject to any stay, including, without limitation, as provided by Bankruptcy Rules 6004(h), 6006(d), and any applicable Local Rule.

DD. Time is of the essence in consummating the Sale. To maximize the value of the Purchased Assets, it is essential that the sale of the Purchased Assets occur as promptly as possible and, in all events, within the time constraints set forth in the Stalking Horse APA. Accordingly, there is cause to lift the stays contemplated by Bankruptcy Rules 6004 and 6006.

EE. **Legal and Factual Bases.** The legal and factual bases set forth in the Motion, the First Day Declaration, the Sale Declaration, and presented at the Sale Hearing establish just cause for the relief granted herein.

NOW, THEREFORE, BASED UPON ALL OF THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. **Motion is Granted.** The relief requested in the Motion is **GRANTED** as set forth herein and the Sale, and the Transactions contemplated by the Stalking Horse APA, are hereby approved, subject to the terms and conditions contained herein.

2. **Objections Overruled.** Except as otherwise set forth herein, all Objections, responses, reservations of rights, and requests for continuance concerning approval of the Sale, if any, are resolved in accordance with the terms of this Order and as set forth in the record of the

Sale Hearing. To the extent any such Objection, response, reservation of rights, or request for continuance was not otherwise withdrawn, waived, or settled, it is overruled and denied on the merits with prejudice. All objections to the entry of this Order or to the relief granted herein that were not timely filed are hereby forever barred.

3. **Notice.** Notice of the Sale Hearing, including as set forth in the Sale Notice and the Assumption Notices, was fair, equitable, proper, and sufficient under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002, 6003, 6004, and 6006, the Local Rules, and as required by the Bidding Procedures Order.

4. **Fair Purchase Price.** The sale of the Purchased Assets and the consideration provided by the Purchaser under the Stalking Horse APA are entirely fair and reasonable, the highest or otherwise best offer for the Purchased Assets, shall be deemed for all purposes to constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law, and were the result of a fair bidding process. The Sale of the Purchased Assets to the Purchaser is a legal, valid, and effective transfer of the Purchased Assets notwithstanding any requirement for approval or consent of any person or entity.

5. The Purchaser is hereby granted, and is entitled to, all the protections provided to a good faith purchaser under section 363(m) of the Bankruptcy Code, including with respect to the transfer of the Assigned Contracts as part of the sale of the Purchased Assets pursuant to section 365 of the Bankruptcy Code and this Order.

6. **Approval of the Sale and the Transactions.** Subject to the terms of this Order, the sale of the Purchased Assets, the terms and conditions of the Stalking Horse APA (including all schedules and exhibits affixed thereto), and the Transactions contemplated thereby shall be, and hereby are, authorized and approved in all respects, and shall be enforceable against each of

the parties thereto. The Debtors have satisfied all requirements of sections 363(b), 363(f), and 365 of the Bankruptcy Code, and all other requirements and standards applicable to a sale outside the ordinary course of business, free and clear of the Liens, Claims, and Interests (other than Permitted Liens).

7. The failure specifically to include any particular provisions of the Stalking Horse APA or any of the documents, ancillary documents, or instruments executed in connection therewith in this Order shall not diminish or impair the force of such provision, document, Stalking Horse APA, or instrument, it being the intent of the Court, the Debtors, and the Purchaser, that the Stalking Horse APA and each document, ancillary document, or instrument be authorized and approved in its entirety with such amendments thereto as may be made by the parties in accordance with this Order prior to the Closing, and each such provision shall be enforceable by or against each of the parties thereto.

8. **Entitled to Credit Bid.** Upon entry of this Order: (i) the Prepetition Secured Parties, or the Purchaser, as applicable, shall be entitled to credit bid all of the Prepetition Secured Obligations and/or DIP Obligations (each as defined in the Final DIP Order), as applicable, without further challenge from any other party in interest, (ii) all of the Prepetition Secured Obligations and DIP Obligations (each as defined in the Final DIP Order) that constitute the ABL Credit Bid and DIP Credit Bid (each as defined in the Stalking Horse APA), respectively, shall be deemed legal, valid, and binding obligations of the Debtors, (iii) the liens securing such Prepetition Secured Obligations shall not be subject to any Challenges (as defined in the Final DIP Order) and any such Challenges by any party in interest shall be deemed forever waived, barred, and released, and (iv) the Challenge Period (as defined in the Final DIP Order) shall terminate and no party shall be permitted to assert any Challenge and all such Challenges shall be deemed forever waived, barred,

and released. Notwithstanding anything to the contrary herein: (i) other than the ABL Credit Bid, the DIP Credit Bid and any other Prepetition Secured Obligations included in the Successful Bid, if any, nothing in this Order shall impair, release, modify, discharge, or otherwise affect any of the outstanding Prepetition Secured Obligations, DIP Obligations, Adequate Protection Obligations (each as defined in the Final DIP Order), or any claims, liens or other obligations relating to the Final DIP Order; (ii) the occurrence of the Closing Date will constitute the consummation of a sale of all or substantially all of the assets of the Debtors pursuant to Bankruptcy Code Section 363(c); and (iii) in accordance with the definition of “Maturity Date” in the DIP Credit Agreement, the Maturity Date for all purposes in the Interim DIP Order, the Final DIP Order, and the DIP Credit Agreement shall be the same as the Closing Date.

9. **Consummation of Transactions.** The Debtors, in transferring the Purchased Assets pursuant to this Order and sections 363 of the Bankruptcy Code, are deemed, under section 1107(a) of the Bankruptcy Code, to have all rights and powers to perform all of the functions and duties of a trustee serving in a bankruptcy case, and will transfer the property pursuant to this Order.

10. The Debtors and their employees, professional advisors, and agents shall be, and hereby are, authorized and directed to fully assume, perform under, consummate, and implement the terms of the Stalking Horse APA, together with any and all additional instruments and documents that may be necessary or desirable in connection with implementing and effectuating the terms of the Stalking Horse APA, this Order, and/or the sale of the Purchased Assets, including, without limitation, the certificates, deeds, assignments, and other instruments of transfer, and to take all further actions (i) as may reasonably be requested by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser, or reducing to

possession, any or all of the Purchased Assets or Assumed Liabilities or (ii) as may be necessary or appropriate to the performance of the obligations of the Debtors' estates in accordance with, or as contemplated by, the Stalking Horse APA, without any further corporate action or orders of this Court.

11. The Debtors and each other person or entity having duties or responsibilities under the Stalking Horse APA, any agreements or instruments related thereto or this Order, and their respective directors, officers, managers, employees, members, agents, representatives, attorneys, and other retained professionals are authorized and empowered, subject to the terms and conditions contained in the Stalking Horse APA and this Order, to carry out all of the provisions of the Stalking Horse APA and any related agreements or instruments; to issue, execute, deliver, file, and record, as appropriate, the documents evidencing and consummating the Stalking Horse APA and any related agreements or instruments; to take any and all actions contemplated by the Stalking Horse APA, any related agreements or instruments, or this Order; and to issue, execute, deliver, file, and record, as appropriate, such other contracts, instruments, releases, indentures, mortgages, deeds, bills of sale, assignments, leases, or other agreements or documents and to perform such other acts and execute and deliver such other documents, as are consistent with, and necessary, desirable or appropriate to implement, effectuate, and consummate, the Stalking Horse APA, any related agreements or instruments, and this Order and the Transactions contemplated thereby and hereby, all without further application to, or order of, the Court or further action by their respective directors, officers, managers, employees, members, agents, representatives, and attorneys, and with like effect as if such actions had been taken by unanimous action of the respective directors, officers, managers, employees, members, agents, representatives, and attorneys of such entities. The Debtors' officers, on behalf of the Debtors shall be, and hereby is, authorized to certify or

attest to any of the foregoing actions (but no such certification or attestation shall be required to make any such action valid, binding, and enforceable). The Debtors and the Purchaser are further authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable Governmental Entity any and all certificates, agreements, or amendments necessary or appropriate to effectuate the Transactions contemplated by the Stalking Horse APA, any related agreements and this Order, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable Governmental Entities or as the Debtors may determine are necessary or appropriate. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if any, required by the corporate laws of the states of formation of each corporate Debtor and all other applicable business, corporation, trust, and other laws of the applicable Governmental Entities with respect to the implementation and consummation of the Stalking Horse APA, any related agreements or instruments and this Order, and the Transactions contemplated thereby and hereby.

12. Each and every federal, state, and local governmental agency or department is authorized to accept any and all documents and instruments necessary and appropriate to consummate the Transactions contemplated by the Stalking Horse APA and this Order. This Order and the Stalking Horse APA shall be binding upon, and govern the acts of all such federal, state, and local governmental agencies and departments, including any filing agents, filing officers, title agents, recording agencies, secretaries of state, and all other persons and 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 in, or to, the Purchased Assets.

13. Pursuant to section 525 of the Bankruptcy Code, no Governmental Entity may revoke or suspend any permit or license relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of the Debtors' bankruptcy cases or the consummation of the Transactions contemplated by the Stalking Horse APA.

14. Except as otherwise expressly provided in the Stalking Horse APA, all persons presently on or after the Closing Date in possession of some or all of the Purchased Assets are directed to surrender possession of the Purchased Assets to the Purchaser, as applicable, on the Closing Date or at such time thereafter as the Purchaser may request. For the avoidance of doubt, all persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to Purchaser in accordance with the Stalking Horse APA and this Order.

15. **Transfer of Assets Free and Clear.** To the fullest extent permitted by law, effective as of the Closing, (a) the assumption of the Assumed Liabilities shall constitute a legal, valid, and effective assumption by Purchaser of all Assumed Liabilities and (b) the transfer of the Purchased Assets to the Purchaser, shall constitute a legal, valid, and effective transfer of the Purchased Assets notwithstanding any requirement for approval or consent by any person. The Debtors are authorized to transfer, and upon the Closing shall transfer to the Purchaser, all of the Debtors' right, title, and interest in and to, and possession of, the Purchased Assets, which shall be immediately vested in Purchaser, and such title to the Purchased Assets, including, without limitation, with respect to intellectual property identified in the Stalking Horse APA or any

instrument relating thereto and all tangible and intangible assets, personal property, goodwill, brand and related likenesses constituting Purchased Assets, shall be transferred to Purchaser free and clear of the Liens, Claims, and Interests (other than Assumed Liabilities and Permitted Liens) pursuant to section 363(f) of the Bankruptcy Code, including:

- (a) liens (including, without limitation, mechanics', materialmen's, and other consensual and non-consensual liens and statutory liens) mortgages, restrictions, hypothecations, charges of any kind or nature, indentures, loan agreements, instruments, leases, subleases, capital leases, encroachments, licenses, burdens, options, privileges, deeds of trust, security interests, equity interests, conditional sale or other title retention agreements, covenants, pledges, judgments, demands, guarantees, encumbrances, easements, defects in title, servitudes, regulatory violations by any governmental entity, decrees of any court or foreign or domestic governmental entity, and debts arising in any way in connection with any agreements, acts, or failures to act;
- (b) interests, obligations, liabilities, demands, guaranties, options, restrictions, and contractual or other commitments;
- (c) rights, including, without limitation, rights of first refusal, rights of offset (except for offsets exercised prior to the Petition Date), rights of setoff, rights of way, contract rights, subrogation rights, exoneration rights, labor rights, equitable rights, employment rights, pension rights, and rights of recovery;
- (d) decrees of any court or foreign or domestic government entity (to the extent permitted by law);
- (e) charges or restrictions of any kind or nature, including, without limitation, any restriction on the use, transfer, receipt of income or other exercise of any attributes of ownership of the Purchased Assets, including, without limitation, consent of any Person to assign or transfer any of the Purchased Assets;
- (f) debts arising in any way in connection with any agreements, acts, or failures to act, of the Debtors or any of the Debtors' predecessors or affiliates;
- (g) claims (as that term is defined in the Bankruptcy Code), including claims for reimbursement, contribution claims, indemnity claims, subrogation claims, exoneration claims, alter-ego claims, products liability claims, environmental claims (including, without limitation, toxic tort claims), labor claims, pension claims, equitable claims, including claims that may be secured or entitled to priority under the Bankruptcy Code, tax claims,

reclamation claims, adverse claims of any kind, and pending litigation claims;

- (h) matters of any kind or nature whatsoever, whether at law or in equity and whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or un-matured, material or nonmaterial, disputed or undisputed, whether arising prior to or during the Debtors' bankruptcy cases, and whether imposed by agreement, understanding, law, equity, or otherwise, including claims otherwise arising under any theory, law, or doctrine of successor liability or related theories;

in each case, whether in law or in equity, known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, direct or indirect, and whether arising by agreement, understanding, law, equity or otherwise, including claims otherwise arising under any theory, law, or doctrine of successor liability or related theories, and whether occurring or arising before, on or after the Petition Date, or occurring or arising prior to the Closing (each, a "Lien, Claim, or Interest," and collectively, the "Liens, Claims, and Interests"). The Liens (other than Permitted Liens), Claims, and Interests shall attach to the proceeds (if any) of the sale with the same nature, validity, priority, extent, perfection, and force and effect that such Liens, Claims, and Interests encumbered the Purchased Assets immediately prior to the entry of this Order, subject to any Claims, defenses, and objections, if any, that the Debtors or their estates may possess with respect thereto.

16. Following the Closing Date, no holder of any Liens, Claims, or Interests in the Purchased Assets shall interfere with the Purchaser's enjoyment of the Purchased Assets based on or related to such Liens, Claims, or Interests, or any actions that the Debtors may take in these

Chapter 11 Cases and no person shall take any action to prevent, interfere with or otherwise enjoin consummation of the Transactions contemplated by the Stalking Horse APA or this Order.

17. The provisions of this Order authorizing the sale of the Purchased Assets free and clear of any Liens, Claims, and Interests shall be self-executing, and neither the Debtors nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or any other instruments to effectuate, consummate, and implement the provisions of this Order. However, the Debtors, the Purchaser, and each of their respective officers, employees, attorneys, other retained professionals, and agents are hereby authorized and empowered to take all actions and execute and deliver any and all documents, releases, terminations, and instruments that either the Debtors or the Purchaser deem necessary, desirable, or appropriate to implement and effectuate the terms of the Stalking Horse APA and this Order, including amendments to the Stalking Horse APA and the release of Liens, Claims, and Interests set forth in this Order.

18. **General Assignment.** The Purchased Assets to be acquired by the Purchaser under the Stalking Horse APA shall be, as of the Closing Date and upon the occurrence of the Closing, transferred to, and vested in, the Purchaser. Upon the occurrence of the Closing, this Order shall be considered, and shall constitute, for any and all purposes a full and complete general assignment, conveyance, and transfer of the Debtors' interest in the Purchased Assets under the Stalking Horse APA and/or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the Purchased Assets to the Purchaser.

19. **Release of Interests.** On or before the Closing Date, each of the Debtors' creditors are authorized and directed to execute such documents, releases, or terminations, and take all other actions as may be necessary, desirable, or appropriate to release, effective as of the Closing, their respective Liens, Claims, and Interests of any kind against the Purchased Assets, as such Liens,

Claims, and Interests may have been recorded or may otherwise exist. If any person or entity that has filed financing statements, mortgages, mechanic's liens, or other documents or agreements evidencing any Liens, Claims, or Interests against or on the Purchased Assets (subject to the Permitted Liens that the Purchaser has expressly agreed to permit to survive the Closing pursuant to the express terms of the Stalking Horse APA) shall not have delivered to the Debtors on or prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all liens and easements, and any other documents necessary, desirable, or appropriate for the purpose of documenting the release of all Liens, Claims, Interests, encumbrances, or liabilities (other than Assumed Liabilities and Permitted Liens) that the person or entity has or may assert with respect to the Purchased Assets, the Debtors and the Purchaser are hereby authorized to execute and file such statements, instruments, releases, terminations, and other documents on behalf of the person or entity with respect to the Purchased Assets. The Purchaser is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Liens, Claims, Interests, encumbrances, or liabilities against the Purchased Assets (other than the Assumed Liabilities and Permitted Liens). 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.

20. This Order: (i) shall be effective as a determination that, as of the Closing, all Liens, Claims, and Interests, except as expressly assumed as an Assumed Liability by the Purchaser pursuant to the express terms of the Stalking Horse APA, have been unconditionally released, discharged and terminated as to Purchaser and the Purchased Assets owned by the Debtors and that the conveyances and transfers described herein have been effected, and (ii) is and shall be

binding upon and govern the acts of all persons, including 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, county, and local officials and all other persons 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 that reflect that Purchaser is the assignee and owner of the Purchased Assets, and ownership of the Purchased Assets owned by the Debtors is free and clear of any Liens, Claims, and Interests or who may be required to report or insure any title or state of title in or to any lease (all such entities being referred to as “Recording Officers”). All Recording Officers are authorized to strike recorded encumbrances and other interests against the Purchased Assets owned by the Debtors recorded prior to the date of this Order. A certified copy of this Order may be filed with the appropriate Recording Officers to evidence cancellation of any recorded encumbrances, Liens, Claims, Interests, pledges, and other interests against the Purchased Assets owned by the Debtors recorded prior to the date of this Order. All Recording Officers are hereby authorized to accept for filing any and all of the documents and instruments necessary, advisable or appropriate, and appropriate to consummate the Transactions contemplated by the Stalking Horse APA.

21. The Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, approval, certificate of occupancy, authorization, operating permit, registration, plan and the like of any Governmental Entity relating to the Purchased Assets or held by the Debtors’ estates, and to the greatest extent available under applicable law, all such licenses, permits, approvals, certificates of occupancy, authorizations, operating permits, registrations, plans and the like of any Governmental Entity are deemed to have been, and hereby are, deemed to be transferred to the Purchaser, as of the Closing Date. Furthermore, the business covered by

the Purchased Assets shall continue operating under all existing licenses of the Debtors until such licenses have been changed to the name of the Purchaser, including but not limited to local occupational licenses, and any other licenses need to operate such business with no interruption to the business.

22. **Payment of Certain Indebtedness.** Nothing in this Order shall limit the rights of the Prepetition Secured Parties or the DIP Lender under the Final DIP Order.

23. **Assumption and Assignment of Assigned Contracts.** Subject to the terms of the Stalking Horse APA and the occurrence of the Closing Date, the assumption by the Debtors of the Assigned Contracts, as provided for or contemplated by the Stalking Horse APA and the Assumption Notices, shall be, and hereby is, authorized and approved pursuant to sections 363 and 365 of the Bankruptcy Code.

24. The Assigned Contracts shall be deemed valid and binding and in full force and effect and assumed by the Debtors and assigned to the Purchaser at the Closing, pursuant to sections 363 and 365 of the Bankruptcy Code, subject only to the payment of the Cure Amounts (if any) solely to the extent set forth in the Assumption Notices.

25. The Debtors and the Purchaser have satisfied all requirements under sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code to provide adequate assurance of future performance under all of the Assigned Contracts. No other or further notice of, opportunity to object to, or other opportunity to be heard regarding the Assumption Notices or the assumption and assignment of the Assigned Contracts is necessary or shall be required.

26. Upon the Closing Date, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested in all right, title, and interest in, and to,

each of the Assigned Contracts. The Debtors shall reasonably cooperate with, and take all actions reasonably requested by, the Purchaser to effectuate the foregoing.

27. Pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code, and except as otherwise provided in this Order, on the Closing Date, the Debtors shall pay or cause to be paid to the Non-Debtor Counterparties the requisite Cure Amounts, if any, set forth on the Assumption Notices, except to the extent that (i) a Cure Amount was amended on the record of the Sale Hearing, (ii) a different Cure Amount is agreed as between the Non-Debtor Counterparties and the Debtors, or (iii) as to be determined by Court order. Except as otherwise set forth in this Order, the Cure Amounts (if any) are binding on all Non-Debtor Counterparties and are hereby fixed at the amounts (including any amount listed as \$0.00) set forth on the Assumption Notices and shall not be subject to any challenge or objection by any party. Except as set forth in this Order, the Non-Debtor Counterparties are forever barred from asserting any other claims, including, but not limited to, the propriety or effectiveness of the assumption and assignment of the Assigned Contracts against the Debtors, the Purchaser, or the property of any of them in respect of the Assigned Contracts. Except as set forth in this Order, all of the Non-Debtor Counterparties shall be fully and finally bound by the Cure Amount listed on the Assumption Notices and any challenge to any Cure Amount is hereby deemed waived and released.

28. Any provision in any Assigned Contract that purports to declare a breach, default, or payment right as a result of an assignment or a change of control in respect of the Debtors is unenforceable, and all Assigned Contracts shall remain in full force and effect, subject only to payment of the appropriate Cure Amounts, if any. No sections or provisions of any Assigned Contract that purport to provide for additional payments, penalties, charges, or other financial accommodations in favor of the Non-Debtor Counterparties shall have any force and effect with

respect to the Sale and assignments authorized by this Order, and such provisions constitute unenforceable anti-assignment provisions under section 365(f) of the Bankruptcy Code and/or are otherwise unenforceable under section 365(e) of the Bankruptcy Code and no assignment of any Assigned Contract pursuant to the terms of the Stalking Horse APA shall in any respect constitute a default under any Assigned Contract.

29. Each and every provision of the Assigned Contracts or applicable non-bankruptcy law that purports to prohibit, restrict, or condition, or could be construed as prohibiting, restricting, or conditioning assignment of any Assigned Contract has been or will be satisfied or is otherwise unenforceable under section 365 of the Bankruptcy Code. All counterparties of the Assigned Contracts that did not or do not timely file an objection to the assumption and/or assignment of the Assigned Contract(s) to which they are a counterparty are deemed to consent to the assumption and/or assignment by the Debtors of their Assigned Contract to the Purchaser, and the Purchaser shall enjoy all of the rights and benefits under each such Assigned Contract as of the applicable date of assumption and/or assignment without the necessity of obtaining such non-debtor party's consent to the assumption or assignment thereof. All counterparties of the Assigned Contracts for which the deadline to file an objection to the assumption and assignment or Cure Amount has passed as of the date of entry of this Order, and that did not timely file such an objection prior to the applicable deadline, shall be deemed to consent to the assumption and/or assignment by the Debtors of their Assigned Contract to the Purchaser effective as of the Closing Date, and the Purchaser shall enjoy all of the rights and benefits under each such Assigned Contract as of the applicable date of assumption and/or assignment without the necessity of obtaining such non-debtor party's consent to the assumption or assignment thereof. If an objection to the Cure Amount timely filed with respect to an Assigned Contract cannot be resolved by the parties, the Debtors

may assume and assign the applicable contract(s) or lease(s) pending resolution of such objection in accordance with the Bidding Procedures Order. Upon the assignment and sale to the Purchaser in accordance with the terms of the Stalking Horse APA, the Assigned Contracts shall be deemed valid and binding, in full force and effect in accordance with their terms, subject to the provisions of this Order, and shall be assigned and transferred to the Purchaser, notwithstanding any provision in the Assigned Contracts prohibiting or otherwise restricting assignment or transfer, and the Debtors, their estates, or any of their affiliates, predecessors, successors, or assigns, shall have no further liability or obligation under the Assigned Contracts. To the extent any Assigned Contract is not an executory contract within the meaning of section 365 of the Bankruptcy Code, it shall be transferred to the Purchaser in accordance with the terms of the Stalking Horse APA and, other than with respect to Assumed Liabilities (as defined in the Stalking Horse APA), the Purchaser shall have no liability or obligation for any (i) defaults or breaches under such agreement that relate to acts or omissions that arose or occurred prior to the Closing Date and (ii) claims, counterclaims, or offsets with respect to such Assigned Contract, that relate to any acts or omissions that arose or occurred prior to the Closing Date.

30. All defaults or other obligations under the Assigned Contracts arising prior to the Closing Date (without giving effect to any acceleration clauses, assignment fees, increases, advertising rates, or any other default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) shall be deemed cured by entry of this Order, or as applicable, payment of the Cure Amounts (if any) on the Assumption Notices and the counterparties to the Assigned Contracts shall be forever barred and estopped from asserting or claiming against the Debtors or the Purchaser that any amounts are due or other defaults exist under such Assigned Contract as of the date of the assignment of such Assigned Contract.

31. Notwithstanding anything to the contrary in this Order, in the event that the Sale does not close, none of the Assigned Contracts shall be assumed by virtue of this Order and shall remain subject to further administration in these Chapter 11 Cases.

32. **No Successor or Other Derivative Liability.** The Purchaser is not a “successor” to the Debtors or their estates by reason of any theory of law or equity, and the Purchaser shall not assume, or be deemed to assume, or in any way be responsible for any liability or obligation (other than the Assumed Liabilities) of any of the Debtors and/or their estates including, but not limited to, any bulk sales law, successor liability, or similar liability. Neither the transfer of the Purchased Assets to the Purchaser, nor the fact that the Purchaser is using any of the Purchased Assets previously owned by the Debtors, will cause the Purchaser or any of its affiliates, to be deemed a successor in any respect to the Debtors’ business or an alter ego, mere continuation, or substantial continuation of the Debtors within the meaning of any foreign, federal, state or local revenue, pension, ERISA, the WARN Act (as defined below), tax, labor, employment, environmental, or other law, rule or regulation (including, without limitation, 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.

33. Further, the transfer of title and possession of the Purchased Assets shall be free and clear of any Liens, Claims, and Interests pursuant to any successor or successor-in-interest liability theory, and, for the avoidance of doubt, the Purchaser, and each of its affiliates, successors, assigns, members, partners, officers, directors, principals, and shareholders shall have no liability whatsoever (other than the Assumed Liabilities) for any Liens, Claims, and Interests, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, whether liquidated or unliquidated, whether asserted derivatively or vicariously,

whether asserted based on Purchaser's status as a transferee, successor, or otherwise, of any kind, nature, or character whatsoever, including Liens, Claims, and Interests based on, relating to, and/or arising under, without limitation: (i) any employment or labor agreement; (ii) any pension, welfare, compensation or other employee plan, agreements, practices, and programs, including, without limitation, any pension or employee plan of, or related to, any of the Debtors or any Debtors' affiliates or predecessors or any current or former employees of any of the foregoing; (iii) the Debtors' business operations or the cessation thereof; (iv) any litigation involving one or more of the Debtors; (v) any employee, workers' compensation, occupational disease or unemployment or temporary disability related law, including, without limitation, any claims, rights, or causes of action that might arise under or pursuant to: (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Worker Adjustment and Retraining Notification Act of 1988 (the "WARN Act"), (g) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (h) the Americans with Disabilities Act of 1990, (i) the Consolidated Omnibus Budget Reconciliation Act of 1985, (j) the Multiemployer Pension Plan Amendments Act of 1980; (k) state and local discrimination laws, (l) state and local unemployment compensation laws or any other similar state and local laws, (m) state workers' compensation laws, and/or (n) any other state, local, or federal employee benefit laws, regulations or rules or other state, local or federal laws, regulations or rules relating to, wages, benefits, employment, or termination of employment with any or all Debtors or any of their predecessors; (vi) any antitrust laws; (vii) any product liability or similar laws, whether state, federal, or otherwise; (viii) any environmental laws, rules, or regulations, including, without limitation, under

the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq., or similar state statutes; (ix) Perishable Agricultural Commodities Act; (x) any bulk sales or similar laws; (xi) any federal, state, or local tax statutes, rules, regulations, or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; and (xii) any common law doctrine of *de facto* merger, successor, transferee, or vicarious liability, substantial continuity liability, successor-in-interest liability theory, and/or any other theory of or related to successor liability.

34. Other than the Assumed Liabilities the Purchaser has expressly agreed to assume pursuant to the express terms of the Stalking Horse APA, the Purchaser is not assuming nor shall it or any Affiliate of the Purchaser be in any way liable or responsible, as a successor or otherwise, for any Liabilities of the Debtors in any way whatsoever, including any Liabilities relating to or arising from the Debtors' ownership or use of the Purchased Assets prior to the Closing Date, or any Liabilities calculable by reference to the Debtors or their operations or the Purchased Assets, or relating to continuing or other conditions existing on or prior to the Closing Date, which Liabilities are hereby extinguished insofar as they may give rise to liability, successor or otherwise, against the Purchaser or any affiliate of the Purchaser.

35. Except as otherwise provided in the Stalking Horse APA, pursuant to sections 105 and 363 of the Bankruptcy Code, all persons, including, but not limited to, the Debtors, all debt holders, equity security holders, the Debtors' employees or former employees, Governmental Entities, lenders, parties to or beneficiaries under any benefit plan, trade and other creditors asserting or holding a Lien, Claim, or Interest of any kind or nature whatsoever against, in, or with respect to any of the Debtors or the Purchased Assets, arising under or out of, in connection with, or in any way relating to the Debtors, the Purchased Assets, the operation of the Debtors'

businesses prior to the Closing Date, or the transfer of the Purchased Assets to the Purchaser in accordance with the Stalking Horse APA and this Order, shall be forever barred and estopped from asserting, prosecuting, or otherwise pursuing such Lien, Claim, or Interest, including assertion of any right of setoff or subrogation, and enforcement, attachment, or collection of any judgment, award, decree, or order, against the Purchaser or any affiliates, successors or assigns thereof and each of their respective current and former members, officers, directors, attorneys, employees, partners, affiliates, financial advisors, and representatives (each of the foregoing in its individual capacity), with respect to the Purchased Assets.

36. Without limiting the generality of the foregoing, the Purchaser shall not assume or be obligated to pay, perform, or otherwise discharge any workers' compensation Liabilities of the Debtors arising pursuant to state law or otherwise, and this Order is intended to be all inclusive and shall encompass, but not be limited to, workers' compensation Claims or suits of any type, whether now known or unknown, whenever incurred or filed, which have occurred or which arise from work-related injuries, diseases, death, exposures, intentional torts, acts of discrimination, or other incidents, acts, or injuries prior to the Closing Date, including, but not limited to, any and all workers' compensation Claims filed or to be filed, or any reopening of such Claims, by or on behalf of any of the Debtors' current or former employees, persons on laid-off, inactive or retired status, or their respective dependents, heirs or assigns, as well as any and all premiums, assessments, or other obligations of any nature whatsoever of the Debtors relating in any way to workers' compensation liability.

37. The Purchaser has not assumed, or is otherwise not obligated for, any of the Debtors' liabilities other than the Assumed Liabilities, and the Purchaser has not purchased any of the Debtors' assets expressly excluded from the Purchased Assets. Consequently, all persons,

Governmental Entities and Units (as defined in sections 101(27) and 101(41) of the Bankruptcy Code) and all holders of Liens based upon or arising out of liabilities retained by the Debtors may not take any action against the Purchaser or the Purchased Assets to recover on account of any liabilities of the Debtors. All persons holding or asserting any Liens in the Excluded Assets may not assert or prosecute such Liens or any cause of action against the Purchaser or the Purchased Assets for any liability associated with the Excluded Assets or any other Excluded Liability (as defined in the Stalking Horse APA).

38. Any party to a personal services contract that has not objected to the assignment thereof is deemed to consent to such assignment pursuant to section 365(c) of the Bankruptcy Code to the extent that such contract is an Assigned Contract.

39. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, all parties to the Assigned Contracts shall have no claims against the Purchaser relating to any assignment fee, Cure Amounts, default, breach or claim or pecuniary loss, or condition to assignment, arising under or related to the Assigned Contracts existing as of the Closing Date or arising by reason of the Closing Date, except for any amounts that are Assumed Liabilities.

40. **Transfer Taxes.** Any Liens, Claims, and Interests of any kind asserted under laws, rules, regulations or governmental or court orders imposing a stamp, transfer tax, or similar tax arising from the transfer of the Purchased Assets to the Purchaser shall be filed against the Debtors' estates and shall not be asserted against the Purchaser. Pursuant to sections 105(a) and 363 of the Bankruptcy Code, all Governmental Units and Persons (as defined in sections 101(27) and 101(41) of the Bankruptcy Code, respectively) are hereby enjoined from taking any action against the Purchaser to recover any claim which such Person or Governmental Unit has or may assert against

the Debtors (as such claims exist immediately prior to the Closing) relating to a stamp, transfer tax, or similar tax arising from the transfer of the Purchased Assets to the Purchaser.

41. **Bulk Sales.** No bulk sale law or any similar law of any state or other jurisdiction shall apply in any way to the Sale and the Transactions contemplated by the Stalking Horse APA.

42. **Statutory Mootness.** Notwithstanding Bankruptcy Rules 6004, 6006, and 7062, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person obtaining a stay pending appeal, the Debtors and the Purchaser are free to close under the Stalking Horse APA at any time, subject to the express terms of the Stalking Horse APA. In the absence of any person obtaining a stay pending appeal, if the Debtors and the Purchaser close under the Stalking Horse APA, the Debtors and the Purchaser shall be deemed to be acting in “good faith” and the Purchaser shall be entitled to the protections of section 363(m) of the Bankruptcy Code as to all aspects of the Transactions contemplated by the Stalking Horse APA if this Order or any authorization contained herein is reversed or modified on appeal.

43. **Modification of Stalking Horse APA.** Subject to the terms of the Stalking Horse APA, the Stalking Horse APA and any related agreements and/or instruments may be waived, modified, amended, or supplemented by agreement of the Debtors and the Purchaser, without further action or order of the Court; provided, however, that any such waiver, modification, amendment, or supplement is not materially adverse to the Debtors’ estates.

44. **Binding Effect.** This Order and the Stalking Horse APA shall be binding on and inure to the benefit of all successors and assigns of the Debtors and the Purchaser.

45. This Order and the Stalking Horse APA shall be binding upon, enforceable against, and govern the acts of all persons including, without limitation, the Debtors and their estates, the

Purchaser and its respective successors and permitted assigns, any Chapter 11 trustee hereinafter appointed for the Debtors' estates, the Committee or any trustee appointed in a Chapter 7 case if any of the Chapter 11 Cases are converted from Chapter 11 to a case or cases under Chapter 7 of the Bankruptcy Code, all creditors of, and holders of equity interests in, any Debtor (whether known or unknown), the holders of the Liens, Claims, and Interests in, against, or on all or any portion of the Purchased Assets, filing agents, filing officers, title agents, recording agencies, secretaries of state, and all other persons 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.

46. **Conflicts; Precedence.** Nothing in any order of this Court or contained in any plan of reorganization or liquidation that may be confirmed in the cases of the Debtors, or in any subsequent or converted cases of the Debtors to cases under Chapter 7 of the Bankruptcy Code, shall conflict with, or derogate from, the provisions of the Stalking Horse APA or the terms of this Order. In the event there is any inconsistency between the Motion, the Bidding Procedures Order, the Bidding Procedures, the Stalking Horse APA, or this Order, this Order shall govern in all respects.

47. **No Avoidance of Sale.** Neither the Debtors nor the Purchaser has engaged in any conduct that would cause or permit the Stalking Horse APA to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code. Accordingly, the sale of the Purchased Assets is not subject to avoidance pursuant to section 363(n) of the Bankruptcy Code.

48. **Waiver of Bankruptcy Rules 6004 and 6006.** Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d) or any applicable provisions of the Local Rules, this Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon

entry, and the 14-day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply. Time is of the essence in closing the Transactions and the Debtors and the Purchaser intend to close the Transactions as soon as practicable.

49. **Retention of Jurisdiction.** This Court shall retain exclusive jurisdiction to enforce the terms and provisions of this Order, the Bidding Procedures Order, and the Stalking Horse APA in all respects and to decide any disputes concerning this Order, the Stalking Horse APA, or the rights and duties of the parties hereunder or thereunder or any issues relating to the Stalking Horse APA 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 Assigned Contracts, and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the Purchased Assets free and clear of any Liens, Claims, and Interests and any actions, efforts, and/or conduct designed to deprive the Purchaser of the Purchased Assets, including any and all tangible and intangible assets, personal property, goodwill, brand, and related likenesses acquired under the Stalking Horse APA.

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

51. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to implement the terms and conditions of the Stalking Horse APA and the provisions of this Order.

52. Neither the Purchaser nor the Debtors shall have an obligation to close the Sale Transaction until all conditions precedent in the Stalking Horse APA to each of their respective obligations to close the Transactions have been satisfied or waived in accordance with the terms of the Stalking Horse APA.

53. The provisions of this Order are non-severable and mutually dependent.